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Recent Books

RECENT BOOKS

RECORDS OF THE COURT OF CHANCERY OF SOUTH CAROLINA, 1671-1774. Edited by Anne King Gregorie. Introduction by J. Nelson Frierson, Dean Emeritus of University of S. C. Law School. The American Historical Association. Washington, D. C. 676 Pp. $10.00. 1950.

This is the sixth volume of colonial records published under the Littleton-Griswold fund of the American Historical Association, other records heretofore published being from courts in Maryland, New York, Rhode Island, Connecticut, and New Jersey.

But for the industry of a few painstaking scholars of the past, a considerable amount of the original legal materials of this jurisdiction would have been irretrievably lost. In 1736, Judge Nicholas Trott brought together and published in his *"Laws of the Province of S. C."*. Those statutes which had been enacted during the previous sixty-five years. This was followed in 1790 by the *"Statutes"* of Judge Grimke, a compilation of those enactments of the legislature which he regarded as then still in force.

It was not until 1809, however, that reports of cases previously decided at law, beginning in 1784, were collected and published. Then Judge Elihu Hall Bay initiated that series of reports of Law cases which continued until 1867. Next appeared, in 1814, Judge Brevard's *"Digest of Laws of S. C."*, in three volumes.

Chancellor Wm. H. DeSaussure, in 1817, published for the first time reports of cases previously decided in Equity. His splendid essay upon the history of Equity, which appeared in his first volume, antedated by nine years the appearance in print of the first volume of *"Commentaries"* of the celebrated Chancellor Kent, of New York. DeSaussure's four volumes of Equity Reports included such reports as could then be found of cases decided as early as September, 1784 and as late as February, 1817. This beginning gave rise to that series of S. C. Equity Reports which continued until 1867.

Under a legislative resolution of 1834 Dr. Thomas Cooper began his monumental task which was completed by David J. McCord. Known as the *"Statutes at Large"*, all laws previously enacted by both the Provincial government and State of South Carolina were thus collected and published. The first five volumes of this peerless work, under the hand of Dr. Cooper himself, appeared in print between the years 1836 and 1839. Then upon Dr. Cooper's death, the

work was taken up by McCord, who brought out the last five volumes between 1839 and 1841.

And now with the publication of *"South Carolina Chancery Records"*, for the first time in more than a century appears in print heretofore unpublished ancient legal materials. This work brings to light for the first time and makes available to the public the work of the colonial Court of Chancery. It fills in the foreground in such a way as to give one an almost complete picture of our system of jurisprudence.

These materials fall naturally into two periods: under the Proprietary Government (1671-1720), and under the Royal Government (1721-1774). In the former, portions of the Journal of the Grand Council (1671-80 and 1692), and certain Case Papers (1700-1720) are included. In the latter, portions of the Minute Book (1721-36; 1737-66; and 1770-74), and parts of pleadings in certain cases (1767-70) are set forth.

But the records themselves are incomplete and fragmentary. If the complaint is to be found, defensive pleadings are apt to be missing, or vice versa. Often only the decree or a copy of it entered in a minute book is all to be found of a particular case. But from these scanty remains often may be fairly surmised what the issues must have been.

It is interesting to note the kinds of problems raised and the sort of relief administered in our courts of Equity during this period of from nearly three centuries to nearly two centuries ago. By far the greater number of cases involved applications for injunctions against suits at law, or against levy under judgments there obtained, alleged to be illegal. Very numerous accounting problems are to be found, as to assets and profits of partnerships, as to estate property and funds handled by trustees or personal representatives, or where accounts were mutual.

In some instances specific performance of contracts to convey land, partially performed, with possession and improvements alleged, are sought and decreed. But how the court enforced its decree in favor of the petitioner in such cases does not appear. Some instances of application to cancel or rescind contracts for alleged fraud also occur.

Problems involving the rights of minors and persons *non compos mentis*, the traditional wards of Chancery, are frequent. Guardians or guardians *ad litem* must be appointed and instructed. The settlement of estates absorbed a large part of the time of the court. Ambiguous provisions in wills must be construed; the corpus of an estate might be ordered encroached upon for the support of minors; the

funds of minors needed investment — should it be in land or slaves? Or should their lands and slaves be sold for more profitable investment?

Questions involving real and personal property arose. Boundary disputes had to be settled; clouds upon titles removed; waste must be enjoined; quiet possession and enjoyment of realty must be decreed; partition of personality or realty became necessary, or the *status quo* of realty must be preserved, pending trial of title at Law.

Foreclosure of a mortgage upon realty left a cloud upon the title so it became a problem for Chancery to decree the time within which the property might be redeemed, or the equity of redemption cut off. In one or two instances we find rather typical cases of marshalling of assets for the benefit of creditors. There is a single instance found in which the court decreed the separate maintenance and support of an estranged wife. In short, many of the problems found are those which must still be dealt with today upon the Equity side of the court.

A number of instances of reluctant pleaders and witnesses occur. Pleaders were ordered, on pain of attachment and arrest, or of sequestration, to file answer on a day certain. Attachments were employed to prevent persons from leaving the jurisdiction. The writ of *ne exeat provincia* or *regno* was used with fair frequency. In one instance it was disallowed, however, because of the laches of complainant.

While at interlocutory hearings the testimony appears to have been usually submitted by affidavit, there are instances where this was supplemented by *vica voce* evidence upon court order. At times it became necessary to obtain testimony *de bene esse,* where a material witness was in jail for debt, was about to leave for foreign parts, or was ill at home and could not be personally present in court. The writ of *dedimus potestaem* was frequently issued to obtain depositions of or to propound interrogatories to witnesses residing in London, Scotland, Barbadoes, or other distant places, it being often alleged that the witness "had gone beyond the seas". The Lord Mayor of London was at times used as Commissioner for this purpose.

The petitions themselves most frequently seek a discovery of defendant, in whose possession it was alleged that all records and documentary evidence was to be found. Accompanying this request there was often sought the writ of *subpoena duces tecum.* Petitions were generally concluded with a long list of numbered interrogatories addressed to defendant and a prayer that he be required to answer these upon oath. In modern justice, many of these latin terms have

been abandoned, but the benefits once afforded by them are still to be obtained by use of equivalent forms in English.

Among the earlier complaints a considerable amount of informality is to be found. After all, these were in the nature of "humble petitions" addressed to that body which was sitting in place of the King. Strict rules of pleading were not observed. Rumor and gossip were repeated; conversations back and forth were quoted, as well as excerpts from letters exchanged between parties. In short, there was considerable indulgence in what is generally called "the pleading of evidence". A considerable show of bad temper and of back-biting is at times to be found. The feelings of the pleaders were often revealed. Sarcasm was used and the charge that the adversary was merely "trfling with the court" and its dignity.

The services of a Master were in use as early as 1714. As time went on this practice appears to have grown more frequent. In many instances he was called upon to state a complicated account. Instances occur in which the equal or proportionate division of real or personal property had to be made. More and more were commissioners, arbitrators, referees, or partitioners called upon for such purposes. Generally, substantial merchants or other prominent laymen, rather than trained lawyers, served in such capacities.

The court, from 1671 to 1720, was composed of the Governor and Council named by the Lords Proprietors. Thereafter, and until the Revolutionary War, it was composed of the Governor and Council named by the King. Thus these gentlemen were then performing judicial functions as well as executive, and possibly some legislative as well.

Nor were they all trained lawyers by any means, although Stephen Bull, who appeared in Charleston in 1671, was trained. Nevertheless, the knowledge of the principles and practice of Equity by the court and its officials seems remarkable. Naturally there was a noticeable advancement in this regard as time went on and more and more trained lawyers were admitted to the practice.

Departures from the standard chancery practice of the day were rare indeed. One striking instance of this was where Chancery injunctively acted upon the Law court itself, as well as upon the plaintiff and his counsel in a suit pending there — an affront sedulously avoided by Chancery courts in England. A comparison of these cases with those found in contemporary English Chancery reports, such as Vernon, Peere Williams and Ambler is highly favorable to the Chancery Court of Carolina, as revealing a considerable knowledge of Equity on the part of the members of the court itself, of its solicitors, and of the other officials.

The fact that Carolina was then a frontier country, or outpost, did not prevent the issues raised in this court from being as complicated as they were in a well established urban society of that day, or, indeed, in modern courts. Commerce between this and other provinces and with the mother country was well developed. A man might die in Charles Town, having accumulated considerable real estate and other wealth not only in Carolina but in other provinces as well.

There was naturally much commerce with England and Scotland, but since many of the early settlers in Carolina came from Barbedoes, there was much traffic with citizens of that island, as well as with Jamaica, New Providence and even Bimini. Ties between Carolina and the islands of the Caribbean were then very close.

Dean Frierson has made a highly valuable contribution in his Legal Introduction, not only in outlining the sources of Chancery, and its changes and development by Statute and otherwise in Carolina, but also in his careful briefing, analyses, and comments upon the pleadings found. This, at best, was a tedious task, for paragraphing, sentence structure and punctuation as used today were not then employed. At times the entire complaint was stated in a single long, involved sentence, the understanding of which required not mere reading, but considerable study.

The editor, on her part, has both contributed the difficult service of reading and deciphering the ancient manuscripts and of checking the proof against the original records to insure accuracy of reproduction. This has been done in a most scholarly fashion. To this she has added a valuable historical introduction, and, by way of numerous footnotes, has given much interesting factual information as to many of the persons whose names appear in the records. At times she furnishes biographical sketches of these persons and lists many valuable bibliographical references. All of this adds to the color, life, and interest of the matters dealt with.

This volume will be of interest chiefly to students of legal institutions, but those who are interested in the history of South Carolina, of social customs and economic history of the times, and in genealogy will find a study of this book highly rewarding.

Especially are Dr. Gregorie and Dean Frierson to be commended for giving so generously of their time and talents to a task which was done without material compensation. It is both refreshing and gratifying to find that there are yet people who are willing to undertake difficult work only for the sake of its worth to posterity.

THOMAS M. STUBBS.*

*Professor of Law, University of South Carolina.

AMERICAN POLITICS AND THE PARTY SYSTEM. By Hugh A. Bone. McGraw Hill Book Company, New York, N. Y. 1949. 771 Pp. $5.50.

A considerable bibliography is now available in the general field of American politics. A number of good studies have appeared on public opinion, pressure groups, propaganda, political behavior, political polls, the party system, party organization, the electorate, electoral methods, bosses, political machines, campaigns and campaign costs, and money in elections. In addition a number of good biographies throw considerable light on the life, character, and political techniques of some potent and colorful politicians.

Apparently this is one of the better textbooks in American politics. It was designed primarily for college students, but it will have considerable appeal for the layman and the general reader. It has all the essential features of a good standard text, but it is a great deal more than a textbook. It is a comprehensive guide to the study of the whole field of political dynamics. There are six major divisions of the book dealing with public opinion, pressure groups, history and character of parties, organization and activities of parties, nominations and elections, and the popular control of government. Despite the broad scope of the study there is nothing sketchy or superficial about it. As a matter of fact, the author has compressed into one volume much of the best material now available on politics and its related fields. The materials were drawn from a wide variety of sources, but the author has coordinated them into a well unified study. A good list of selected readings is given at the end of each chapter. These lists include monographs, texts, articles from scholarly journals, current papers and periodicals.

In his discussion of the place of public opinion in a democracy the author emphasizes the importance of such opinion and describes the several forms, varieties, and shades of it. Democracy is always vitally concerned with the free discussion of political issues and ideas and with the freedom to resort to constitutional means for expressing the changing currents of opinion. Some of the one-party states make difficult if not impossible the free organization of rival party opinions. It is practically impossible to discover exactly the origin of all opinions and beliefs. It is equally difficult to determine accurately the part played by the locale, home, church, school, club, press, radio, motion pictures, and even the government itself in the moulding and development of public opinion. Nevertheless, an appreciation is needed of the role, potentialities, and shortcomings of each of these in the formation of public attitudes.

According to the author, the founding fathers of the Constitution recognized the importance and value of economic interests in the political life of the country. In the *Federalist,* James Madison talked about the "interests" in this country — a manufacturing interest, a commercial interest, a farming interest, a worker's interest and many other interests which reflect the hopes, aspirations and desires of the people. He and others of his time saw the role of government as essentially that of reconciling these interests within the state. A hundred and sixty years of experience have proved the wisdom and validity of their insight. These interests — now called "pressure groups" — are still the expression of the real concerns of our citizens. American politics is rapidly becoming the politics of organized groups. The growing vitality and power of pressure groups are creating some major problems for politicians and political parties.

The section on the history and character of political parties traces their origin and development from the seventeenth century Cavaliers and Roundheads in England through the presidential election of 1948. The highlights, shifting fortunes and significant changes in parties are pointed out and explained. Special emphasis is given party development in the early days of the federal government. Party alignments are covered and analyzed during the Jacksonian era and the Civil War and post war periods. The period from McKinley to Franklin Roosevelt is reviewed and many of the great issues presented. Among them are foreign policy, international trade, social legislation, regulation of business, public enterprise, regulation of the liquor traffic, farm relief and the control of agricultural surpluses.

The author points out that during the first decade of the twentieth century many of the great issues were ignored by both major parties. Since that time some of the problems have been partially solved; but many of them are still without a completely definitive solution and they will continue, as they have in the past, to divide parties and men. Pressure politics and party politics have been bound up to a large extent with the politics of social security. The automobile, air plane, radio and television are bringing new and vital methods for the control of public opinion and they are making possible easy communication between the various sections and regions. As never before great numbers of people can be reached without much difficulty. Mass bombings and the splitting of the atom are revolutionizing the concept of international security and making foreign policy a matter of primary importance.

The author describes the New Deal as a program of bold action. The regime of Roosevelt is an era unto itself, an era which brought

unprecedented federal action in new fields as well as great extension in older ones. It ushered in an age of positive government where, in the words of the President, "new instruments of public power" were built up and placed "in the hands of a people's government". The depression, the Second World War and New Deal program, their effects on politics, parties and party alignment are covered in considerable detail. The Truman administration is discussed and current political trends indicated.

There is an adequate description of the major parties, their legal basis, composition, organization, leadership, discipline and personnel. There is an excellent treatment of the role of minor parties. A clear distinction is made between "splinter" and bona fide minor parties. Apparently the pressure groups and minor parties are responsible for much of the progressive legislation passed. One feature almost unique in textbooks on American politics is the space devoted to parties in other countries such as Canada, England, France and the other continental states. The contrasts stand out in bold relief.

There are other interesting chapters on the party hierarchy, machines and bosses, political leaders, selection of candidates, national conventions, campaigns, propaganda, party finance, suffrage qualifications and popular control of government. In his concluding paragraph the author states that: "Democracy must be positive, not negative; it should be for, rather than against, something. It must be dynamic and ever ready to experiment with the objective of improvement. Popular government also demands self-confidence — the confidence that the great mass of the people are capable of choosing officials who will govern them and that the people are capable of rectifying mistakes of judgment".

GEORGE R. SHERRILL.*

READINGS IN AMERICAN LEGAL HISTORY. Compiled and Edited by Mark DeWolfe Howe*. Harvard University Press, Cambridge, Mass. 1949. 529 Pp. $7.50.

This book brings together in convenient form materials of all kinds relating to the law, including statutes, court proceedings, opinions, addresses, and the like, and constitutes an invaluable contribution to American legal history. The materials contained in the book extend from very early dates in our history, and the compilation of the same, including the classification and editing thereof, suggests a prodigious amount of work. The chapter headings of the book

*Professor of Political Science, University of South Carolina.

give a fair idea of its contents in general terms, as well as of the time involved. For convenience, we quote them as follows:

"1. The General Problems of the Reception and Rejection of English Law.
2. The Condition of the English Law, 1550-1650.
3. The Law in the Massachusetts Bay Colony.
4. Critical Problems of American Law, 1790-1820.
5. The Nineteenth Century Movement for Codification."

It will be observed that one of the very important chapters relates to the law in Massachusetts Bay Colony; but there must be some limitation in any work of this kind, and the great importance of the development of the law in the area mentioned was sufficient reason for its selection. However, it should be stated that the book does not confine itself absolutely to any particular section of our country; and, among other things, there are references made to South Carolina, some of which will hereinafter be mentioned. The book under consideration is really in line, in its major purpose, with the recently published book entitled *"Records of the Court of Chancery of South Carolina, 1671-1779"*, edited by Anne King Gregorie, with an introduction by J. Nelson Frierson, Dean Emeritus of the South Carolina Law School.

Books of this character perform a very useful service, not only because of the preservation of records of historical value, but also because they make such records available to research scholars in the field of law, as well as to the bench and bar; for an understanding of our present legal problems requires at least some knowledge of historical background.

In attempting to review a work of this type, it is quite obvious that if the review is to be kept within reasonable limits, little more can be done than to call attention to some particular matters which may be of special interest to the readers of this journal.

The first chapter heading relates to a subject about which there is often a lack of accurate knowledge on the part of practitioners. That is the question of how far was the colonial law controlled by the English law, and, more particularly, after American independence, to what extent was the common law, including old English statutes, adopted by the several States?

In this connection it should be observed that attention is called in the book above mentioned, *"Records of the Court of Chancery of South Carolina"*, to the fact that an act of the General Assembly of

°Professor of Law, Harvard University.

the Province of South Carolina was enacted December 12, 1712, declaring what English statutes were of obligatory force in the Province; and, incidentally, it was therein stated that the common law of England, where the same is not altered by the enumerated acts "or inconsistent with the particular Constitutions, customs and laws of this Province", shall be of full force in the Province.

In the book under review reference is made to an old South Carolina case demonstrating that our Courts did not hesitate to speak frankly and somewhat critically, at least as to the origin of the common law of England, where circumstances seemed to justify it. The case mentioned by Prof. Howe is that of *State v. Lehre,* a libel case, decided in 1811, and, curiously enough, the same appears to have been reported twice, in 2 Brev. 446, and in 2 Tread. Const. 809. The full text of the opinion, which was delivered by Judge Waties, is found only in the latter report. We quote from this opinion the excerpt used by Prof. Howe:

> "It is a great error, to look to the first sources of the common law, for the purity of its principles. The best and purest of these are of later accession. The sources of the common law (except such parts as were derived from the laws of Rome) were shallow and muddy. In its downward course, it has been continually filtered and enlarged, by passing through courts of increased wisdom and science; and it is owing to these continued filterings and accessions, that we see it as it now is, a clear, wholesome, deep and majestic stream."

In Chapter 4, relating to critical problems of American law, 1790-1820, much of the source material relates to marine insurance, and Prof. Howe cites our case of *Bailey v. South Carolina Insurance Co.,* 3 Brev. 354, which involved a question of great importance at that time, to wit, the effect of the judgment of a foreign Court of Admiralty. Among the opinions of our Constitutional Court in this case, decided in May, 1813, was one delivered by Judge Nott, and the sharpness of his critical attitude to the current British Courts is demonstrated by the excerpt from his opinion quoted by Prof. Howe, and which we also quote, as follows:

> "None of the reasons . . . on which the decisions of the British courts have been bottomed, will support their opinions . . . The time was, when even England and France were, or at least, affected to be, governed by the rules of common honesty, and their courts of admiralty influenced by a sense of stern morality . . . I have already shown that even Sir William Scott, the great

> oracle of maritime law, and of the law of nations . . . finding that he must give up his place, or his opinion, has had the weakness to surrender his principles, and an immortal fame, to sordid interest."

But perhaps the most interesting part of the book before us is Chapter 5 relating to the nineteenth century movement for codification; and the greatest figure in this field of legal reform would unquestionably appear to be David Dudley Field, distinguished lawyer of a distinguished family, for he was a brother of Cyrus W. Field and Mr. Justice Stephen J. Field of the Supreme Court of the United States.

David Dudley Field was the Chairman of the Commissioners of the Code appointed in New York, and their first report appears to have been made in 1858. Without going into any detail as to the preparation and subsequent use of the Field Codes in general, it should be especially noted that our own South Carolina Code of Civil Procedure is substantially the same as the Field Code of Civil Procedure adopted in New York. Our Code was adopted in 1870, and there have been relatively few amendments to the same; and I am of opinion that the bench and bar of the State would agree that this Code has been of inestimable value in the administration of the law in the State of South Carolina, and was a happy result of the nineteenth century movement for codification to which Prof. Howe refers.

Codification of course is a very broad subject, and based on experience in our State we should say that codification in procedural matters is quite desirable, and of course the codification of statutes is a practical necessity. Indeed, our State Constitution of 1895, Article VI, Section 5, provides for the decennial codification of the statutory laws of the State. But when we refer to the codification of the common law these advantages are not so obvious. There was indeed, on the part of some groups of the lay public during the period in which the Constitution was adopted, a demand somewhat to the effect that the law should be simplified and *put in one book*, so everybody could readily understand it; and it may be that this had something to do with the adoption of the statutory codification provision of the Constitution. But the difficulty about effecting codification of the common law, in the general sense of that phrase, is that the law is a growth and development arising out of experience, and it cannot be confined within the limits of any code. On the other hand, codes and "restatements" do sometimes perform a useful function in the settlement and unification of the law.

One of the most entertaining things in the book before us is the reproduction of an oration delivered by Thomas S. Grimke, a truly distinguished South Carolina lawyer, on the practicability and expediency of reducing the whole body of the law to the simplicity and order of a code, the same having been delivered to the South Carolina Bar Association March 17, 1827. This address is properly designated as an oration, because it is a masterpiece of eloquence, appropriate to the era in which it was delivered, and the arguments therein contained are not only the result of careful reasoning, but there is a background of extraordinary learning. We are truly indebted to Prof. Howe for the inclusion of this address in his book.

Nevertheless, the opinion of the orator appears to be too optimistic, for he seems to contemplate a general code (which, however, was never adopted), covering the whole field of the law, which would be invested with a degree of "sanctity", protecting it from annual innovation by the legislative body.

L. D. LIDE.*

COURTS ON TRIAL. By Jerome Frank. Princeton University Press, 1949. Pp. xxxii, 441. $5.00.

With his distinguished record as a lawyer, chairman of the Securities and Exchange Commission, federal judge, and as a prolific writer on legal matters, and with his acquaintance with many branches of knowledge — from anthropology and psychology to mathematics and music — Judge Frank presents a volume of unusual depth and meaning.

Believing that John Q. Citizen should be told of the flaws in the workings of the courts and should be taught how to become qualified to consider them, the author endeavors to teach Mr. Citizen the difference between inherent, ineradicable, difficulties in the administration of justice and those which are eradicable and should be eliminated. He brings into focus a wealth of significant observations from his own experiences in courts, against a background of reading so extensive as to surprise his readers. Much is told about the workings of our courts with which the ordinary citizen, unfortunately, is not acquainted. As the book is intended for intelligent non-lawyers as well as lawyers, technical legal jargon is avoided.

Courts on Trial is a complement to two of Frank's earlier books; *Law and the Modern Mind* (1930) and *If Men Were Angels* (1942).

*Retired South Carolina Circuit Court Judge. Member of South Carolina Bar, Marion, S. C.

Overlapping those books in part, and continuing where they left off, this book centers on the doings of trial courts. His principal aim is to show the major importances of those courts; how they daily affect the lives of thousands of persons; and how, often with tragic results, they do their jobs in ways that need reform.

The principal point of attack by the author is his conviction that the matching of wits as, at present, is manifested in our trial courts results in less certainty in the ascertainment of truth than the average citizen is led to believe. No witness — however honest he may be — is likely to be more than fifty per cent correct. The demeanors, as well as the words of the witnesses, are reflected on the jurors and judges minds, and thus, all facts being twice refracted, once in the minds of witnesses and once in the minds of the triers — scientific accuracy becomes negligible.

Legal institutions, such as the jury, are re-examined in a new light. Questions are raised regarding traditional assumptions such as those pertaining to the relative importance of the determination of facts and the application of the rules of law, the predictability of the outcome of cases in trial courts, the degree of certainty afforded by the doctrine of *stare decisis,* the nature and significance of the control exercised by appellate courts over trial courts, the relative importance of trial and appellate courts, and the proper emphasis in legal education.

The author takes issue profoundly with the orthodox explanations of the way in which courthouse government functions, and comes up with numerous suggestions for improvement. He proposes the following reforms:

1. Reduce the excesses of the present fighting method of conducting trials:
   - (a) Have the government accept more responsibility for seeing that all practically available, important, evidence is introduced at a trial of a civil suit.
   - (b) Have trial judges play a more active part in examining witnesses.
   - (c) Require court-room examination of witnesses to be more humane and intelligent.
   - (d) Use non-partisan "testimonial experts", called by the judge, to testify concerning the detectible fallibilities of witnesses; circumspectly employ "lie-detectors".
   - (e) Discard most of the exclusionary evidence rules.
   - (f) Provide liberal pre-trial "discovery" for defendants in criminal cases.

2. Reform legal education by moving it far closer to court-house and law-office actualities, largely through the use of the apprentice method of teaching.

3. Provide and require special education for future trial judges, such education to include intensive psychological self-exploration by each prospective trial judge.

4. Provide and require special education for future prosecutors which, among other things, will emphasize the obligation of a prosecutor to obtain and to bring out all important evidence, including that which favors the accused.

5. Provide and require special education for the police so that they will be unwilling to use the "third degree".

6. Have judges abandon their official robes, conduct trials less formally, and in general give up "robe-ism".

7. Require trial judges in all cases to publish special findings of fact.

8. Abandon jury trials except in major criminal cases.

9. At any rate, while we have the jury system, overhaul it:
   (a) Require fact-verdicts (special verdicts) in all jury trials.
   (b) Use informed "special" juries.
   (c) Educate men in the schools for jury service.

10. Encourage the openly disclosed individualization of law suits by trial judges; to that end, revise most of the legal rules so that they avowedly grant such individualizing power to trial judges, instead of achieving individualization surreptitiously as we now largely do.

11. Reduce the formality of appeals by permitting the trial judge to sit with the upper court on an appeal from his decision, but without a vote.

12. Have talking movies of trials.

13. Teach the non-lawyers to recognize that trial courts have more importance than upper courts.

The author suggests those reforms most tentatively, readily admitting that no one, he included, has the competence to contrive sane, practical solutions to the problems he has posed. Realizing that such solutions must come from the concerted efforts of many of our ablest minds, and not exclusively lawyers' minds, Judge Frank stimulates thinking about those problems which he believes (and points out) have been too long neglected.