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SOME LEGAL ASPECTS OF PUBLIC EDUCATION IN KENTUCKY

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FOREWORD

In December of 1956, the State Department of Education in cooperation with the Kentucky Association of School Administrators and the Advisory Council on Public Education in Kentucky sponsored a conference devoted to informing school administrators of many aspects of the legal responsibilities of public school officers and teachers.

The sponsoring agencies were fortunate in being able to obtain Dr. Robert R. Hamilton, Dean of the College of Law at the University of Wyoming to conduct the conference. Dean Hamilton's four lectures delivered before the conference occupy a major portion of this Bulletin.

In our time society is placing ever growing responsibilities on our public schools. The consequences of these increasing pressures make it necessary for school administrators to familiarize themselves with the various legal aspects of the public education program. This report is intended as a source of information and reference to help them gain a portion of that familiarity.

The Department of Education gratefully acknowledges Dean Hamilton's permission to reprint the text of his lectures as well as his assistance in editing the manuscript.

Robert R. Martin
Superintendent of Public Instruction

ADDRESS BY C. H. FARLEY, PRESIDENT, BEFORE THE KENTUCKY ASSOCIATION OF SCHOOL ADMINISTRATORS

DECEMBER 13, 1956

My fellow school workers, we have started on a new road in education. Through the cooperation of our state officials, our P.T.A.'s, our progressive school patrons and the leadership furnished by the school personnel, we have been able to get on the right road in education, but reaching the highway and just standing there gets us nowhere. It seems to me by virtue of our positions as school leaders that we must reassess and re-evaluate the tremendous job that lies ahead of us.

As has been said and pointed out to us many times, we must test, grade, measure, counsel, guide, individualize, generalize, nationalize, Americanize, Christianize, humanize, intellectualize, spiritualize; we must classify on proper social levels, vocation levels, maturity levels, intelligence levels, psychological levels; that you must adjust the misadjusted, adjust the maladjusted, and the utterly unadjusted; that you must not only be a leader, but a psychologist, a psychiatrist, a sociologist, a progressivist, a modernist and a fundamentalist and a 100 per cent Americanist — all this you must be and more; you must have a basic philosophy.

Some writer has said that education is guided growth. Another writer's concept is that education is an increased appreciation for the eternal values of life and still another writer says that education is that process which enables a human being to be at home in this modern world. Each of these philosophies says the same thing in different words.

Now following our philosophies it seems to me we should ask, "What is a school worth?". We might ask, "What is a superintendent of a school system worth?". The briefest answer I know is, "A school is worth just the difference it makes in improving the lives of children."

Dr. William Rainey Harper, President of the University of Chicago in 1903, said to a freshman class who had been called to assembly for the first time, "Young gentlemen, you have come here in the hope of furthering your education. If you are to do this it would be well that you have some idea of what an educated human being is. If you have this, you will know what to aim at

here, what this institution exists to assist you to become. An educated man is a man who by the time he is twenty-five has a clear theory, formed in the light of human experiences down through the ages, of what constitutes a satisfying life, a significant life and who by the age of thirty has a moral philosophy consonant with racial experience. If a man reached these ages without having arrived at such a theory, such a philosophy, then no matter how many facts he has learned or how many processes he has mastered, that man is an ignoramus and a fool, unhappy, probably dangerous."

This concept of education has been accepted since the days of Plato and Aristotle by our students of philosophy and psychology, but today, as of yore, it is not seeping out enough to our students in our classrooms.

We have failed miserably in our practices, in our methods and in our procedures to convince our student bodies to learn that books are a pleasure and that through them we travel to the utmost points of the earth. We have failed to impress on our youth their obligations and respect to their elders. We have failed to impress our students with the greatness of our country and the importance of their patriotic duties toward it and its history. This was shown by the reports we had from foreign countries when they sent their criticisms after interviewing our soldiers stationed there during the war.

My son who is a senior in high school, at the dinner table not long ago, was attempting to convince his sister who is a sophomore of how much more difficult his work was than hers. He questioned her thusly, "Does your teacher require you to go to the board and work problems?". "Does your teacher require you to stand up in class and give a full and detailed answer?". "Does your teacher, at all times, keep a record book in her hand putting down your grade as she sees it?". In the discourse he continued to discuss the importance of the teacher's holding the record book and the grade over the child.

We are permitting the teachers to use the grade as a bluff and a scare to such an extent that children become disgusted with school work and are dropping out at the earliest opportunity. We are accused and rightly so of frightening our students with such statements as "hardwork," "difficult course" and meaningless statements instead of encouraging them. We are constantly frightening our students with the statement that the most important thing in the school is class work while at the same time we overlook the all

important problem to teach the child the niceties of getting along together, of understanding and working for each other.

We stand indicted again on the charge of making students feel the grade they get in a book or on a paper is all important. Furthermore, we, all to often, leave the impression that the student's academic record will make or break his life. We leave the impression with students that the teacher, principal, supervisor, or superintendent is all wise, all important, close to being omnipotent. We make students slaves to notes which they are supposed to commit to memory and give back to us on examination. As soon as the year is over, these notes are so insignificant and distasteful to the student that he rushes out to burn them. We talk about examinations so much that the student comes to look on them as horrible labyrinths through whose doors, if they are ever closed behind them, they will never see the light of day again.

Can't we come together in such meetings as this and untangle some of these knotty traditional concepts that have been established down through the cycle of ages and have our children live in a modern world, making an environment for these students so acceptable that instead of developing nervous prostration that they will come to enjoy getting an education as well as using it after they mature into manhood and womanhood? No wonder the hospitals in this country are filled with frustrated people. In many classrooms in this entire land of ours we are helping to fill the psychiatric wards if not during the student's life, he soon falls victim after he gets into modern life.

Some writer has said, "Youth is not a time of life — it is a state of mind. It is not a matter of pink cheeks, red lips and supple knees — it is a temper of the will, a quality of the imagination, a vigor of the emotions. It is a freshness of the deep springs of life.

"Youth means a tempermental predominance of courage over timidity — of the appetite of adventure over a love of ease. It can exist in a man over 50, as in a boy of 20.

"No one grows old by merely living a certain number of years. People grow old only by deserting their ideals. Years may wrinkle the skin, but to lose enthusiasm wrinkles the soul. Worry, doubt, self-distrust, fear and despair — these are the long, long years that bow the head and turn the growing spirit back to dust.

"Whether seventy or twenty, there is in every being's heart the love of wonder — a gentle amazement at the stars and moon — an unfailing appetite for what is next in the game of life.

"You are as young as your faith, as old as your doubt — as young as your self-confidence, as old as your fear — as young as your hope, as old as your despair.

"In the central place of your heart there is a radio receiving set; so long as it picks up messages of beauty, hope, cheer, courage, and power from the earth, from men and from the Infinite — so long are you young.

"When the central place of your heart is covered with the snows of pessimism and the ice of cynicism — then are you grown old indeed, and may God have mercy on your soul."

Shirley Cooper, President of the County and Rural Area Superintendents of the United States, when asked to anticipate his assignment, writes:

"Any look toward the future of any phase of education in this country must be taken with consideration given to a few basic facts:

1. The job will be bigger. There will be more children, more teachers, more buildings, more materials and equipment, more everything that goes into the operation of schools.

2. Education will cost more, much more.

3. There is and will be much more to teach and to learn than ever before.

4. The stakes are higher than ever before; that is, understanding, reason, command of technical information and highly developed skills will be more important to individuals, to industry, to business, to our culture than ever before.

5. Educational leadership in the country has been given a clear mandate from the people to make marked improvement in the schools — to do everything they have been doing well in the past, to do more and to do it better."

We seem to be on the threshold of what will be a new era in public education. New proportions of quality as well as new dimensions of quantity will be added to the educational program. The intermediate district of school administration is in a most favorable position to contribute to the progress. Its organization, its function, its staff, its financial resources, its relationships to other units of school government is being carefully studied with a view to improvement. It is not tied down by tradition. It is ready to change, and through legislative action already under way or actually accomplished in many parts of the country substantial improvements are being made. The rate of improvement will speed up as the way to move forward becomes clearer.

We may look forward to seeing more attention given to:

1. Use of more media of communication in regular classroom instruction as well as in adult education.

2. Enrichment of the educational program to challenge and to develop the abilities of the mentally gifted children.

3. Use of the community school plant facilities throughout the school year.

4. Marked improvement in instructional materials and equipment — tools for teaching must be the best that can be devised and that must be kept, at all times, in the best possible condition for effective use.

5. The teaching staff must have the opportunity and leadership needed for continuous improvement. Anything less than the best cannot do the job that can be and must be done.

It is through making a major contribution to bringing about these improvements that the intermediate districts will move forward in the future.

Finally, Administrators, in the light of my experience as a school man, I have found that it is most important to look into the future and to set up some goals toward which I think the Kentucky Association of School Administrators should move:

1. We must work hard and loyally together on school legislation, let it be national in scope, or state or local. The cardinal lesson that we learn from the defeat of the Kelly Bill is that no educational legislation will pass without good bipartisan support. One critic, after the Kelly Bill was defeated, said as follows:

> "In my mind, the inactivity and complacency on the part of the school people was an important factor in the Kelly Bill's final defeat."

2. I believe that we should ask the State Superintendent to set aside a room in the Department of Education to be known as the Kentucky Administrator's room for the purpose of taking care of continuous reports, a permanent storage of records and research materials. In this way, as each president of your association completes his term, those records will have a permanent home.

3. I think we should have a committee appointed. The purpose of which to look after worthy administrators who have lost their jobs, to help them, if possible, to find a new one.

4. I would recommend a standing committee on research to promote and strengthen our organization.

5. This organization is capable of making valuable contributions to the Kentucky Association of School Administrators by preparing annually, pamphlets and booklets on desirable school procedure. I recommend such a committee.

6. I recommend an ethics committee for our organization in order to stop superintendents from unethical practices on fellow superintendents.

7. I recommend that the K.A.S.A. give aid in State Educational Philosophy. We offer little aid to new superintendents, both local and our incoming state superintendents.

8. I recommend that we join the American Association of School Administrators 100 per cent.

Finally, we are glad to have you with us. We hope you will like the program that has been provided for you by your Board of Directors. I do want to commend our very able and hard working Secretary. He has done all the work and I have been blessed continuously with his wise and able counsel.

ACCOMPLISHMENTS IN EDUCATION DURING 1956 AND INDICATED NEEDS FOR FUTURE LEGISLATION

. . . . An address given by Robert R. Martin, Superintendent of Public Instruction, at the annual joint meeting of the Kentucky Association of School Administrators and the Advisory Council on Public Education at Louisville, Ky., on December 15, 1956.

The year 1956 will stand as a landmark in the history of education in Kentucky, because in that year we saw the fruition of many of our efforts over a generation. The profession has been concerned with the plight of public education in this state, but only through the survey, the campaign to amend Section 186, and through the enactment and financing of the Foundation Program Law did we begin to see the fruits of our efforts.

The credit for these accomplishments undoubtedly belongs to the teaching profession in Kentucky and to the countless devoted leaders of the profession and laity who have labored unceasingly for the advancement of education in Kentucky. The 1956 General Assembly, on the recommendation of Governor A. B. Chandler, provided for full financing of our program.

We believe that the accomplishments can be sketched in outline form under six headings. These are:

ACCOMPLISHMENTS OF 1956

1. **Financial Support**
   - a. Full financing of the Foundation Program.
   - b. Full financing of the Teacher Retirement Act.
   - c. Adequate financial support for the University of Kentucky and the State Colleges.
   - d. Increased appropriation to the Department of Education.
   - e. Legislation strengthened the position of Kentucky School Building Revenue Bonds.
2. **Reorganization of the Department of Education**
   - a. Organization of Department into sections designed to secure economy and efficiency.
   - b. Expansion of staff to provide better services.
   - c. Increased staff to furnish additional services.
     - (1) Guidance services
     - (2) Added administrative and public relations service
     - (3) Exceptional children

3. **Improved Instructional Program**
   a. Provision for full-time and part-time supervising principals.
   b. Instructional supervisors available to all school districts for the first time.
   c. Higher level of teacher training than ever before.
   d. Minimum of nine months' school program for every boy and girl in the state.
   e. Expanded program of in-service teacher training with the full cooperation and participation for the State Colleges.
   f. The programs in many districts have been expanded by provision of music, art, industrial arts, library service and other enriching areas.
   g. Teacher morale is high as a result of better working conditions and salary increases averaging $600 across the state.
   h. Over 100 school systems held pre-school planning conferences this year. This is more than twice the number in any previous year.
   i. There was a 50% increase in the number of graduates of Kentucky colleges remaining in Kentucky to teach.

4. **Higher Education**
   a. Cooperation between the State Colleges and the University of Kentucky has increased tremendously.
   b. The Council on Public Higher Education has, for the first time, been provided with a full-time staff.
   c. Evaluations of twenty-five colleges have been completed this year.
   d. The Colleges and University have more adequate staffs and salaries have been increased.
   e. A State Medical School has been authorized, and active planning is now underway for its construction.

5. **Expanded Educational Leadership**
   a. The first Governor's Annual Conference on Education was held.
   b. The Advancing Education in Kentucky program was inaugurated with a three-day conference. The program is expanding and gaining momentum every day.
   c. The Advisory Council on Public Education in Kentucky was established by a combination of legislation and State Board of Education regulation. It accomplishes the purpose of providing advice and assistance to the Superintendent of Public Instruction from the district superintendents.

d. A series of four two-day Foundation Program Workshops were held in May for the purpose of explaining the operation of the program to administrators. This was highly successful.
e. The most progressive program of school legislation in recent years was enacted during the 1956 session of the General Assembly.
f. And, of course, this three-day School Law Conference in which we are now engaged, under the guidance of Dr. R. R. Hamilton, the nation's outstanding authority on school law.

6. **Consolidation and Construction**

a. There were 350 one-room schools discontinued this year.
b. One hundred additional unsatisfactory classrooms were abandoned.
c. A net gain of more than 750 new classrooms has been made.
d. A majority of the school districts have building programs in some stage of planning or construction.

The implementation of the Foundation Program this year and the study of the educational situation have brought to the forefront some problems in at least seven areas. I shall discuss these briefly and recommend we seriously consider them for future legislative action:

First, the Foundation Program is a "dynamic" program, and its financial requirements will increase as we improve the educational program for more and more boys and girls throughout the Commonwealth.

Second, we do not have enough trained teachers for our schools.

Third, we need additional classrooms to house our boys and girls.

Fourth, more talented Kentucky boys and girls need the opportunities of training beyond the high school level.

Fifth, the Teacher Retirement System needs to be strengthened and defended.

Sixth, the Free Textbook Law needs to be implemented through adequate financing.

Seventh, the profession has the opportunity to improve the administrative structure of education through the adoption of the constitutional amendment which will be voted on in November, 1957.

1. **The Foundation Program Must Be Kept Fully Financed**

Our Foundation Program is not a "static" program but is a "dynamic" one. The cost of the program will be increased as more services are provided for more boys and girls. More classroom units will be needed as we solve the shortage of teachers and class-

rooms. More classroom units will be needed as we improve our educational program and increase the pupil holding power of our schools. More classroom units will also be needed as our enrollments increase as a result of the increasing birth rate. The allotment for instructional salaries will increase as our teachers are placed in higher ranks because of a higher level of training. More transportation units will be provided as we advance our school consolidation program and transport more rural boys and girls into larger and more efficient school centers.

The General Assembly wisely realized that the cost would increase from year to year and increased the appropriation for the second year of the current biennium by $3,000,000. We must realize now that the appropriations for 1958-59 and 1959-60 must be substantially increased as the Foundation Program gains stature and momentum.

Our best estimate is that an additional 4 to 5 million dollars will be needed during 1958-59 and an additional 8 to 10 million will be needed during 1959-60 over the amounts appropriated for the second year of the present biennium.

We must also constantly evaluate the Foundation Program to determine if the allotments for instructional salaries, other current expense, transportation and capital outlay continue to be adequate. These levels were set in 1953 before the constitutional mendment was voted. They are extremely conservative. Their adequacy must be evaluated.

2. **The Critical Need for Qualified Teachers**

There is a critical shortage of trained personnel in all skilled and professional fields. By 1965 there will be 10 million additional jobs, and a college degree will be almost essential to the success of the individual.

In no field of endeavor is there a more critical shortage than in the teaching profession. The problem of providing the thousands of additional teachers is a three-pronged one:

(1) Securing good teacher candidates
(2) Providing salaries and working conditions sufficiently attractive to retain teachers
(3) Providing the college personnel and facilities for training high caliber teachers.

There are some rays of hope, however, because recently the attitudes of young people toward teaching have greatly improved. Teaching is now high on the job preference list. College enrollments

in teacher education have increased more rapidly than the general increase in enrollment. Interest in securing a college education is deepening in the minds of more young men and women, and because of the increasing birth rate there are more people in the college age group.

In spite of these latter two factors, it is an irrefutable fact that of each 10 able high school graduates, 4 attend college, while at least 3 of the remaining do not attend due to financial reasons.

We must be seriously concerned with this group. Here is the source of many fine teachers.

I recommend that Kentucky, just as 34 of her sister states have already done, establish a scholarship program designed to aid capable boys and girls to enter the teaching profession. I recommend that we urge the General Assembly in its 1958 session to implement a state-wide scholarship program providing at least one thousand scholarships ranging from $400 to $700 annually for a period of four years. These scholarships should require at least four years of subsequent teaching in Kentucky. I am convinced this step is absolutely essential if we are to secure qualified teachers to staff our schools.

3. The Shortage of Classrooms

The shortage of classrooms for the school children of America is rapidly becoming a national disgrace as well as a national tragedy. We have a shortage of classrooms already for 5,000,000 American children and we are continuing to fall behind at the rate of 50,000 classrooms a year. In Kentucky the situation is deplorable. We will need to spend $350,000,000 in the next ten years to build the additional 10,000 classrooms that are needed and replace the 10,000 classrooms that are inadequate, obsolete and unfit.

Where can we get the financial resources to meet this need? Our local school districts are making tremendous efforts to meet the problem. Sixty-two of our 221 school districts have special voted taxes for school building purposes above the $1.50 tax rate. On June 30, 1956, the school districts were amortizing a revenue bonded indebtedness of $74,000,000 besides $1,896,500 in voted bonds.

But the local school districts alone cannot meet the problem. They must look to the national government and the state for assistance.

In the recent presidential election it appeared that the national political debate regarding schoolhouse construction was concerned with who was responsible for the failure of schoolhouse construction

bills rather than the national obligation for providing adequate classrooms for children. This leads me to believe that the next session of the Congress will provide some type of federal aid for schoolhouse construction. Alas and alack, however, no realistic bill has ever been presented to the Congress, and Kentucky cannot hope to receive enough in federal aid to meet substantially our need for classrooms.

I am convinced that the solution to the problem in Kentucky rests in a state-wide bond issue for schoolhouse construction. This bond issue should be based on the needs of the various districts as well as their ability to meet the needs. It should take into consideration the efforts already made by school districts to meet their building needs so that all districts will be treated fairly. It should be large enough to meet the needs of the public schools as well as the state institutions of higher learning and the special state schools. It should be presented to the people at the earliest possible time. We have a committee of administrators who are working diligently on this proposal.

4. **Opportunities for Training Above the High School Level**

The problems faced by higher education in Kentucky will become increasingly acute in the next few years. Enrollments are already higher than they were at the peak of the veteran enrollment after World War II. They will go even higher when the children now crowding our elementary and secondary schools reach college age. Three major problems which face higher education in Kentucky are the need for more buildings, the need for more faculty, and the need for additional programs of study.

Last fall we had 33,585 students enrolled in 40 institutions of higher learning in Kentucky. In 1900 the comparable figure was 4,918. By 1920 enrollment had increased only to 6,379. During the decade of the twenties, however, it increased to 16,668. By 1950 it had become 28,878.

The estimated fall enrollment for 1960 is 50,200. It is estimated that our higher institutions will need 2,000 additional faculty members by 1960 if the present student-faculty ratio is to be maintained. How can we adequately staff our colleges?

Educational expenditures in Kentucky colleges were 5½ million dollars in 1932, 7 million in 1942, 19½ million in 1952 and will be an estimated 33 million dollars in 1960. The estimates for our public colleges show a need for 25½ million dollars in 1960 or an increase of 9½ million over 1954 public college expenditures.

More buildings are needed for the students already enrolled as well as for those who will arrive in the next few years. The faculty shortage already is becoming critical. Additional programs are necessary to keep abreast of our rapidly developing industrial and agricultural economy.

The mounting enrollments do not mean that all who could profit by a college education will receive one. I have already pointed out that surveys have shown many of the most able high school graduates are not going to college due to financial reasons.

Fundamentally, these are the same problems that face all education — higher, secondary and elementary. Basically the same type of action will be necessary to meet these problems at each educational level.

5. **Teacher Retirement System**

The Teacher Retirement System needs to be strengthened through the addition of the so-called "fringe benefits" and through an increase in the annuities of teachers already retired and those who will retire during the next ten years before our Teacher Retirement System reaches its full potential.

We have one of the finest Teacher Retirement Systems in the country, or we will have as soon as the recent changes have taken full effect.

It is as sound as a dollar. I have said on other occasions, and I repeat at this time, that no man, I am convinced, in the entire history of public education in this state, has served a given sphere more ably than the Executive Secretary of our Teacher Retirement System, Mr. N. O. Kimbler. I know you are distressed as I am at the state of his health, and we all pray for his recovery and restoration to good health.

6. **Free Textbook Law Appropriations Should Be Increased**

We have had a program for the provision of free textbooks in Kentucky over the last two decades. Unfortunately, that program is being severely handicapped as a result of inadequate financing. The cost of textbooks, like the cost of every other item which we purchase, has increased, and state appropriations have not increased at a rate to provide the necessary textbooks for our children.

The elementary pupil enrollment for the 1955-56 school year was 483,071 pupils in grades 1 through 8. The annual textbook appropriations for the 1956-57 and 1957-58 school years were $1,034,000 or a little more than $2.00 per pupil after deducting the shipping charges.

One complete set of textbooks per elementary pupil enrolled in the public schools of Kentucky would cost the sum of $7,321,-443.84. The cost of textbooks for the required subjects would be $4,467,394.24. An additional $2,854,049.61 would be required to purchase textbooks for the optional subjects.

Assuming that books may be used for a period of four years, the annual cost of elementary textbooks would be $1,830,360.96. To supply each pupil enrolled in the elementary grades with one complete set of books with the present appropriations of $1,034,000 requires seven years.

Part of our program at the next Legislature must be the support of a budget request for an adequate appropriation for the Free Textbook Law.

7. **Constitutional Amendment**

The profession has the opportunity to present to the people of Kentucky this fall (November 1957) a constitutional amendment which will vitally affect the future of education in this state. This constitutional amendment which will provide for the selection of the Chief State School Officer on a professional basis rather than his election on a political basis will greatly enhance educational progress and will make possible the development of better educational planning and continuity of administration. It must be decided on its merit as an issue, and there is certainly no place for the involvement of personalities in the discussion of it. In a few words, it provides for a constitutional State Board of Education of nine members who are to serve nine-year terms and who are not subject to political interference or forced resignations. The initial board appointments will be for terms of one to nine years. Any vacancies by resignation or death would be filled by the other members of the Board. The State Board would serve as a policy making body in the true sense and would choose a Commissioner of Education to serve as its Executive Officer.

It is significant to point out that this amendment is the result of one of your resolutions adopted at your 1955 annual meeting. At the same time, it should be pointed out that the other amendment which provides for an increase from 2 to 5 in the number of amendments which may be submitted at any one time is a most worthy companion amendment and is deserving of the support of all friends of public education. It will make possible the improvement of our Constitution more rapidly than is now possible under the two amendment limitation.

You have the educational, executive and political know-how to implement this legislative program. We all know that in unity there is strength, and anyone who would divide the profession does not promote public education. You also realize that in the next few days — the next few weeks at the most — candidates will be announcing for membership in the House of Representatives and the State Senate. You can advance education in Kentucky tremendously if you are active now in urging friends of public education to offer themselves for these most important offices. The records of the members of the Legislature show that, by and large, it was a Legislature most friendly to education and most anxious for its advancement. This came about as a result of your activities over the last several years for developing a favorable public opinion for public education in this state and then seeing that members were chosen who reflected this favorable public opinion.

This has been a most interesting and challenging year. We are at the beginning of a period of educational awakening in this state. You have done and you are doing a great job in advancing public education in Kentucky.

THE LEGAL STATUS OF THE LOCAL SUPERINTENDENTS OF SCHOOLS

(Lecture by Dr. Robert R. Hamilton, Dean, College of Law, University of Wyoming before the Ky. School Law Conference, December 14-15, 1956, Sheraton-Seelbach Hotel, Louisville, Kentucky.)

Mr. Superintendent, Mr. Attorney General, Assistants, array of legal counsel, Ladies and Gentlemen of the School Law Conference.

It has never been my pleasure to introduce my good friend Bob Martin in public, but I am a very patient man and the time will come when I will introduce him. Then I shall do it with the complete, utter disregard for the truth with which he has introduced me.

I have been in Kentucky some 30 hours now though it doesn't seem that long. I think these people in Kentucky *must* have been the folks who brought hospitality to this country. You certainly know how. I have been overwhelmed by it, and I do mean overwhelmed.

As Dr. Martin has said, I was born and reared across the Mississippi and Ohio River, in southern Illinois — lived there for a number of years and taught school there for a long time. I was a Superintendent of Schools, so you see I have simply "back slidden."

I think I know something about your problems. I don't know whether it is queer folks who go into being superintendents of schools or if it is just being superintendents of schools that make us queer, but certainly we do some of the queerest things as superintendents of schools sometimes, and I am always delighted indeed to see a group of superintendents and school people of this size.

I always take a great deal of comfort in seeing a group of this size because when I see you I realize that at least there are that many of you that are still out of jail. And the condition of the law under which public education operates in this country — not speaking particularly of Kentucky now, but generally, — the condition of being able to stay out of jail by people who are charged with the responsibility of carrying on the schools of this country is quite an accomplishment.

I have never been quite sure what the implications are when the people in charge of a conference of this sort back me up with such a galaxy of legal talent as I have with me here today. I don't know whether they lack full confidence in me and just don't want to take any chances, or just want to give me plenty of help so I

won't have to work so hard. I am giving myself the benefit of the doubt in assuming that these legal people are going to keep me straight (at least on the matter of school law), and I am delighted to have them here. It is not my primary purpose, I assure you, to talk too much about the specific provisions of Kentucky school law. The specialists are here to do that for us.

Now, before I start talking about superintendents (and I am to talk about the legal status of local superintendents of schools), it is perhaps appropriate that we should briefly set the stage for the discussion. There are some things that we need to remember. Public education in this country has become a tremendously big enterprise. The schools are in all kinds of businesses. We are in the transportation business, transporting between 4 and 5 million children to and from school every school day, probably the greatest transportation system in the nation. We are in the restaurant business and the entertainment business; (and if you don't think we are in the entertainment business, go out to the stadiums on Saturday afternoons and watch the American equivalents of bull fights). We are in the manufacturing and repair business, and others. Is it any wonder, then, that the number of legal involvements that people in education throughout the country are finding themselves in are so great and increasing by leaps and bounds?

I am going to make what I hope is a relatively informed guess as to the amount of litigation that is going on in this country involving schools and school personnel. Now, if anybody has a better estimate or a better guess, I will be glad to accept his, but I am going to give you mine at the start. I think that in 1955, as near as I can estimate it, there were between 7 and 8 thousand school cases that reached all courts in all states in this country. Now I say that is a guess. I estimate that from the *Digest* which comes out to us each month. That includes the cases, of course, that don't reach higher courts. There are the Justice of the Peace cases, the Municipal court cases and all of the other lower courts cases in which legal controversies involving public education and public school personnel have been decided.

Now, that being true, we can easily realize the tremendous amount of money which is going "down the drain" in useless litigation. Useless litigation which consumes millions of dollars which should be available for increasing teachers' salaries, the improvement of equipment and school buildings, and all the rest of the things that really count in public education. It might prevent us,

in some degree, from carrying education down to the ultimate consumer, namely, the child in the classroom.

Now, of course, that is very important, but what disturbs me even more deeply is the fact that school law suits are disruptive and divisive influences which often split communities wide open, and they sometimes may remain split for years. Who is it that finally suffers? It is the child in the classroom.

Let us now examine the legal nature of the position of superintendent of schools. You in Kentucky are rather fortunate, I think, as to your status; you are at least legitimate, and that is more by the way than you can say of superintendents in some other states as I will attempt to show you. I did not say that your ancestry may not, perhaps, have had aspersion cast upon it at times. (Mine was when I was superintendent of schools, and, by the way, deans of law schools don't escape that entirely!)

Well, I find that there is at least some authority to hire you. In Section 160.350 it is said that each board of education shall appoint a superintendent of schools whose term of office shall be for a stated period and the board shall fix the salary of the superintendent of not less than $1200. per annum. I am delighted to see that your salaries here are really getting up in the world! And you are required to have a certificate, I notice; a Certificate of Administration and Supervision. Now, I don't know whether that may keep you from being a teacher or not although you do have one case in your state that says the position of superintendents and assistant superintendents is incompatible with that of a teacher in a public school. I don't know whether that means that a superintendent is no longer qualified to teach when he becomes a superintendent.

It has been said that a Dean is somebody who hasn't brains enough to be a Professor but is too smart to be a College President. I don't know whether that analogy applies to superintendents and teachers but I do know that you can be hired here for one, two, three or four years, and that a superintendent of schools may be removed for a cause. Obviously that can only mean, as your Court of Appeals in the case of Bourbon County Board of Education vs. Darnaby, that the word "cause" means "legal cause." Now, that's always a great help! If we can just know that we can't be fired except for legal cause, that answers a lot of questions! The difficulty is that nobody (including the court) knows what "legal cause" is until you ask it in a particular case.

I know certain things that you can be fired for, and so do you, but I don't know what all the legal causes are.

It's interesting how courts operate. There are two things that we should derive from this conference. One, of course, is some "housekeeping" information. The people who are charged with the responsibility of running the schools of Kentucky are going to have some of your "housekeeping" questions answered by your specialists so I am not going to dwell upon them. However, if that's all you learn in this conference and if all the school law you know is what you find in the *Kentucky Common School Laws of 1954* together with the *Supplement,* some legislature may come along some day and repeal all the school law you *know* and then you are really going to be in bad shape!

You must know these laws, and the very last thing I would say to you is that you need *not* know them, but as important as that is, it isn't the *only* important thing. The second important thing is that we must develop some attitudes and approaches here, and I think it is important that we understand *how* school questions are handled when they get into the courts and observe what judges (who are educational laymen) have to say about education and about educational philosophy. If you have some idea of how a court goes about handling a legal problem, and especially an educational legal problem, I think that we will be able to follow the changes in the law much more intelligently.

I am very interested also to notice that you don't take any chances on what a Superintendent must do in Kentucky in the matter of "housekeeping". Under Section 160.390 of your code, a Superintendent may appoint clerks, and is charged with general duties as to the condition of the schools. Now, I don't know what "condition of schools" means. I observe that the statutes provide that the Superintendent should devote himself exclusively to his duties. Well, that's a tremendously important provision! I suppose you would do that normally. The code provides also that, "He shall exercise general supervision of the schools of his district..." Superintendents don't do that, of course. "He shall prepare and have prepared all budgets, salary schedules. . ." and all the rest; you see? The housekeeping jobs are *his.*

Finally, the law requires that, "He shall be responsible to the board for the general condition of the school," and I don't have a very clear idea what that means. I suspect it's one of those "preaching" statutes. We have a lot of "preaching" statutes in this country, and I think they serve a good purpose, but after all we mustn't forget that our legislators are butchers, and bakers, and candlestick makers, and ranchers, and farmers, and business people. It's they who make

up the Legislature. There is sometimes a number of them who think that by virtue of the fact that they have become elected to the Legislature, they have also become great educational statesmen. They then immediately want to do something for the benefit of the schools—they think! Well, one of these legislators may get one of those "preaching" statutes on the books, and he has a great feeling of accomplishment; he is convinced that he has done a great thing for education, and everybody forgets it, except him, and he should! I suspect that every Superintendent, if he is "worth his salt", is going to be responsible to his board for the condition of his schools; he is certainly going to make his reports; he is certainly going to do all of these housekeeping chores.

I said earlier that there is a legitimacy for Kentucky Superintendents; that in some states their positions are legally doubtful. Let me describe what has happened in Missouri. Remember, I'm talking to you about the law in other states, for two purposes—first, it is of some concern to the people of Kentucky to know the kind of schools we have in Wyoming, and Illinois and the other states, and it is important to the people of Kentucky what kind of school laws we have in other states. Second, if we talk about some of the provisions that have been operating in other states, it just may provide an idea that might want to be tried in Kentucky.

In St. Louis' Court of Appeals just a few years ago, we had this interesting situation. There was no doubt about the legality of the position of Missouri school superintendents until the St. Louis Court of Appeals raised some very real questions concerning it. Missouri, incidentally, has a very interesting law on the matter of discharge of teachers. There may be a law in some other states like it— I am not sure—but I don't know of any other. The legislature has taken completely away from the local boards of education any power or authority to "fire" a teacher.

> "The board shall have no power to dismiss a teacher but should the teacher's certificate be revoked, his contract is thereby annulled. Should the teacher fail or refuse to comply with the terms of the contract, the board may refuse to pay said teacher until compliance therewith has been rendered."

In other words, the only ways that a board can rid itself of an unsatisfactory teacher is either to induce the state board of education, or the institution that issued the certificate, to revoke his certificate or exert economic pressure through refusal to pay him. Now economic pressure, of course, could be very effective. It could be effective because teachers have the habit of eating the same as

any one else! The question whether a *superintendent* is a *teacher* is always raised by indirection. In the St. Louis Appeals Court case, the superintendent of schools insisted that he had the right to the benefit of the tenure statute in Missouri. The statute provided only for the hiring of *teachers* by a board. If a superintendent is a teacher, he may then have the protection of the statute. Otherwise, he does not. If the board may legally say, "this man is not a teacher; he is simply a superintendent", he then may be discharged.

The Court held that a superintendent is a teacher. This is true even though there is no actual authority to hire a superintendent as such. The court said that boards, in the management of the schools, employed all the school personnel under the general authority to employ teachers, and no statutory authority was required to employ superintendents. The court goes on to say that superintendents of schools have always been considered teachers, and the provisions and the protection of the tenure statute accordingly have been applied to the position of superintendent of schools.

The lower court called in an expert from the State Department of Education and asked him what he thought about it. They even called in a college professor! They all answered to the effect that they considered superintendents as teachers.

Now, I said earlier that I was going to attempt to show you something about attitudes. Not very often would we dare take the so called "reasoning" of courts and generalize from it. Every lawyer on this platform knows that. I am not at all sure, (and you gentlemen on this stage will forgive me if I exaggerate just a little), but sometimes I *am* inclined to *believe* that what courts do is simply make some fundamental assumptions. Since they nearly always have certain choices among the assumptions that they can make, they make a particular assumption and the so called "reasoning" is all "down hill" to the result they want to reach.

Sometimes I rather suspect they may figuratively take a sheet of paper upon which they intend to write their decision and at the bottom they will write "judgment for the plaintiff" or "judgment for the defendant" and then make "legal noises" above the names and hope that by the "grace of heaven and a fast backfield" the reasoning will sound logical. The important thing, of course, is that they reach a just decision, and the amazing thing to me is that if you read these decisions, you may wish to disagree with the "noises" they make, but the educational results they reached normally are very sound ones. In a tremendous majority of cases, there isn't a single person in this room who is engaged in public education who

would not agree with the educational results reached. Its those "noises" that drive us, in the legal profession, to distraction.

Another point raised in the Missouri case is: what remedy does a superintendent of schools have if he is illegally discharged from his position? Mr. LeMasters, the superintendent was illegally discharged in Missouri. In personal service contracts, normally the law does not grant "specific performance". For example, if I contract with you to sell you my house and I break my contract and refuse to sell it to you, you have a choice of two actions; one is that you may bring an action against me and actually require me to convey. The law calls that specific performance. However, specific performances do not apply in special service cases normally. Employers are not required to take the employee back, or let him continue if they break their contract of employment. He may recover only damages. There are a lot of technical reasons for that. One is the difficulty of the court in enforcing the decree. The court can't supervise the schools to see that its decree is being carried out. In any event, who wants an employee around who doesn't want to stay! That's pretty much the judicial attitude that has been taken. However, the courts have taken the position in tenure cases (not only in the case of superintendents but also in the case of other teachers) that merely permitting the teacher to recover damages, whatever damages he can prove, is an inadequate remedy. The court required that board in Missouri to restore the superintendent to his position.

Here is what the court says and one of the things that I hope you get out of this conference is a little bit of acquaintance with some things that courts have said about education. If for no other reason than just to show you that there isn't a lot of "hokus-pokus" in this matter of the law as far as results are concerned, I am going to read you some decisions, read you some judicial language—now listen to this:

> Beyond these observations real argument can be made that the wrong threatening the Superintendent is amenable so little to the market place responses that he ought not to be turned out of equity with a comfortless instruction that the blow that is about to fall upon him is one which he must receive before he can have any redress at all and then only that which would award him damages in money.

And this is the part of this decision which is important to administrators:

> Despite dismissal from his post of honor and responsibility, a professional teacher is stigmatized sometimes beyond rehabilitation before his colleagues; before those who might otherwise want his professional services, and before the public

generally. Injunction therefore we think is an available remedy and may prevent the plans of dismissal.
And the court so ruled.

There isn't a single person in this room, nor a single person who knows what happens to school administrators when they have been discharged, legally or illegally, who would disagree with the court's appraisal of the situation. The word gets around that something has happened to this administrator—I have seen it happen many many times and so have you—and a perfectly fine administrator is professionally ruined. I am very happy to know that there are no members of boards of education here. But fortunately, there is no law in any state as far as I know against stupidity in education, just as there is no law against stupidity in a lot of other areas. Even in administering law schools!

So, the Missouri court held that a superintendent is a teacher. The exact opposite is the law in Minnesota. What the Minnesota court held was under a statute somewhat similar to that of Kentucky, a part of which I read earlier, to the effect "that the Superintendent shall have the authority to supervise instruction." In this case, the Superintendent sought to take advantage of the tenure law which applied to teachers in Minnesota. Teachers and the position of superintendent were statutorily defined in a statute resembling your own. The term, "teacher," under the law in Minnesota includes "Every person regularly employed as a Principal or to give instruction in the classroom or to superintend or supervise classroom instruction". Now it makes a lot of difference to administrators and superintendents of schools how we define their positions. In a case which arose in Duluth, the court said that the statute has defined a superintendent as one who supervises instruction. A superintendent doesn't do it, therefore he is not a teacher.

Finally, to indicate how insecure a position of a superintendent may be legally, and how uncertain his status is in some other states, let us notice a case which arose in Illinois just this year. The same thing happened there as happened in the Missouri and Minnesota cases. It became necessary to establish a superintendent's status.

Under the Tenure Act of Illinois we have this provision: The Act defined teachers as any or all school employees required to be certified under laws relating to the certification of teachers. It held that the act was entirely adequate to bring the superintendent under the provisions of the law.

So much for the certainty of a superintendent's position. I want to speak for a moment now about the contractual authority of a

superintendent. Or, I should say speak about the lack of such authority because actually there isn't any. Every spring—almost from March on—there will show up on our campus at the University of Wyoming, superintendents from all over the region seeking teachers. They show up with a packet of signed "contracts" in their pocket. What do they plan to do, if they find Mr. Jones, an English teacher, or Mr. Brown, a mathematics teacher? They simply take these papers that are signed by the board before the superintendents leave home, fill in the name of the teacher they hire on the spot. Also, filled in is a description of the teacher's position and a few other provisions that go into such contracts. Then he has Mr. Jones sign it, and they think they have a contract. Of course they don't have a contract because at the time that "contract" was signed by the board there wasn't anybody with whom the board could contract. The only act that a superintendent of schools can perform is to recommend to the board that certain people be hired. They have no contractual authority at all, in most states. I will give you an exception to that in just a few moments.

Fortunately, we also have in the law a principle which we call the principle of ratification. If the teacher is permitted to begin her teaching, the contract is ratified—it's just as good as if the teacher has appeared before the board, and the contract has been entered into. Or, the board may actually *expressly* ratify it at some subsequent time. We know as a matter of fact (in most cases) the board doesn't actually exercise any real discretion; they may never even see these teachers. Now, since they do not see these prospective teachers, then why should we leave the law lagging so far behind actual practice? There is at least one state which has taken care of the situation by express provision of statute. That is the state of Connecticut. The Connecticut law gives "express authorization" to a superintendent of schools to employ teachers. It provides expressly that a board of education may delegate to a superintendent of schools the authority to enter into contracts with teachers. I think that is a good law; we don't know how important it is; we can continue with this ratification process if we desire. Not many cases arise under it, but if the number should increase, perhaps it might be a good idea to change the structure of our law to accord more nearly with actual practice in these states.

In the matter of the discharge of superintendents (I don't now whether anybody ever gets discharged in this state) perhaps some of the experiences of superintendents in other states which will show us

some of the pitfalls and legal dangers to watch out for in order to keep ourselves from getting into legal difficulties, will be of interest here.

I don't want to frighten you out of a year's growth; I don't want you to go out of here thinking—"I think I will resign; I just can't afford to be a superintendent." Rather I want you to go ahead and experiment and try new things. After all you have a school system to run. You have children to instruct, and nearly always educational practice actually is far ahead of statutory provisions. I am often asked, "What should we do in these situations when we want to try out a particular practice; we want to experiment and the statute doesn't say that we have the authority?" Satutes may say expressly or by implication that a board of education has such authority as is given it by the statute and those that are necessary to be implied. It's the implied power of boards that opens up the field for experimentation and the trying out of new ideas.

What are implied powers? We just don't know until the court has ruled on the legality of a particular power. I said at the outset of this discussion that it is somewhat amazing how few superintendents are in jail. Suppose you do experiment. I know that there is a possibility of personal liability; I know that they are not great. About the most serious thing that normally happens to a superintendent of schools is for the court to tell him not to do it anymore. Not often is he fired; he is never imprisoned! I think I can demonstrate beyond a doubt that practically every genuine advance in public education in this country in the last 75 years has been made under extremely dubious legal authority. Some superintendent has had the intestinal fortitude to try new ideas and risk a legal action to stop him. It is seldom that such action is taken. I suspect that if we had been required to wait until we could educate our legislators to the point that they would provide, or permit, instruction in physical education, home economics, music, health, permit health examinations and so on, we would be 25 to 30 years back of where we are now. I am inclined to advise school people to try out an idea and see what happens. In Wyoming it is said that a young deputy sheriff once went to his superior and said, "Boss, you have just made me a deputy sheriff. Suppose you send me out to arrest a man that we think is a cattle thief, and suppose I am not sure that he is a cattle thief, Boss, what should I do?" The old sheriff said, "Well, young fellow, you had better shoot first and let the coroner ask the questions." Now, why not try out things?

If it works you'll find the man in the next county or school district picking it up. The practice will spread and keep spreading until it possibly occurs to somebody to try to stop you. By that time, the practice is so firmly entrenched in your educational practices that courts may not be inclined to enjoin it. That is what happened in the Kalamazoo case that all educators know about. Why do you suppose that in the Kalamazoo case the Supreme Court of Michigan decided that a school district, even though there was no express legislative authorization for it, may carry on a high school? Why did the court sustain the legality of high schools despite the fact that it had, at one time, a statute which permitted high schools which was subsequently repealed? The reason, to my mind, is that by the time the Kalamazoo case was decided there were already 200 high schools in Michigan and within two years after the Kalamazoo case was decided, there were 800 more in that state. The decision simply opened up the flood gates; apparently, people were just waiting for this decision! The same thing happened in the matter of Health Education in Dallas. The school board in Dallas took the attitude that youngsters needed health inspections as the board hired nurses, physicians, and dentists to provide the inspection. A taxpayer said, "Why, you are not engaging in education. This is an illegal expenditure of public monies." The Supreme Court of that state said that health inspection is a great aid to the teacher in determining whether the children are able to carry a full load of school work or engage in certain other activities. What the court did there, of course, was *not* to reason to its conclusion. What it did was find a legal peg upon which to hang a decision that it was *already determined* to make, namely: That health is a good thing; that health education is a good thing, and since it is a good thing, it should be tied into education.

I don't suppose that the Supreme Court of Texas would have complained too bitterly if these youngsters happened to gain a little health education along the way. I love those decisions; I love them because of the complete lack of logic in them. The Court (I like to call it the clever method of reasoning) instead of trying to reason themselves to a particular result, "*hacked*" its way to the decision.

I have legal friends who are on these panels with me often. Just two months ago, at a large university, I had a representative of the Attorney General's office who was responsible for legal decisions in educational cases on a panel with me, and a wonderful person he was. I said some of these things to him, and he said, "Yes, of course, that's so, but our decisions have to be right in the middle of the

book." Well, not many people who give legal advice to school districts ever get into difficulty by saying *no*. It's when they say *yes* that they get into difficulty, in most cases.

Another important thing this young man said is, "Well, you know I have reached the point that when a superintendent of schools writes in and asks a question about a particular practice in which he is engaged or contemplates which he thinks is a good educational practice—I say this, 'Look, Mr. superintendent, are you sure that you want an answer to that question?' And these superintendents have learned to know what that means."

Now, that happens in my state. As you might suspect since the rumor has gotten around in my state that I am interested in school law, I am likely to get a request for an opinion from the Attorney General's Office, or the Superintendent of Public Instruction, and I have learned to give the same answer. I think I would say to the person who asks the question, "Are you sure that you want an answer?" In doing that, as far as I know, nobody has gotten into jail yet, and nobody so far has sought to disbar me for unethical conduct. So we are getting along very well.

There isn't any question in my mind now but what there is probably arising in this country a brand new responsibility; a brand new obligation on the part of superintendents of schools. It is his obligation and responsibility to do everything he can to keep his schools out of legal difficulty. Now what does that mean? It means, that in the future training of educational administrators, we are simply going to have to give them a broader training and a broader understanding of some of these legal techniques. Not, Heaven forbid, that a superintendent of schools should ever attempt to be his own lawyer. He is exactly like a lawyer who is trying to plead his own case. He has a fool for a client. Just don't do it, but recognize some of these points and know when you need to have technical advice, then go get it.

I don't mean that you should turn the administration of the schools over to the lawyers. The lawyers on this stage and the lawyer standing before you here simply do not know enough to run your school. This job of education has become a highly technical one. We in the law can help you, we hope. There are certain things we can do and there are certain things we can't do; there is also a wide area in which there is broad discretion on the part of school people to try things, and having tried them, if you get into difficulty, you have had as good legal advice as you can get. But

you don't need to run to a lawyer every time you want to issue a box of chalk, if you see what I mean. And I think these gentlemen here will agree with that. Thank you very much for your patience. I shall see you again shortly.

"LIABILITY OF PUBLIC SCHOOL OFFICERS AND TEACHERS"

(Lecture by Dr. Robert R. Hamilton, Dean, College of Law, University of Wyoming, before the Kentucky School Law Conference, December 14-15, 1956, Sheration-Seelbach Hotel, Louisville, Kentucky.)

Mr. Chairman, Ladies and Gentlemen of the Conference, I was very interested indeed to hear your chairman address you as "Fellow Pistol Packin' Mama's" which reminds me that I did not come to Kentucky without some trepidation.

I had heard and had read that each superintendent in Kentucky was required or was at least expected, to take an oath that he has not fought duels, has not acted as seconds in duels, and so on, but I have been treated so wonderfully here that I am sure that is simply some "window dressing" that you folks have adopted down here to be unique. Just go ahead and take those oaths; they never hurt anybody and I doubt very seriously if anybody in Kentucky has ever been prosecuted for perjury for having taken that oath.

* * * *

Liability of school districts, school administrators and school employees is becoming more and more important. People ask every place I go, what's going to happen if a youngster gets hurt? Who is going to have to pay? The interesting thing is that there is a lot of jumping to conclusions on the part of school people too frequently on the whole question of liability. The assumption is that by virtue of the fact that a youngster on the playground, or in the school bus, or in the school room becomes injured somebody must pay. We know that it isn't so in every day life and it certainly is not true in education.

Certainly there are circumstances in schools, as I shall attempt to point out, in which people are held liable but it's *when,* and this is the important point, it's only when somebody is at fault. Merely by virtue of the fact that somebody is injured in the process of administering the school system it does not follow that somebody must pay. It's only when somebody has become injured in a negligent manner, that there is liability. When then, is a person negligent?

As is true in so many rules of law, the rule here is very simple. In my law school, I teach courses in contracts and securities. If

I had only to teach my students the rules, I wouldn't have a job very long because I can teach them all the rules in a short period. It's the operation of those rules that I can't teach them in a brief period. Therefore, we have the rule that if a person conducts himself in a negligent manner and his negligence causes injury, he must pay whatever damages he has caused. That's the rule and, as is true of so many legal rules, we no more than state it than we are obliged to recognize exceptions to it.

So we have a very simple definition of what constitutes negligence. If a person does not conduct himself as a reasonably prudent person would under the same or similar circumstances, he is said to be negligent. Or, if a person does conduct himself as a reasonably prudent person would under the same or similar circumstances, he will not be held to have been negligent, and if someone is injured as a result of that non-negligent action, there is no liability.

We all know that we can drive down the street, strike an icy spot and injure someone. A jury, twelve good men and true, must then tell us whether we were negligent. If not, we simply have an unavoidable accident. What constitutes negligence, then, depends upon the circumstances of each case and each case will vary. Hardly ever do we find two cases that are exactly alike on their facts. It is the responsibility of a judge or jury to decide whether the act complained of was negligent.

But let us examine the whole problem of liability. It seems to me that there are three facets of it. The three facets are, first, the liability of the district itself; second, the matter of personal liability of school officers and boards of education; third, the liability of employees of the district-teachers, coaches, janitors, and others.

Let's examine first the matter of liability of the district itself. Except in three states, and in certain restricted conditions in two or three others, the district is not liable for the torts of its agents or employees. Now let me teach you just a little legal vocabulary. I assume that most of you know what a tort is. But just in case somebody may have forgotten I will tell you. It means a wrong. A wrong that comes about as a result of a wrongful act, as distinguished from damage which may result from breach of contract. If I negligently operate my automobile so as to injure you, I have committed a tort. If I trespass on your property, I have committed a tort. So we are talking about this type of wrong by boards and employees.

The rule is that there is no liability against the state's institutions except in California, Washington and New York, and with

slight modifications in the District of Columbia, North Carolina, Mississippi, and possibly in another state or two. I think there has recently been a statute passed in Illinois which permits limited liability against certain state institutions. The theory of this immunity is that the state is sovereign and a sovereign can do no wrong. The concept of the inability of a sovereign to do wrong was brought to this country from England. But interestingly enough, there is not now, and never has been in England any rule of non-liability, or immunity from liability of school districts. A school district is an agency of the state; an instrumentality of the state adopted by the legislature for the purpose of carrying out the constitutional mandate to provide for the establishment of a uniform and efficient system of public education for the people of the state. So a school district is an agency. It is a creature of the state, and the state can do with it as it pleases within certain narrow constitutional limits. I don't know whether you have any constitutional districts in this state or not.* If you do not have, I know of absolutely nothing which would prevent the legislature of Kentucky, of Illinois, or Wyoming, from completely wiping out in one storke of the legislative pen every school district in the state and reconstituting the state into districts in any way the legislature may determine. Since a school district is an agency of the state, and since the state cannot be sued without its consent, a school district cannot be sued without the consent of the state. That is the second reason for the rule. The third reason for the rule is that there is no money to pay judgments in case judgments are rendered against a district. But that, of course, is reasoning in reverse. In all probability there would be money to pay a judgment if there were liability rather than saying there is no liability because there is no money. There seems to be a growing feeling on the part of the courts that this is the principal reason for not permitting liability of districts.

Interestingly enough, the courts have not liked the rule. They have complained about it. They have given what I like to call, "grumbling assent" to it. For example, a judge said this about it:

> "While the law writers, editors and judges have criticized and disapproved the foregoing document of governmental immunity as illogical and unjust, the weight of precedent of decided cases supports a general rule and we prefer not to disregard a principle so well established without

*Kentucky's school districts are statutory (KRS 160.010 [4399-2])

> statutory authority. We, therefore, adopt the rule of the majority and hold that the school boards cannot be held liable for ordinary negligent acts."

This language was written by a judge of the Supreme Court of Utah. But let me give you the facts of the case from which this language was taken. A little girl three years old was riding her tricycle on the school grounds in Bingham City, Utah. On the grounds was an incinerator which was used by the caretakers to dispose of waste paper and other debris. The trash was burned there and after the burning, the janitor would rake the embers and hot ashes onto the ground around the incinerator so they would cool. The little girl was riding her tricycle through these hot ashes when it upset with the result that she was seriously burned.

Action was brought against the board and the no liability rule was applied. Whether this youngster was a trespasser we don't know, and thereby is raised some very interesting questions as to the responsibility of school districts to keep their premises safe. Let me tell you one that I just learned about last week, while I was talking on this subject in New York. A superintendent there asked me this question, and New York, you will remember, is one of those states in which the district is liable. "Here's what we have on our premises," he said. "We have a swimming pool; around it we have a wire fence some six or seven feet high and we had it locked." But these youngsters, nevertheless, were climbing over the fence after school is closed, and going swimming there. One of them was drowned and action was brought against the district. In a state in which districts are liable for their negligent acts or for the acts of its employees, the question was whether this district had done everything it was legally obliged to do; has it acted to protect these children or were they trespassers. I was told, although I have not read the case, that the court held the district liable. Well, after all what is a school district expected to do? Should a Kentucky Colonel like me call out a regiment of the Militia in order to protect these school districts or may we do something else? What the court said, according to my informant, is that the district did in fact know that this situation was going on; that this was an attractive nuisance and that the district was liable. In such a situation, a district should procure insurance and be sure that insurance is broad enough to protect them in these cases. I'll have something else to say about insurance in a few minutes.

Now let me go back to the Utah case. The court held no liability there, applying the old doctrine of non-liability. The only

reason I chose that case was not for the purpose of showing the operation of a general rule but also for some language which was used in a very bitter dissent by Mr. Justice Wolfe of the Supreme Court of Utah, who, in my opinion, is one of the very able judges of the nation. He says, in referring to the rule of immunity:

> "I prefer to regard the said principle of immunity for the purpose of overruling it. I would not wait for the dim, distant future, in the never, never land when the legislature may act."

Mr. Justice Wolfe proceded to state that the rule rests upon the immortal, indefensible doctrine that the sovereign can do no wrong and further, that a state should not be permitted to shield itself behind it.

In another case, in which I have a great deal of interest for several reasons, one being that one of my own graduates tried it. He wasn't any "intellectual tornado" when he was in school but he was fairly able. I asked him after the case had been decided why he tried it. I said, "You knew what the rule was in Michigan. You know that Michigan follows the general rule of immunity of school districts." He said, "Well, I wasn't doing anything else; there wasn't anybody bothering me; no clients at my door, and I thought I may as well have a little practice."

Here were the facts of the case. In Bay City, Michigan a night football game had been played. Cars of spectators had been parked in a dimly lighted area. Now if you are going to have football games, put arc lights or search lights or anything you can find all over the place. Youngsters were returning to their cars parked near a ramp down which trucks apparently were driven to take supplies into the basement of the building or for unloading in the storerooms. Along the top of this ramp was a concrete wall about six inches high; on top of this wall was an iron railing about eighteen inches high. The whole wall was about two feet high, just about the right height to strike a twelve or fourteen year old youngster just above the knees and trip him. A little girl twelve years old, in this dimly lit area, tumbled over the railing, fell into the ramp and sustained a spinal injury from which resulted horrible lingering suffering and finally death.

Action was brought by this former student of mine against the school district. Interestingly enough, and he doesn't know how it happened, the lower court gave judgment for $10,000 in favor of his client! The lower court then overruled the verdict of the jury

and gave judgment for the district. The case finally reached the Supreme Court of Michigan, one of the very able courts of this country. The action of the judge in overruling the verdict of the jury was sustained by the court by a 4-4 decison. Now the interesting thing of the case is that although the rule of immunity prevailed in that state, four of these very able judges were willing to overrule the old precedent. Now let me say to you that I believe the old rule of immunity of school districts is obsolete, never had any sound basis and should be repudiated in its entirety. Here is what I think about it. I wrote the following about the rule several years ago:

> I incline to the view that the immunity rule is wrong and should be abrogated in its entirety. I think it has become obsolete. Education has become big business. If educational programs subject pupils to the hazards of modern traffic, buzz saws, dangerous chemicals in the laboratory, injuries in athletic contests from which districts take a profit and other dangers, the cost of compensating for injuries suffered in such programs should be assumed as a legitimate cost of education. It is submitted that public education can no longer justify sending pupils through life blind or maimed through the negligence of districts and smugly take refuge behind a rule, the foundation and soundness of which is, to put it mildly, open to serious question.

You may disagree with me. If you do you will not be the first. As a matter of fact, I belong to the only profession in the world in which exactly half of us are always wrong. One side always loses every law suit. I think public education should assume the responsibility for the damages it causes if we are going to engage in this big business. It should be required to carry insurance to protect itself. That is not very expensive.

I know what the argument is against abrogating the immunity rule. It is said that districts will be flooded with these claims if they may be sued. I have asked the people of California, Washington and New York how the liability rule is working there. I have asked if their districts are flooded with these claims. They answer in the negative. As a matter of fact, they say they have found it a wonderful thing for school superintendents to be able to say to an irate parent when they come in if Johnny has had the swing bump him and raised a knot on his head—'Well, now, Mr. Jones, we pay insurance to take care of just that kind of a situation and will you please refer that to Mr. Brown our insurance agent down

town. I am sure that he will be glad to take care of it.' They have told me that there is a lot of "heat" taken off of school administrators by that procedure.

* * * *

Now let us examine another aspect of liability. We know that it is sometimes difficult to keep our schools clean and the allegations in the situation I am now going to discuss demonstrates that fact. The allegation was that many of the pupils, in using this wash basin would splatter water on the floor which was smooth and hard surfaced so that it became slippery. This allegation did not charge the board of education with the creation of the nuisance. Rather, if an unsafe condition was created by the pupils, it was because the employees did not prevent the pupils from splashing water on the floor. In this event, failure on the part of teachers to prevent such action of the pupils might constitute liability of the responsible teachers.

Now what about the practice of seeking to apply an exception to the rule in order to impose liability upon districts.

A school board does not have the power, under the immunity rule, to engage in proprietary as distinguished from governmental activities. But some courts don't agree with that. They say that there is power to deviate from governmental act and engage in proprietary acts in which case the district can be held liable. An important case will illustrate the operation of this exception to the immunity rule. It appears that on September 9, 1952, a young man was injured at a football game between the Amphitheater High School and the Mesa High School teams. The Amphitheater school and the Mesa district were intense rivals. This was the annual "hate game". I'm sure you don't have such games in Kentucky but if you do—say between Lexington and Frankfort, then you can fully understand what this situation was between Amphitheater High School and Mesa High School.

It's the game the coach must win. He can lose all his other games but if he wins this one, he's had a successful season. Neither school had an "arena" big enough in which to stage this 'bull fight', so they rented the Tucson, Arizona Stadium. The young man climbed to the top of the stadium so that he could view the game. The rails where he chose to sit were defective—the pipes that were installed about the top of the stadium, the same kind of pipes that many stadia have. This man leaned against the defective rails, fell through then to the ground and was permanently injured. An

action was brought—not against either one of the districts whose schools were participating in the football game—but against the Tucson School District which owned the stadium.

But I want you to see just what a golden opportunity existed here in which liability could be imposed upon a school district if the court desired to avoid the doctrine of immunity. The courts seized upon *that* opportunity. The court held that this district had, in fact, engaged in proprietary action; that it had abandoned its (District's) function as a governmental agency and was liable despite the fact that the governmental immunity rule is applicable in Arizona. The court said:

> "Most of the states in attempting to decrease the severity of the rule (of immunity) have adopted the governmental proprietary test. The test is an arbitrary one, but the general trend of the decisions have declared more and more functions proprietary rather than governmental so as to allow recovery."

That statement has tremendous significance to the people who hold the responsibility for the administration of public education. In other words, according to this court, more and more other courts are now categorizing certain kinds of actions as proprietary as distinguished from governmental *in order* to require the districts to pay. That being so, the immunity doctrine may crumble rapidly.

* * * *

Another situation I want to discuss with you now is related to the charging of admissions and fees. There are cases involving this aspect of school operation in Massachusetts and in Minnesota. In the latter case, the facts were these: In a football game, a player somehow got slaked lime in his eye from one of the field lines. The boy lost the sight of the eye and an action was brought against the district stating that the public charged to see these affairs, a profit was realized from it, and though it is considered a part of the educational program, it is also a proprietary activity by virtue of the fact that is a 'show' to which the public are admitted by the purchase of tickets. The school district was held *not* liable; the court said that the charge in this case was only incidental to carrying on the school program. In Quincy, Massachusetts, the school district rented a building to a lodge, charging the lodge a rental fee of $52.50 to, "cover the reasonable expenses incident to such use". Somebody was hurt and an action was brought against the school district. Again, no liability was imposed upon the district because the fee was only to defray "reasonable expenses incident to the use of the facilities."

I'm waiting for the following situation to arise. It hasn't arisen yet as far as I know. A district plans to launch a purely money raising project. It presents a play or pageant only remotely related to the program of the school. Somebody is injured in the process and suit is brought against the district. I'm waiting to see what the supreme court of some state decides in such a case.

Let us next consider the matter of individual liability. Individual liability is where the "clutch" comes *because* employees of the district do not enjoy the same immunity that applies to school districts in all but the three states I have preivously mentioned. That is, this immunity does not inure to the benefit of the employees, and I'm speaking now of superintendents rather than of board members; I'm speaking of principals, teachers, bus drivers, janitors. Some cases which have come to light involving these people, are rather shocking. Teachers are not sued very often, but on my way out here, I read in a Denver newspaper the account of such a suit. It appeared in the Rocky Mountain News of December 11, 1956.

Here's the headline of the story: "Teacher loses fight to halt $15,000.00 suit." The judge refused to dismiss a suit against a Denver teacher arising out of an alleged slapping and pushing incident with a student.

The point I want to make is that teachers can be sued, and incidentally, the number of suits against teachers is increasing—this may well be true because it has only been during the last few years that teachers have been paid enough money so that they could pay a judgment. Because they can now pay these judgments, they are being sued more often.

Let us see what some other situations are that involve the question of individual liability. Accidents around a school occur in precisely those places you might expect them to occur, namely in laboratories, on playgrounds, in manual training shops, in athletics, and so on. One case arose in California involving a laboratory accident. The teacher and district were sued. You will recall that California is one of three states in which districts are not immune from suit. This class was manufacturing gun-powder. I did that when I was taking a chemistry course. It was one of the basic experiments required of us. We took certain chemicals, placed them in a mortar, ground them with a pestle. It was a routine chemistry experiment. The instructor had explained the problem and the procedure in detail; the laboratory manual prescribed the step by step method of performing the experiment—yet, with a perversity that can be displayed only by a youth of that age, these fifteen or sixteen years olds decided,

as soon as the teacher turned his back, to perform the experiment in another way. The expected thing happened of course. One youngster had an arm blown off, another lost the sight of an eye, and another was injured. Now you know without me telling you that when something like that happens, everybody in sight *does* get sued.

The court held that the act of that teacher constituted negligence even though he had done no more than walk to the other end of the room, and had little more than a minute before, explained the experimental procedure in detail. The court said something in that case which I think might very well be taken to heart by every man who has anything to do with school administration. It said that if we require youngsters to perform dangerous experiments in a laboratory, they must be given extraordinary supervision. Someone should be completely in charge of them at all times. If there is a moral in this case, it is that this particular phase of chemical education might be dispensed with without handicapping the purpose and function of high school chemistry. I doubt very seriously if my own chemical education would have suffered had I not been taught to manufacture gun-powder. Possibly in the light of such cases, we should take a new look at our whole program of laboratory experimentation. Not many of the people who enroll in high school chemistry plan to become professional chemists—a few of them will be, certainly. But I am not sure that their scientific education will be seriously impaired or fatally defective if they do not perform some of these exercises.

In New York a physical education teacher was held personally liable under the following circumstances: Two strong, vigorous boys, untrained in boxing, were permitted by the instructor to fight through one round and part of another. The plaintiff was struck a heavy blow on the temple resulting in cerebral hemmorahage. The instructor sat in the bleachers while this contest was going on. The teacher was held personally liable for the injury incurred by the boy.

The Appellate Division of New York said:

"It is the duty of a teacher to exercise reasonable care to prevent injuries. The pupil should be warned before being permitted to engage in a dangerous and hazardous exercise. Skilled boxers at times are injured, and these young men should have been taught the principles of defense if indeed it was reasonable to permit a slugging match of the kind that the testimony shows this contest was." The testimony indicates that the teacher failed in his duties, and that he was negligent.

Another situation arose in South Dakota. This will show that even 'horse-play' may involve teachers in legal difficulty. I suspect

that there are some people here today who are members of fraternities. I don't know how many I'm a member of—my secretary just writes the checks for the dues. If I knew, I might stop it. But most schools have their various clubs. I'm sure that many high schools in Kentucky have varsity letter groups—'M' Clubs, 'L' Clubs, 'W' Clubs and so on depending on the name of the school. Highmore, South Dakota, had its 'H' Club. As part of the initiation ceremonies of new members in their Club, they gave the initiates the 'hot seat'. Now for the benefit of those of you who may happen not to know what the hot seat is, I shall briefly explain. A chair is placed against a wall near an electrical outlet. A cushion or other cover is placed overthe seat of the chair and a wire under the cover is attached to the electrical outlet. The plan of this maneuver is that during the initiation ritual, the candidate is seated in the chair, the current is turned on and he is expected to arise very abruptly indeed, to the merriment of the assembled brethren. In this case, it didn't quite happen that way. Instead of this young man jumping up, he tumbled off the chair—dead.

The board members, the superintendent of schools, the coach, and the high school principal were sued. The court held the district not liable. The doctrine of immunity prevailed. That doctrine is still the law in South Dakota. But the coach was not immune and here's what the court said regarding him:

"The facts disclose that the coach actively participated in the initiation activities and it was he who tested the electrical appliance and therefore played an active part in the entire proceedings."

Nearly everybody involved lost his job as a result of this episode. The superintendent was held *not* liable since he only gave his permission to use the gymnasium and did not participate in the initiation ceremonies. The implication is clear. Had he taken any active part in the initiation, no matter how remote, he also might have been held personally liable.

My time is about gone for now, gentlemen, but unless you stop me, or want me to stop, I'll take a few minutes to talk to you about school patrols.

* * * *

There are several reasons why I want to spend a few minutes on the subject of school-boy patrols. It is a very controversial subject and though my opinion in this matter is shared by a lot of people, it is only fair that I tell you that it is also not shared by a lot of people. If you agree with my view concerning school patrols

—fine; if you don't, you have a lot of very distinguished company, including the American Automobile Association which originated the school patrol.

Suppose we examine the matter of school-boy patrols and the legality of them. Certainly it is a beautiful thing to see the boys in their white, Sam-Brown Belts, marching in precision. It is a spectacular thing, one that strikes the imagination, but the operation of patrols raise some legal questions in my mind.

Let us start with the assumption that it is probably legal for school boards to initiate school-boy patrols on general grounds—to inaugurate them through the machinery of rules and regulations. The question then arises as to how far can a school district go in the matter of controlling traffic? The rule is quite clear. A school district does not have any police power by virtue of its existence alone. It may certainly set up certain rules and regulations for the control of pupils in school, and even to and from school. It is well settled beyond that, however, that a school district *does not* have police power. That means from what little law there is on the point that the school district has absolutely no authority to control the public in the streets or on the sidewalks.

I think I'm far enough away from Phoenix, Arizona to tell you what I saw the last time I drove through there. The main street, East Van Buren, is a six-lane thoroughfare or highway and the traffic is very dense. In the middle of this busy thoroughfare was a boy who couldn't have been over twelve or thirteen years old. He was stopping cars and trucks and saying, "Back it up there. Back it up, you folks," and then, he would wave them on.

That that boy was at the behest of the district, acting illegally, there isn't the slightest question in my mind. Not the slightest question! But, more important from the standpoint of school administrators; What about the question of "acting as a reasonably prudent person would"? If entrusting the safety of school children to the immature judgment of a twelve year old boy is "acting as a reasonably prudent person would", then I'm going to go back and ask for a refund of the money I spent on my legal education. In my opinion, that is *not* acting as a reasonably prudent person would. That this district was exercising police powers would seem obvious.

Is it a reasonably prudent thing for a principal or school patrol supervisor to place these immature youngsters in such a position of danger? I have three grandchildren and I'm telling you that I am just not satisfied at all to have their safety entrusted to a twelve year

old when they cross busy streets, and I don't care how smart he happens to be. Furthermore, I don't believe that any superintendent of schools, principal, or supervisor of such patrols can be legally safe under such circumstances. That fact is recognized in at least two states. Utah and Wisconsin have express statutes which protect people who have patrol-operation responsibilities.

I should like to enter a plea for more and greater protection for school children. Communities should insist that their children be protected by police officers and should accept no less. Affording that protection is the responsibilty of the police department. Can you think of any more important function that such agencies could perform when school children are subjected to the dangers of modern traffic? I can not.

What is the answer then, from the standpoint of the individual? More and more states now have what we refer to as "save harmless statutes". New Jersey has an excellent one, and if you decide to enact such a law, you would do well to study it.

Certainly I advocate save harmless statutes. I don't think that it is any longer fair, when we have the possibility of legal involvements on the part of school people increasing, for the public to expect school people to assume personal responsibility for their possible negligent acts.

* * * *

Your chairman has graciously requested that I discuss the question of the liability of board members and you have, with equal graciousness, declared your willingness that we impinge upon the time allotted for your various group meetings. I shall not take much more than ten minutes to talk about this but I think that it should definitely be included in this discussion.

Normally, there is no liability on the part of board members, unless their actions are capricious, fraudulent or unreasonable. The reason there is a very strong presumption in favor of protecting good faith action by board members is simply that if we hold board members personally liable for their mistakes in judgment, we're not going to get anybody to serve on school boards except those who are judgment proof. A man who has a house, or car, or bank account is certainly not going to take the job without that good faith presumption. Thus, boards are presumed to have acted in good faith. But in Kentucky I have noticed that there appears to be a stronger disposition on the part of your Court of Appeals to hold board members individually liable under certain circumstances.

It is well settled that an administrative official, such as a board member, will be held personally liable if he fails to perform a specific, mandatory, statutary act. This rule is not applied often, but your Court of Appeals has applied it in some cases. I'm going to give you the citations because you may want to study them. They are, by the way, important not only to Kentucky, but are actually the leading cases in the country. They have been cited widely by other courts.

The legality of a school bus insurance situation was considered by your court in a series of cases. In the case of Taylor vs. Knox County Board of Education, 292 Ky. 767,187 S. W. 2nd, 700, a particular stipulation in an insurance policy was described, and the statute which is a comparatively common one, provides—or did at the time this case was decided, that:

> "Each board of education may set aside funds to provide for insurance against the negligence of drivers or operators of school buses owned or operated by the board. If the transportation of pupils is let out under contract, the contract shall require the contractor to carry insurance against negligence in such amounts as the board may determine. In any case the policy shall bind the company to pay any final judgment rendered against the insured district for damages to the property of any school child, or other persons."

There are statutes in other states that have substantially the same language except the last clause, "Or other persons". It's very clear then that your legislature had in mind, the protection of anybody who might be injured through the operation of school buses.

In the case of Taylor vs. Knox County Board of Education, the board had failed to procure the insurance required by the statute quoted. A woman was killed and an action was brought against the board. There could be no liability of the district, of course, becouse the immunity rule is followed in Kentucky. But, the Kentucky Court of Appeals held the board members individually liable *because they had failed to carry out an express mandate of the legislature.*

About six months after the Knox case was decided, the constitutionality of this statute was contested in the case of Bronaugh vs. Murray: 294 Ky. 715; 172 S. W. 2nd, 591. The Kentucky transportation contract, if you will note the statute, *must* require this insurance. It isn't merely a permissive law; it is mandatory in Kentucky. The board of Murray had failed to require a bus contractor to furnish insurance. A lady was killed and the board and the superintendent of

schools were sued. The constitutionality of the statute was sustained. Therefore, there is no longer any question about the validity of that law in your statute. On the personal liability question, the court held that members of the board were individually liable and stated that the duty of the board to require bus drivers, with whom they had contracts, to carry liability insurance was a specific and definite duty and pointed out that the board had no discretion in the matter. The superintendent was sued under a rather broad statute which was interesting to me. I didn't know how he got out from under it—If he's here, maybe he'll come around and tell me about it. This statute is that a superintendent of schools shall see that laws relating to the schools are carried into effect. The court said, however that the superintendent wasn't liable because the statute didn't specifically require any duty of him in regard to the insurance, so he was able to escape its provisions.

You have a more recent case—Whitt vs. Reed in which these appear to be the facts: A school principal had been employed by the board to do some plumbing in one of the school buildings. For some reason or other, and certainly I'm not going to attempt to explain how, the hot and cold water pipes had become reversed, and hot water was coming out of the drinking fountain. A child was subsequently badly burned by exploding steam when she attempted to get a drink. The school district, because of the immunity rule, was not sued. But the superintendent was sued, as was the principal, the janitor and the board members. The case went up on "demurrer" which is to say that the allegations in the case were held by your court to constitute a cause of action. In other words, the court said that if such allegations could be proved there could be personal liability on the part of these people.

Whether the allegations were in fact proven; whether liability was, in fact, held or whether anyone did, in fact, have to pay—I do not know. I asked by friends here if they knew whether the case was ever tried. They didn't know but somebody thought it had been settled out of court. If that is true, all we have from this case is the ruling that this statement of facts *would* constitute a cause of action against board members, the superintendent, principal, janitor, and anyone else who had anything to do with the defective plumbing job.

All of these cases indicate that you have gone far in Kentucky in holding boards of education personally liable. I think that the dangers apparent, in the light of these cases, to individual board members are such that it is folly not to protect them with insurance.

But let me say this—I don't think there is any authority, or any implied authority on the part of school boards to spend public money for the purchase of liability insurance, unless your statute permits. It has been held that there *is* implied authority enabling school boards to purchase fire insurance on buildings. A statute is not needed for that; but you do need a statute for liability, and that need is based on the theory of "non-existent liability". That theory is that since there is no liability on the part of districts under the immunity rule, the purchase of insurance then would be really purporting to *protect* districts against a liability that *doesn't exist.*

Well, what does that mean? It means that since districts can not be held liable for the negligent acts of board members, districts have no more authority to spend public money to protect board members than it has to use public money to pay premiums on their life insurance.

I submit to you therefore that you would be well advised if you went before your General Assembly and asked for specific legislation in this area, permitting boards of education to purchase insurance. This should permit the purchase of insurance, not only for their protection but for the protection of others as well.

In Wyoming, because of the ever present danger of individual liability to school employees, we thought we dare not wait for that 'never-never land' in which our legislature *might* act, so the state teachers' association took out insurance for the benefit of every teacher in the state to the extent of $10,000.00. It costs the association $2.00 per teacher annually. It is pretty hard to beat that, isn't it?

Juries throughout this nation are becoming more and more generous with other people's money. As a consequence, larger judgments are being rendered. A few years ago, I had an occasion to visit California to deliver a lecture. I had been reading some California accident cases just prior to the trip and had learned that damage verdicts of seventy-five thousand to one hundred thousand dollars were fairly common. I had been carrying the typical "10 and 20" liability policy on my automobile. (Ten Thousand dollars for one person; twenty thousand dollars for one accident). When I learned of the impending California trip, I sought out my agent and increased the policy to $50,000.00 and $100,000.00. My premium was increased three dollars! The point is that adequate insurance is a great deal cheaper from any point of view than inadequate insurance.

I will not tell you what your responsibilities are if any of you happened to ride over to this meeting in one person's car. If I did, I'm afraid that those who rode would refuse to ride back with you.

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"LEGAL PROBLEMS RELATED TO TEACHER PERSONNEL"

(Lecture by Dr. Robert R. Hamilton, Dean, College of Law, University of Wyoming, before the Kentucky School Law Conference, December 14-15, 1956, Sheraton-Seelbach Hotel, Louisville, Kentucky.)

I am sure you realize we are only scratching the surface in these lectures. Let me mention some areas we will be unable to consider at all. The question of board meetings, elections, residence for voting purposes, the effect of an illegal board meeting, the necessity of notice, and the problem of the legalities involved in the non-school use of school buildings. We might well have an entire conference devoted to discussion of the legal problems that arise in connection with school construction. Such matters as the requirement that contracts must be left to the lowest and best bidder and what constitutes the lowest and the best bidder? What about the authority of boards to change contracts after they have been let? To what extent may they be modified without reletting, and so on? Of course, it is possible to consider only a very few problems in a three-day conference.

In the final analysis, the person who actually carries the services of the school to the ultimate consumer, the children, is the teacher, so let us examine some of the legal aspects of the teacher-district relationship.

It is important to note that everything we do in public education is done by virtue of law. Our jobs are made possible by operation of law. Every penny we spend has to be by operation of law. Contracts are entered into by operation of law. School districts exist by operation of law and certainly teachers can be employed only by contract.

So let us examine into some of the elements of teachers' contracts. Some states have standard form contracts approved by the state. If you have an approved form, follow it, of course, but follow it *only for the purpose for which the form was designed.* In the Illinois case which I called to your attention yesterday, one of the big difficulties which arose was the fact that they had hired a superintendent and used a contract which was designed for the purpose of hiring teachers. It (the contract) had all the provisions with reference to tenure and matters that had to do with the hiring of a teacher but had no particular reference to the hiring of a superintendent, and

legal trouble ensued. Do not use a form that isn't designed for the purpose for which it is being used.

I am frequently asked, "What do you think are the minimum provisions that should be placed in a teacher's contract?" It is a question that is impossible to answer for all states. Certain local circumstances and certain conditions will dictate different provisions in teachers' contracts. Very frequently I find elements in teachers' contracts because of some difficulty that has arisen locally. Contractual provisions tend to accumulate and become too long and involved. After numerous additions contracts may reach the point where it doesn't mean very much. Certainly, I think there are certain minimum provisions which should go into a contract. Let it be understood that these are only suggestive minimums.

You should certainly have a contract in writing. All states do not require teacher's contracts be in writing. Even if there isn't any such requirement, it is always prudent practice. It's good business to put agreements in writing because you are likely to, or at least there is a possibility, that having entered into a contract, there may later arise some dispute as to what its provisions were. Of course, there must go into a teacher's contract *salary* and the *term*. Second, the payment dates. Is this teacher to be paid monthly, semi-monthly or otherwise. A third thing which should go in, is the amount of sick leave, if any. The whole question of sick leave, and the authority of the board to grant it have been, and is still, a subject of considerable litigation in this country. Suppose a teacher is ill. Now there isn't any question that, unless there is a provision in the contract to the contrary, the board, if it wishes, can reduce the teacher's salary for the time she has lost. It isn't a question whether the teacher was at fault. The fact remains that he wasn't on the job, did not teach, therefore, you are giving public money away if you pay a teacher for services which he does not render. So I think it's a good thing to put into the teacher's contract, the amount of sick leave which they are to be granted, if any. I am not talking about the prudence of it. I have never seen a case yet in which a teacher has been docked for being ill or any questions raised as to the authority to pay her, although technically, I'm inclined to think there might be some question raised as to the legality of it.

Those are absolute minimums as I see them. I have another suggestion to make in a moment when I speak of the duties of a teacher under his contract. Lets let those stand as absolute minimums.

A situation which is getting into the courts fairly frequently now is whether the rules and regulations or the boards of education really

are by implication, (without any reference thereto in the contract itself) a part of a teacher's contract.

In each of the previous discussions I pointed out this obvious and fundamental legal idea—that a board of education *does have a right to make and enforce* reasonable rules and regulations for the maintenance of the school. You don't have to have a statute to that effect. That authority exists by virtue of the fact, and solely by the virtue of the fact, that we have boards of education charged with the responsibility of running the schools. Certainly we must have rules and regulations. That, by the way is true all the way down the line. The superintendent has the right to make rules and regulations; the principal has the right to make rules and regulations, and even the classroom teacher may make reasonable rules and regulations within her baliwick. These rules need only meet the test of reasonableness. What constitutes a reasonable rule and regulation? We frequently let a jury, sometimes humorously referred to as "twelve good men true" decide. They do a pretty good job too.

In meeting the test of reasonableness then, the question that at once arises is, what about the binding affect of a rule or regulation upon a teacher, which rule or regulation he had no knowledge of at the time the contract was entered into?

There isn't any doubt that if a teacher has a particular rule and regulation called to his attention at the time the contract is entered into and he signs his contract, he is bound by. Even the unreasonableness of it would be a little bit difficult to prove when the teacher knew what the situation was. In some states, (Missouri being one of them and perhaps the typical one) the situation is controlled by express provision of statute. The Legislature of Missouri has done some amazing things. I don't know whether the superintendents were back of this sort of provision or not, but it occurs in the Missouri Statute. Missouri Law contains the following language:

> "The faithful acceptance of the rules and regulations furnished by the board shall be considered as part of said teacher's contract, provided said rules and regulations are furnished to the teacher by the board when the contract is made."

I recommend that if you have any such provision as that in Kentucky you forthwith attempt to get it repealed. I know of no other state in which this provision prevails, but it might be a good idea to look at your own law and see if it does.

What does that mean? *It means that a teacher is bound only by such rules and regulations of the board as she is furnished copies of*

at the time the contract is entered into. Well what that does obviously is restrict the board in the matter of adopting new rules and regulations for the management of the school system.

In the case in which the statute was construed, the teacher was told about a regulation having to do with the matter of prohibiting female married teachers from teaching; or provided that a female teacher shall resign, or her job shall be forfeited if she becomes a married woman. This is becoming perhaps more and more an academic question these days since, as I indicated this morning, we are glad if we can just get warm bodies to put in these classrooms. This is a very inept statute, in my opinion. In the first place, I think it is educationally unsound, and the second place the weasel word "*furnished*" is used in the statute. . . . "provided said rules and regulations are *furnished* to the teacher by the board when the contract is made." The teacher was told about them but she was not "furnished" a copy unless just telling her was the furnishing of it. The court, in the case of the young woman concerned, held that this was adequate if the merely giving of notice was sufficient. Now what that does is make it impossible for boards to publish rules and regulations binding upon a teacher after he signs his contract.

A similar case arose in Indiana which did not involve this kind of a statute, I'm happy to say. As a matter of fact there wasn't anything at all in the statute with reference to this question of the obligaion of teachers to follow the rules and regulations of the board of education. But this case dealt with a situation in which a rule and regulation was passed after the teacher's contract was entered into and while she was in the process of performing it. The right of the board so to do was challenged and the Supreme Court of Indiana sustained the right of boards to adopt rules binding upon teachers even though they were adopted after their contracts were signed. Here is what the court said and with it educational philosophy I am confident nobody here will have any quarrel. This is the language of the Supreme Court of Indiana:

> "If only such rules could be enforced as were in existence when the contract was signed, the school system might be static for at least a year, (that is during the period of the teacher's contract), new situations could not be met promptly, new problems would have to await solution until the close of the school year. We cannot find any such intent in the contract nor in the purpose behind the tenure law. All rules and regulations must, we think, include those adopted after, as well as those adopted before the execution of the teacher's contract. Any other interpreta-

tion would unduely hamper the administration of the public school system by the authorities charged with their management."

Of course that's sound educational philosophy. Nothing else makes any sense. To say that merely by virtue of the fact that you enter into a contract with a teacher the board then cannot make such reasonable rules and regulations binding upon the teacher as the exigencies of the situation may demand, would unduly restrict the rule-making power of the board. The same is true with reference to rules and regulations of state boards of education. Sometimes when we don't have suitable statutes but we can press all sorts of legal tools into service in order to reach a particular result. It is often a matter of finding a "legal peg" upon which to hang the decision. In Oregon for example, we had this rather interesting situation. The state board of education adopted the following regulation:

"Teachers in the public schools shall to the utmost of their ability inculcate in the minds of their pupils the correct principals of morality and proper regard for the bonds of society and for the government for which they live."

Every teacher of course, would do that sort of thing any how. The local board used this particular statute to get rid of one of these rare misfits that sometimes get into teaching. This fellow was fond of telling risque stories in class. He engaged in contortions before the class such as scratching the back of his head with his foot. He extolled the virtues of nudism. He engaged in other conduct obviously unbecoming a teacher and there wasn't any particular statute on the books of Oregon which permitted you to fire teachers for scratching the back of their heads with their feet, but we had to find some legal basis to discharge such an obvious incompetent. The local board pressed the regulation of the state board of education quoted above into service. Let me read it again. "Teachers of the public school shall to the utmost of their ability inculcate in the minds of their pupils the correct principals of morality and proper regard for the bonds of society and for the government under which they live." The court sustained the board's action on the basis of this statute. Some of you have heard me say that sometimes it seems that the courts are required to use a monkey wrench to repair a watch and I certainly think they did it here if you see what the analogy is. The important thing in my mind is not what tool was used but that the judge got the watch fixed and education progressed.

For many years I had looked for a case which would tell me exactly what the duties of a teacher are under his contract. I have never been quite sure. I wasn't sure when I was a superintendent of schools, how much I was entitled to demand that a teacher do under his contract. Obviously it would be impossible to put into a teacher's contract all of the possible contingencies that may arise in which the services of that teacher may be needed. I had always had the feeling as a superintendent, that not only did I hire Miss Jones to teach Latin and Mr. Brown to teach Science and Miss Smith to teach English, but that there was also implied in that contract, (even though nothing was said about it in the contract) certain implied obligations on the part of those teachers to make contributions to the successful on-going of the whole school enterprise. I've always thought that but I had never been sure.

Finally, here was the answer I thought. In a case decided in 1951 in New York, the court went to great lengths in attempting to delineate what the implied obligations of a teacher are under his contract. Teachers are beginning to express and to exercise a substantial degree of independence. In this case, certain teachers asked for a raise in salary which was denied by the board. The teachers then decided to do only what their contracts required.

This famous case is entitled Parrish vs. Moss. It was the first case to come to my attention that dealt with how much and what type work a teacher legally may be required to do. The following quotation is important since it was the first case in which the obligation of a teacher under his contract was delineated in any great detail. Here is what the court said:

> "Any teacher may be expected to take over a study hall regardless of his field of teaching. A teacher engaged in instruction in a given area may be expected to devote a part of his day to student meetings where supervision such teacher is, in the opinion of the board, educationally desiraable. Teachers in the field of English and Social Studies and undoubtedly in other areas may be expected to coach plays. Physical training teachers may be required to coach both intramural and inter-school athletic teams. Teachers may be assigned to supervise educational trips, which are proper part of the school curriculum. A band instructor may be required to accompany the band if it leaves the building. These are illustrations of some of the duties which boards of education have clear legal justification to require of their employees. A board is not required to pay additional compensation for these services. The duty assigned must be within the scope of the teachers' duties.

> Teachers may not be required to perform janitor services, police service, traffic duty, school bus driving service, etc. These are not teaching duties. The board may not impose upon a teacher a duty foreign to the field of instruction for which he is licensed or employed."

I'm glad that not too many school people found out about this. I don't want the word to get around that teachers may not be required (except the handling of study halls, etc.) to perform services that are not more or less directly related to the teaching field for which the teacher is certified. I think there is a great responsibility—an overall responsibility—on the part of every teacher to make every reasonable contribution he can to the successful on-going of the school enterprise regardless of whether it happens to be within his teaching field.

I was discussing this problem with a group in Sacramento State College in 1951 or 1952, soon after this case had been decided. I had a good deal to say about the obligation of teachers for carrying on certain activities even though they may not be related to the teaching fields. I learned that a man in my audience had gotten into difficulty on this matter in Sacramento. Here is what happened in the Sacramento School. Certain teachers, although they were teachers of various subjects, had been assigned several extra curricular, supervisory jobs. The teacher in question had been assigned the job of supervising certain intramural games. He, with other teachers, had been asked to assume responsibility for keeping the people from running across the floor after basketball games were over, and to see that the pupils behaved themselves. It was simply a matter of general supervision.

The teacher, citing the Parrish vs. Moss case, insisted these duties were not teaching duties. Since they were not, he denied any obligation to perform them. The case went to the District Court of Appeals of California. It held that the California law requires a reasonable amount of "outside" work of teachers. Here is the language of the court:

> "A teacher expects to, and does, perform a service and if that service from time to time requires additional hours of work the teacher expects to, and does, put in the extra hours without thought of measuring compensation on terms of the given sum of money per hour. The direction and supervision of extra curricular activity are an important part of their duties. All of his duties are taken into consideration in his contract for employment at the annual salary."

All of this, of course, subject to the test of reasonableness. What is reasonable must necessarily depend upon the facts of each case as we have said many times here. Supervising students to protect their welfare at school athletic and social activities is within the scope of the teacher's contract. Thus there is an overall responsibility of a teacher to make such reasonable contributions he can to the successful on-going of the school enterprise. From this case, the clock-watching teacher certainly can take no particular comfort.

The next topic I should like to consider with you is the matter of teachers unions. Let me point out to you at the outset that it is not my purpose (although I have some very definite views on the subject) to advocate or to condemn teacher's unions. I want that very distinctly understood. I'm going to talk to you about the only situation, as far as I know, that has arisen in this country involving the right of teachers to strike.*

It has been settled for many years, and as far as I know there is absolutely no authority to the contrary, that teachers have the right to organize. That right was established by an Oregon case. It was sustained by a case in Illinois, and one or two in Ohio. The right of a teacher to join a labor union is clear. There have been situations in which actions have been brought by teachers to force boards of education to hire them even though they were union members. Now these are not tenure teachers. The answer to the question as to the right of a board to discharge a tenure teacher because she joins a union, I have no idea. As far as I am aware, it has never been tested.

The board of education in the first instance may discriminate against any teacher. No teacher has a legal right to a job. It's a privilege. We have a license to engage in teaching. A board of education can decline to hire, a bald-headed man. It can decline to hire red-headed men. It can decline to hire anybody it wishes with complete legal impunity. The only time these questions could ever arise is when we have a teacher on tenure and there frankly, I do not know what the answer is to the question.

In 1951, the first time, and as far as I know, that any court of last resort, the highest court of any state, has had before it the question of the right, not of teachers to organize, but their right to take advantage of the organization and strike against the school district. The case arose in Norwalk, Connecticut. It appeared that

*Since this lecture was delivered, the Supreme Court of New Hampshire has decided that teachers may not legally strike.

as early as April, 1946, a dispute over salary rates arose between the board and the Norwalk Teacher's Association. I have been told that the teachers there were practically driven to organize because of the unreasonable attitude which the board had taken toward their association. Anyway, all but two of approximately 300 teachers in the system were members of the union. The Board of Estimates and Taxation, the State Board of Education, and the Governor finally got into the controversy. After long negotiation 230 members of the association rejected the contract tendered them and refused to return to their teaching duties. In other words, they struck.

Before I go on with the discussion of how the court handled this problem, let me call your attention to one other thing and this rather parenthetically has to do with these unions. A little over a year ago I had the attorney for the State Teacher's Association in a neighboring state call me at 11:00 o'clock in the morning in great consternation. He said he had been told that the teachers of that state were going to strike and he had to give them an opinion as to their right to do so at 1:00 o'clock. I told him that there was only one case of reference that I knew of. He wanted to get hold of it. Fortunately it was written up in a publication I prepared and told him where he would find it. I didn't hear anything more about it. The next summer I was speaking there on this same subject and he came to me and said, "you know I don't know whether you are right or whether you aren't, but I showed these people the material you had written and they didn't strike."

In the Norwalk case there were three or four questions that were presented to the court. The question, "Is it legal for teachers to organize?" was answered in the affirmative, just as in all the other cases that have been raised on that question. But then this court held, however, that even though there may be the right to *organize,* there still is not the right to *strike.*

The court quoted from the language of the late Franklin D. Roosevelt, who by no stretch of the imagination could be considered anti-labor. He made this statement and the court quoted it:

> "Particularly I want to emphasize my conviction that militant tactics have no place in the functions of any organization of governmental employees. (A) strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable."

Here again we find a situation in which you have the interest of a particular group in conflict with the interest of the whole people. Anytime you find those situations the interest of the individual group must give way. There were at least two important rights that were decided here: (a) The right to organize; and (b) Obligation *not* to strike. The question arises, just how effective can a teacher's union be if it is denied the right to strike? Normally, professional employees do not organize and professional people do not strike. There is nothing in the law which says that teachers may not organize.

Here is the part of the whole problem that disturbs me. *Not* whether teachers have the right to strike (although I think it is an important determination whether it is *right* or whether it is wrong.) but does the teacher have that right when there is *no* right on the part of a policeman to strike; *no* right on the part of the judiciary to strike; the right of firemen to strike. Now for the first time we have the *right* of the people of America to have their children taught taking its place beside the other rights to which the public is entitled.

That is a new concept. It is a step forward, or backward depending upon the point of view. But if the scarcity of teachers continues in this country, I suspect that if we don't get salaries up and if we don't start giving teachers the recognition to which they feel themselves entitled, there is going to be more union mindedness in the profession. I have hopes, however, that there is some way that we can keep our teachers; some way that we can satisfy them; some way that we can work this problem out without driving them into unions.

I believe, in final analysis, we are going to have to make up our minds in public education, as to who is going to furnish educational leadership. If we have an extension of teacher's unions and if we should find a court which would disagree with Connecticut, holding that there *is* the right to strike, are we going to find that the leadership in public education is now passing into the hands of labor leaders? I don't know. I'm simply saying that that is one of the things that the public and the leaders in public education in this country are going to have to make up their minds about and it is going to be a difficult decision. But we are confronted with it and we must make up our minds on it soon.

* * *

Let us turn to the legal and ethical problem of the teacher whom I refer as a contract jumper. These are teachers who accept jobs with districts and simply use them as vantage points for looking around for better jobs. This type of teacher leaves the board in the

lurch by resigning the first of September or just before school starts. And that practice, I am very sorry to say, is increasing nationally.

Teachers are really becoming very nomadic. I've heard it said here since I arrived, that this matter of a contract between a board and a teacher is a one-sided proposition. As a practical matter there is a lot of truth in that. As a technical matter it is not true. I think I have read just about every case either in complete or in digest form, that has ever been decided in school law in this country. I have a case in which a board of education has brought an action against a teacher for breach of contract although, technically that contract is just as binding upon the teacher as it is upon the board. Why is it that teachers have not been sued? One is they have been "judgment proof". That is the thing I talked to you about this morning. The second thing is, who wants a teacher around that doesn't want to stay? There isn't anything legal about that; it is just common sense in educational administration. I can cite scores of cases in which the teacher has brought an action against the board. As a practical matter the board really has no practical remedy against a contract-jumping teacher. As a consequence there have been certain legal devices that have been set up, and certain laws have been passed for the purpose of giving boards some protection. One of them is a provision in the contract itself for the forfeiture of the last month's pay in those situations in which the contract calls for the payment of a teacher over a twelve months period even though the duty may extend only nine or ten months. A second one which is much more effective and they told me in New Jersey last week that they are really using this one,—that a contract jumping teacher may have his certificate revoked or suspended for the year.*

It makes sense and its the only sort of think which I feel gives a board any effective protection. But let me say this, unless and until teaching becomes a *"real"* profession, it doesn't make much difference what the law says—you can't make a decent person out of a teacher just by legislation any more than you can legislate love, morality or affection. We are simply going to have to develop in our teachers a spirit of professional attitude and set up a code of ethics with enough "teeth" in it so that we can discipline those who violate it the same way we discipline doctors and lawyers for violation of theirs.

What may a teacher do if he is illegally discharged? A very large number of teacher tenure laws now provide that a teacher is not bound merely to accept damages but he may be restored to his

**Kentucky has a similar law.*

position. What your law is here I do not know.** But that is the rule, and it is in contravention of the old contract law of the Common Law of England which is still the law of contracts in this country. Normally a teacher is simply bound to accept damages but he is also bound to go out and seek another job. It is, in accordance with the general rule of law which we call "mitigation" of damages, the obligation on the part of a teacher or anybody for that matter, to cut down or lessen the damages if he can. A teacher is bound to go out and try to get another job. He is not bound to go out of the same town; not bound to accept a job which is of lower standing, lower dignity and certainly not of lower salary than he or she had in the job from which he was discharged.

A final observation on the matter of the discharge of teachers—statutes provide various bases—incompetency, immorality, neglected duty and so on for terminating a teacher's tenure. I am told (and it is only the superintendents and administrators that are supposed to hear this statement) that the superintendent of schools simply would not think of trying to fire teachers for anything under the sun. Those attempts to fire teachers with tenure do not really constitute a hearing of a teacher—they constitute a trial of the superintendent!

The operation of tenure is a very interesting thing. I am told by the administrators of a certain large western state that there are many ways of evading tenure and those people there evade it. I had always thought that tenure was something that was greatly to be desired. But the teachers in one state have told me that they do not want tenure because, they say, they are perfectly willing to assume risks in doing their job and don't want to have to carry any "dead wood" on their backs. In another western state, the administrators tell me that they "swap" teachers just before the teachers go on tenure. For example, let's say I'm a superintendent in School X; your a superintendent in School Y. I have a fine English teacher; you have a fine English teacher. Just before either goes on tenure I fire mine and you fire yours, and we just trade them. I'm not saying that is legal. Every time the courts get a chance at that sort of thing they certainly condemn in no uncertain terms. But what they say in the state referred to is: "We simply must keep the 'biddies' moving."

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**Kentucky Tenure Law (KRS 161.790, Par. 5) provides for such restoration of position if in a case of dismissal, a teacher files a petition of appeal and so designates that as a condition in said petition and provided "relief prayed for in the petition" is granted by the court. Either teacher or board may appeal from the action of court to Court of Appeals.*

"LEGAL PROBLEMS RELATED TO PUPIL PERSONNEL"

(Lecture by Dr. Robert R. Hamilton, Dean of Law, University of Wyoming, Before the Kentucky School Law Conference.)

This morning, we are going to spend some time discussing this matter of legal problems involved in pupil personnel administration. There are a great many very interesting cases recorded in this area dealing with a multitude of situations.

One problem that is always tedious is the matter of residence and tuition. Suppose we begin there.

A case arose in my state in which a father maintained a home, fully furnished, in the district in which he worked. There was no high school there but he established what he called a 'second home' in an adjoining district where a high school was located. He sought to send his child there, tuition free.

The question arose—where does this child live? Was his home at the house his mother had moved into and in which she had set up housekeeping for him, or was it where the father lived. If he lived with the father, there is an obligation to pay tuition. It was held that tuition was due. The domicile was a thing that controlled in that case, but it doesn't necessarily hold in all cases. I shall attempt to show you why.

The domicile is determined by one's legal residence. It is said that the difference between domicile and residence is this: Domicile is where you live and residence is where you "hang your hat." In other words, we are all domicile of our respective districts and states. We are residing in this hotel or where ever we are registered now.

The test seems to be: Has this child moved into the district primarily for the purpose of taking advantage of the school facilities there? If taking advantage of the school facilities is only an incident to his being in the district, he is entitled to attend school there tuition free despite the fact that his parents may have a legal resident in some other place.

A standard legal work—Corpus Juris—was cited in this case. This is the way the rule is stated in that work:

> Instruction cannot be claimed by a non-resident child whose primary purpose in coming to the district is to attend the public schools therein, or by children of the person who comes temporarily into the district to reside during the scholastic year for the purpose only of sending his children

to school in that district, or by a child temporarily sojourning in that district but claiming a home outside the district, or by children boarding out in a boarding house in the district by parents living in another district.

The test is, as I have indicated: What is the purpose of a child moving into a district? Let me indicate how it operates by referring, without describing, to three or four cases.

In Colorado, a child was placed by his father in a home of a family in another district in order to give him a home with desirable influences and surroundings. The father maintained his home where he had always had it. He was a widower and he placed these children in a home in another district *not* primarily for the purpose of their taking advantage of the school facilities in that district, but in order to give them a proper home. The use by the children of the school facilities was only incidental to their presence there.

In Nebraska, a motherless child was held to be a school resident of the district in which she lived with her sister, although the father lived outside the district.

A minor child who had been freed from parental control may establish school residence apart from the residence that is the domicile of the father. The Supreme Court of Wisconsin has so ruled. Therefore, the mere fact that the parents may live in a district other than that in which the child is attending school does not necessarily mean that the child may be required to pay tuition, or that the home district would be required to pay tuition for the child.

* * * *

Let us now consider the matter of home instruction and compulsory attendance. The problems to be found in home instruction and compulsory attendance have been with us from the very beginning of our school system, I suppose. At least, they have from the time of the enactment of laws in this country requiring pupils to attend schools. The theory of compulsory school attendance is not that it be for the benefit of the individual child. (I do not mean to say that the privilege of a child's attending school is not a valuable one which will be protected by the court. It is a valuable privilege and one which will be carefully protected by the courts.) But fundamentally and basically, the philosophy of compulsory attendance laws is that they are necessary to insure the protection of the state itself. When a parent insists upon his religious right (as many of them do in some areas) to have their children instructed in their homes, or that they attend other than public schools, we must not lose sight of the fact that it is still the basic philosophy

of education that we must have an enlightened citizenry if a democracy is to survive. Therefore, school attendance is not so much a right as it is a duty which the state, for his own preservation, places upon parents.

This principle has been determined by the Supreme Court of the United States in the famous case of Pierce vs. the Society of Sisters which arose in Oregon. It was held that a statute which requires either attendance at a public school or home instruction is unconstitutional. The right of people to send their children to private schools is protected and preserved in this country by that landmark case. But the right to home instruction has also been preserved in many states. Whether it has in all states I am not in a position to say. It is very clear, however, that home instruction will be permitted under definite limitations.

A case was recently decided in California in which it was held that the quality of instruction, whether it be in the home or in private schools, is still under the control of, and may be determined by the state itself. Therefore, even though the right to have a child instructed in private schools is preserved, this preservation does not mean that his instruction may be completely entrusted to private schools without any control of the quality of the instruction they provide.

The problem of home instruction has long been a troublesome one and I shall describe for you only one case in which we find a court expressing its feeling, giving expression to what it considered the fundamental philosophy that there is no right on the part of parents to have their children receive instruction at home.

The Supreme Court of Virginia upheld the conviction of parents who insisted upon training their children at home. These parents belonged to a religious group which opposed youngsters coming in contact with other youngsters and they, therefore, insisted upon instructing them at home. The tenets of their religion required it. The Supreme Court of Virginia said, when a conviction of these parents for the violation of the Compulsory Attendance Law was brought before it:

> Obviously an illiterate parent cannot properly educate his child nor can he, by his attempt to do so, avoid his obligation to send his child to school. No amount of religious fervor he may entertain in opposition to adequate instruction should be allowed to work a life long injury to the child. Nor should he, for this religious reason be suffered to inflict another illiterate citizen on his community and on his state.

That is as fundamental and as basic philosophy of compulsory school attendance as will be found. It is sound educational and social philosophy. Certainly every man has a right to his own religion, but he also has an obligation to exercise that religion in such a way, and only in such a way, as will not impose his will or his desire upon other people who have the same right. There is an obligation and a responsibility on the part of parents to see that their children are educated.

In New Jersey we have a rather famous case in which the court condemned entirely the whole idea of home instruction. The case was an interesting one because the evidence showed that the children involved were difficult to control. The court said that they had taken the attitude that they were on a grand holiday. Here is what the judge said on the question of home instruction:

> I incline to the opinion that education is no longer concerned merely with the acquisition of facts; the instilling of worthy habits, attitudes, appreciations and skills is far more important than merely imparting subject matter . . . Education must impart to the child the way to live. This brings me to the belief that in a cosmopolitan area such as we live in with all the complexities of life, it is almost impossible for a child to be adequately taught at home.

That certainly is true. Education has been defined as that which remains after what has been learned in school has been forgotten.

Children cannot be isolated from the society in which they must live. As a consequence, this court takes the attitude that they must be sent to school, either public or private.

Now we get into some of those areas that become a bit more amusing. A rather fascinating area, I think, because it shows such perversity on the part of some parents. I am referring to the matter of conduct of pupils while they are away from school. It is established that there is a right by the board to enact reasonable rules and regulations. But how far may those rules and regulations extend and still meet the test of reasonableness which the courts have established?

When we speak of the right of a school district to *control* youngsters, including the right to punish him if he engages in conduct which is inimical to the best welfare of the school, we're talking about one problem. But when we consider the responsibility of a pupil while he is off the school property—on his way to and from school—we are concerned with an entirely different one. Let me see if I can

explain the difference. When we speak of the authority of the board in the area of the responsibility for school pupils we may be concerned whether the district would be held liable or the individual school employee would be held liable for something that happens to the child in the transportation to or from school, or in walking to and from school. Now, we have said that the district in Kentucky is certainly not liable because you have the immunity rule in application here. But what about the individual liability of superintendents, principals, and teachers for the safety of these youngsters on the way to and from school? In every case I know about in which the problem has ever been raised, the court has, either expressly or by reasonable implication, said that the school has not assumed the sole and complete responsibility of seeing that these youngsters get to and from school safely. The parents still have some responsibility in this area. That philosophy has been advanced normally in cases attacking the sufficiency of transportation. In other words, a parent sometimes insists that if the district undertakes to transport his child to and from school that undertaking extends from the steps of the school house to the steps of the home. No court has held that to be true. On the contrary, the courts have uniformly said that there is still a measure of responsibility—a very genuine and real responsibility, remaining on the parents in these cases.

Here is an old case — decided almost a hundred years ago in Vermont, which is as sound today as it was when it was decided. The case is entitled "Lander vs. Seaver" 32 Vermont 114, 74 American Decisions 156. Not only the rule but its underlying philosophy has modern judicial approval in case after case. Here were the facts: A high school boy had already been home. He had theoretically, at least, gone back to his home and parental control had been resumed over him. But he had gone to the pasture after the family cow and was driving her to the barn. The teacher in the case, a Mr. Seaver, was walking along the street and this boy said to his companion, "Look, there goes old man Seaver." The next day he decided to call this young man to account, which he did. It was held that the teacher was within his rights. That is to say, merely because of the fact that a pupil has gone home does *not* deprive the school of authority to punish him for certain acts which may subsequently have been committed.

This comes very frequently as a surprise to some school people. The test is *not* concerned with the question of when the act occurred or whether the pupil has reached his home before committing the act. That isn't the sole test although it is an element to be con-

sidered of course. The important question is what is the effect upon the school itself? The Supreme Court of Vermont said:

> "This misbehavior, it is especially to be observed, has a direct and immediate tendency to injure the school, to subvert the master's authority and to beget disorder and insubordination. It is not the misbehavior generally, or toward other persons or even toward the master in matters in no way connected with the school, for as to such misconduct committed by the child after his return home from school we think the parents, and they alone, have the power of punishment. But where the offense has a direct and immediate tendency to injure the school and bring the master's authority into contempt, we think he has a right to punish the scholar if he comes again to school."

Why not? Why be technical about this matter? Of course, there is a limitation; there is a point beyond which we may not go. If we envision a group of youngsters in a hot-rod driving by the home of the principal, the teacher, or the superintendent and hurling uncomplimentary remarks in his direction — maybe along with empty beer cans — we have the modern counter-part of the old Jack Seaver occurrence, and I venture the opinion that there is not a court in the land which would not sustain responsible school authorities in calling such youngsters to account.

In a Connecticut case, we had one of these bullies who lived just a short way from school. He had reached home, had had a glass of milk and been around his home for a while. Just how long, the case is not clear but at least several minutes or perhaps as long as half an hour. Little girls coming home from school who lived beyond the boy's home walked across the corner of the lot on which the home of this boy was located. He emerged from his home and started annoying these little girls who were on their way home. The mother and father failed to control the boy although there was evidence that they knew what was going on. The school took him to task when he came to school the next day, and it was held that the school had a legal right to punish him. The court said:

> The effect of the rule claimed by the parent, that a pupil cannot be punished for acts committed after he reaches home, if applied, would result in a serious loss of discipline in the school and possible harm to innocent pupils in attendance.

Supposing some strong armed juvenile bully attending school lived upon the next block and he did some harm to another child after the child has been home. Punishment in that case must either be done by the parents themselves or you must have recourse to prosecution in a court of law. In one case of this kind the court said:

Some parents would dismiss the matter by saying they could give no attention to children's quarrels.

Have you ever seen that kind of parent? "We can't be bothered" type of parents? It makes a difference whose ox is being gored in these cases. People whose children are on the offensive talk that way. Certainly it isn't the way the people on the "other side of the fence" talk. Many parents would champion their children as being correct in their conduct. They take the attitude that their child can do no wrong just like the sovereign can do no wrong. Well, that may be the attitude taken, but the harm to the school has been done. The test then, is not whether a pupil has been home, or the act occurred. Rather it is what effect the conduct has upon the school.

Now let's proceed to the matter of corporal punishment. I had supposed that corporal punishment had long since ceased to be a serious problem. Apparently it is still a very real problem. I have had requests from at least a score of school people throughout the country to write something about corporal punishment. What I shall say to you here is taken from some material which I wrote on the problem in response to those requests.

Unless there is a limitation by statute or by board regulation, there is the right of school authorities to inflict reasonable corporal punishment upon a child. The Supreme Court of Alabama 65 years ago set out what is still the law, in the absence of the regulation by statute, board regulation, or rule. It said:

> The teacher is, within reasonable bounds, a substitute for the parent, exercising his delegated authority. He is vested with the power to administer moderate correction with the proper instrument which ought to have some reference to the character of the offense, sex, age, size, and physical strength of the pupil. When the teacher keeps within the circumscribed sphere of his authority the degree of correction must be left to his discretion, and as it is to the parent under like circumstances. Within this limit he has the authority to determine the gravity of the offense, mete out to the offender the punishment which he thinks his conduct justly merits. All the authorities agree that he will not be permitted to deal brutally with his victim so as to endanger life, limb, or health.

Now, there is the fundamental statement of the rule and I repeat, that unless it is changed by regulation or by statute, it is the law in all states as far as I know.

There are some states that do modify the rule by statute. Maryland is one of them. In some states the language of the statute

is sufficiently broadened to expand the authority of the teachers in this area, while others narrow it substantially as I shall attempt to show you.

In Pennsylvania, the authority of the school over pupils is described as follows:

> Every teacher in the public schools shall have the right to exercise the same authority, as to conduct and behavior, over pupils attending school during the time they are in school including the time required going to and from their homes, as their parents, guardians or persons in parental relationship may exercise over them.

This places teachers "in loco parentis." "In loco parentis" means "in place of the parent."

Other states, such as Maryland go to the other extreme. Here is what the state board of education in that state has ruled:

> Under no circumstances shall an assistant teacher inflict corporal punishment upon a pupil. Cases seeming to require corporal punishment shall be referred to the principal who may administer corporal punishment as a last resort. Pupils shall not be stricken on or about the head in any way, nor shall they in any manner be subjected to any brutal or unreasonable punishment.

Connecticut, Oklahoma and Kansas seem to select very interesting cases to litigate and as a result, we get some rather fascinating ones from those states. I spoke about the O'Rourk vs. Walker case in the discussion concerning the control of children by parents and by prosecutors. Here is another case from Connecticut on corporal punishment which I think is one of the prize ones of all time. It is not an old case. It was decided in 1944. I am going to state for you some of the facts as they appeared to be in the case. They are as follows: A ten year old boy weighing 89 pounds, and below average for his height was a pupil in the third grade in the Bristol, Connecticut School. The defendant was the principal in the school and had 25 years teaching experience. He was strong physically; 46 years old, and weighed 190 pounds. (That's a little over 100 pounds more than the boy weighed.)

The boy's teacher had 48 years of experience. (I've never ceased to be amazed at how long some people can be in a school room and still not gain any experience in teaching.) She told the boy she was going to punish him for impudence in defying her instructions of a few minutes before when he was on the school grounds. The boy backed away from the teacher's attempts to punish him by striking his hands with a strap, but she did strike him once on the neck with the strap. At this juncture the defendant,

principal, emerged upon the scene. Finally, her efforts being unsuccessful, the teacher turned the strap over to the principal. She gave up on the job. The court made this obvious observation, quote, "The plaintiff's (the boy's) temper had by now become thoroughly aroused." (After all, whose wouldn't?) The principal ordered the boy to his office, but he refused to move and remained silent. The boy just sat there. (Of course, he is going to sit there, this 89 pound 'beast' with all his emotions aroused. What else could be expected of him?) The principal grasped the boy's wrist and dragged him across the floor of the room into the corner. During this time the boy was struggling to escape. He kicked the principal, was crying, and began to call the defendant vile names. Finally, the pupil was pushed to the floor, and this 190 pound representative of public education knelt with one knee on the abdomen of the 89 pound boy. Of course, the boy squirmed about in his efforts to escape, and mercifully the plaintiff finally lifted his knee and merely sat upon the boy's abdomen.

We must assume, of course, that all of this was done in the interest of public education and for the purpose of inspiring respect for authority and the democratic way of life.

Suit was brought against the principal for damages for the pupils injuries and the case reached the Supreme Court of Errors of Connecticut. Those cases often do. The principal was held liable and the court said:

> "The lower court concluded that the plaintiff (pupil) was not required to remain docile, and in view of the circumstances was justified in attempting to escape from the crushing weight of the defendant, principal. In effect it has been found that the privilege or indulgence in the exercise of the defendant's descretion terminated, and that there was an excess of restraint imposed."

That's an extreme case, but I was very surprised to hear that these cases still arise in public education. What, then, are the tests? What should a teacher look for when he considers it necessary to inflict corporal punishment? From the purely legal point of view, even in states in which corporal punishment is permitted, the teacher who resorts to it assumes certain substantial legal risks. He is bound, according to law to at least do these things: (1) Act from good motives and not from anger or malice; (2) Inflict only moderate punishment; (3) Determine that the punishment is in proportion to the gravity of the offense; (4) Convince himself that the contemplated punishment is not excessive, taking into account the age,

size, sex and physical strength of the pupil to be punished; and, (5) Assume the responsibility that the rule he seeks to enforce through the infliction of corporal punishment is a reasonable one.

That's just a check list. I think it would be a very fine thing for a teacher to have such a check list under the glass of her desk so that she can read it often. I suspect that if a teacher will just stop long enough to read it, she may have devised a much better way of resolving the difficulty.

Let us, for a few minutes, consider the married pupil problem. I have been on the staff of my institution for many years. When I came there in 1929, the attitude toward married pupils at the University of Wyoming was exactly the opposite of what we hold today. At that time there was a rule that students who married while they were in school were automatically dismissed from the institution. Now, however, we have just gotten through building two or three hundred very nice apartments for married students on our campus.

For many years (1946 to about 1952) from 90 to 95 per cent of the students who were in our law school were married. A very large number of them still are married. I must confess, though, that I have never yet quite become accustomed to having a freshman in law school come in and say, "Dean, I'd like for you to meet my wife and four kids."

I'll not take the time to discuss the legal nature of child marriages. Suffice it to say, that the law generally inclines to the sustaining of those marriages if there is any reasonable way of doing it. The handling of the married pupil problem, however, has been something less than uniformly wise on the part of boards of education, and let me pause here just long enough to say that one of the things which probably gets more boards of education into difficulty than any other single thing is the fact that they become enamored of, and fall in love with their own rules. When boards assume the attitude that their rules, merely by virtue of their adoption thereby become as immutable as the law of the Medes and Persians, they are headed for trouble. After all, rules and regulations of boards of education, state superintendents, teachers, and everybody else authorized to make them, are designed to aid in the management of the schools. There is nothing holy, or immutable, or unchangable about them, just by virtue of the fact that they come into existence. A rule must have enough 'elbow room' in it to give it some flexibility in its application. Otherwise we had better rid ourselves of the rule.

School boards, in two cases, involving married pupils sought to adhere too strictly to their rules. One of them arose in Kansas in 1929. I suspect that you may be able to think of at least one case in this part of the country that is a fair facsimile of this one.

Dorothy McNutt, a sophomore in the Goodland, Kansas, High School, was informed shortly after she enrolled in the fall of 1928 that she would not be allowed to remain in school because she was a married woman. She had become married in February of 1928 and in August in 1928 a child had been born to her. It was, therefore, clear that her child was conceived out of wedlock. Evidence as to her character and conduct were conflicting. The girl's father in her behalf sued to force the board to readmit her, and his suit was successful.

The court stated the familiar doctrine that every child had a legal right to attend school provided his moral standards are not objectionable. The court said that a child who is of a licentious or immoral character (these adjectives are important) may be refused admission to school. However, under this general policy the pupil should not, according to the court, be excluded from school *unless it is clear* that his conduct falls within the rule just stated. The court said:

> It is proper to see that no one within school age should be denied the privilege of attending school unless it is clear that the public interest demands a denial of his right to attend. We are of the opinion that the evidence was insufficient to warrant the board in excluding the girl from the schools of Goodland. It is a policy of the state to encourage the student to equip himself with a good education. The fact that the plaintiff's daughter desired to attend school was of itself an indication of character warranting favorable consideration. Other than the fact that her child was conceived out of wedlock, no sufficient reason is advanced for preventing her from attending school. Her child was born in wedlock and the fact that her husband may have abandoned her should not prevent her from gaining an education which would better fit her to meet the problems of life.

How naive can a board of education get? Three judges of the Supreme Court of Kansas adhered to the right of the board of education to exercise a sound discretion in which they should not interfere. In my opinion, that's exactly the situation in which the court ought to step in and overrule a board when it seeks to keep an unfortunate child out of school.

The same problem arose in Mississippi. A board of education

excluded married pupils from school and was challenged on the grounds that it was an arbitrary and unreasonable rule, and constituted an abuse of the board's discretion. The case involved a girl who wanted to come to school but who had recently married. There was no evidence of any immoral act by her. She had simply married, but wanted to return to school.

The Supreme Court of Mississippi did not agree with the board's opinion that it was not a good thing to have married students in school. It apparently had never occurred to that board of education that probably the first woman these children ever saw was a married woman. It had also not occurred to the board evidently, that all the children in the schools had lived with married women most of their lives and probably were so doing at the time this problem arose.

Here's what the court said:

> It is argued (by the board of education) that marriage relations being about views of life which should not be known to unmarried children; that a married child in public schools will make known to its associates in the school such views.

Now naive can you get? My fourteen year old boy taught me a lot of things. The idea that these youngsters don't know what's going on when they get into high school is a foolish and naive one. Let's be a little realistic about it.

The Supreme Court's opinion stated further:

> We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relationship is entered into with correct motives, the effect upon the husband and the wife is refining and elevating rather than demoralizing. Pupils associating in school with a child occupying such a relation it seems would be benefitted instead of harmed.

Maybe it's a good thing, according to the court, or at least, it isn't degrading to have a youngster in school who is married. It isn't likely to disrupt the orderly procedure of the school to have a married pupil in school. Now, I know what these problems are. I'm realistic enough to know that you have a real problem when you have a married girl in school and pregnancy occurs. How long should you permit the pregnant pupil remain in school? I know these are realistic problems, and I know they are difficult to handle. But I do hope that, if those problems arise in your schools, you will be able to handle them without permitting them to emerge as legal controversies. Let me say this — these cases are very clear to the

degree that if there is any *reasonable* doubt at all as to the right of these youngsters to attend school, those doubts will be resolved *in favor* of the right of the pupil to be in school. After all, these schools do not exist merely for the purpose of being administered and they certainly don't exist merely to provide boards of education with an organization to regulate and administer.

Finally, and I have saved this case until last because it is one of those few cases in which a court had a perfectly wonderful time in arriving at its decision. We normally think of a court as a black-robed, sober body, deciding cases and keeping people from doing what they want to do. But once in a while a court will abandon a bit of its dignity and have a perfectly wonderful time deciding a case. That is what the Supreme Court of Kansas did in a case involving a girl who cheated in an examination.

Let me say at the outset that I condemn cheating. I described this case in a talk before a luncheon club two or three weeks ago, and one of the members came to me afterwards and said, "Are you condoning cheating on an examination?" Well, of course not, and I found that I hadn't made myself quite clear on that point. I certainly do not condone cheating in examinations. On the other hand, I am inclined to think that cheating problems must be handled reasonably. The case concerns one Kathleen Ryan, a senior in the Eureka, Kansas, High School, on the day before commencement when she was taking an examination in American History. She had to have credit in American History in order to graduate. While examination was in progress Miss Walker, her teacher, discovered a paper in Kathleen's possession containing notes on American History. A rule forbade possession of books or paper during an examination; Kathleen was told that she need not proceed any further and was denied credit in American History, and as I said she was required to have the credit before she could graduate.

There certainly is a law suit shaping up here! Pupils don't come that close to graduation only to be denied the privilege. How are you going to handle that situation? In this case, everybody got into the act. The superintendent of schools, the principal, the teacher, the board of education, and I think maybe the state department before the controversy was settled.

The rule governing examination was promulgated by the principal of the school and was read to Kathleen and the other pupils before they took the examination. The teacher confiscated Kath-

leen's paper, denied her credit, and thereby denied her the diploma.

So we have presented expressly the question whether a board may refuse to issue a diploma because of a violation of a rule of the board of education or a rule of the school. It seems to me that you are pretty likely to be in trouble any time you attempt to mix discipline with academics. Now, if you want to punish this youngster, that's one thing; if you want to hold up academic attainments, however, that's quite another thing, and you are in danger when you attempt to mix them. Mr. Phillips, the superintendent, ordered another examination to be given; the paper was graded and the young lady passed. The superintendent then ordered the diploma issued. But still the teacher and the principal refused. The case finally went to the Supreme Court of Kansas.

That court indulged in some 'tongue-in-cheek' reminiscing in this case and here is what it had to say, partially:

> What became of the interlinear literal translations of the Latin that was available for use under necessity's sharp pinch in the days when Christmas vacations were used, if at all, for making up and not for getting ahead, and when — on reflection — the court will drop that subject as incompetent, irrelevant and immaterial.

Then speaking of the notes that were found in Kathleen's possession, the court observed that:

> A photostatic copy of the notes is attached to the abstract of this case. It contains a statement in proper order of President Wilson's famous 14 points and will be preserved in the archieves of this court for reference by those who may, as the years go by, become rusty on the subject.

Then the court's philosophy on examinations was most interesting. It says of examinations:

> The objects of an examination were enumerated by Dr. A. Lawrence Lowell, President of Harvard University as follows: '(1) To measure progress of a pupil; (2) As a direct means of education; (3) To set a standard for achievement.' The rules concerning examinations did not deal specifically with wandering eyes. If just letting the eyes wander across the aisle to another paper should stimulate thought, perhaps it might be construed as receiving help. If there was an expression of despair or yearning in the eyes, perhaps it might be construed as an attempt (to get help). But in case a boy or girl was nonplussed by some examination question might not wandering eyes toward another paper achieve Dr. Lowell's second purpose? (As

you may remember that was, 'as a direct means of education.')

After the court had had its fun, it proceeded quite seriously to resolve the controversy. It said:

> When the members of the senior class assembled in the midst of flowers and the strains of music for the greatest event of their lives up to that time and receive their diplomas in the presence of proud parents and admiring friends, Kathleen Ryan was denied hers.

Would I need read any further to inform you of the decision in that case? This girl is going to get a diploma! But here is how the court expressed its philosophy of education and its decision:

> Children as a class do not develop uniformly in body, mind, or moral apprehension. Self-mastery is seldom fully attained at high school age. Some are a long time putting away childish things but their piccadilloes and delinquencies are not crimes, and a method of dealing with them is to cultivate in them a wider view. Not to apply the branding iron to their foreheads and banish them as outlaws while they still think and speak as children. Superintendent Phillips evidently understands youth, sympathizes with it, and has that faith in its ultimately reaching sound maturity, which must sustain all educational endeavor or the effort is misspent.

Here again may be an indication that there is emerging a new responsibility on the part of educational administrators. It is the responsibility of administrators to prevent their school districts from becoming involved in legal controversies. Whether they win the suits against the district is not always the primary factor. They should be able, in most cases, to keep the districts out of legal trouble. If we are expected to keep our educational systems on an even keel, we are, therefore, expected to recognize legal pitfalls and see to it that we get the proper legal guidance before we pursue a course of action that may lead us into litigation.