ADDRESS OF ELIHU ROOT IN PRESENTING THE REPORT OF THE COMMITTEE.

Gentlemen of the Bench and Bar of the United States: It is an inspiring and cheerful spectacle upon which I now gaze, the spectacle of men eminent in the great profession of the law who have come from high station and leadership in practice in the various courts of our country from all parts of the Union, to participate in a conference upon the improvement of the law.

I have been requested by the Committee to make a brief statement in explanation of the proceedings which bring us to the point where we are now. Most of you know that for many years we have been talking in The American Bar Association and in many State Bar Associations about the increasing complexity and confusion of the substantive law which is applied in all our states and in the Federal courts. We have been talking about it. We have had committees appointed, but nothing has been done, and about a year ago a number of gentlemen interested in the subject began to consult as to whether something could not be done, and how it could be done. It was apparent that the confusion, the uncertainty, was growing worse from year to year. It was apparent that the vast multitude of decisions which our practitioners are obliged to consult was reaching a magnitude which made it impossible in ordinary practice to consult them. It was apparent that whatever authority might be found for one view of the law upon any topic, other authorities could be found for a different view upon the same topic. The great number of books, the enormous amount of litigation, the struggles of the courts to avoid too strict an application of the rule of *stare decisis*, the fact that the law had become so vast and complicated that the conditions of ordinary practice and ordinary judicial

to secure attendance from all parts of the country of the men who ought to be in such a meeting; and accordingly it was determined to constitute such a committee as everybody knew such a meeting would constitute, and to let them make a thorough, exhaustive study of this problem—How can the work of restating the substantive law, in clear and simple terms and in authentic form, be performed?

Accordingly, such a committee was got together. They secured funds, they employed competent and experienced assistants, and for nearly a year the work has been conducted, and the result of the work is this report which we make to this meeting as if we had been appointed by you to make this study and report, asking you to receive it and to consider it and act upon it.

Copies of the report have been circulated, sent, I think, to each one of you in sufficient time for you to have an opportunity to read it, and I assume it will not be necessary to spend the day in re-reading it here. The idea of the report is that if we can get a statement of the law so well done as to be generally acceptable and made the basis for judicial consideration, we will have accomplished at the outset a very great advance.

We recall the part played in judicial decisions by what Judge Story said, not only in his decisions, but in his textbooks and in his writings; the part played in judicial decision by what Chancellor Kent said in his great work. To take recent instances, take the work on equity written by John Norton Pomeroy. I have not followed the reports closely enough to know whether it still continues, but for a good many years after the publication of that work the courts quoted what he said with practically the effect with which they would have quoted a great judicial decision.

There is a work now which is playing the same part, Mr. Williston's work on contracts, which is being quoted in the same way.

Now, if you can have the law systematically, scientifically stated, the principles stated by competent men, giving their discussions of the theories upon which their statements are based, giving a presentation and discussion of all the judicial decisions upon which their statements are based, and if such a statement can be revised and criticised and tested by a competent group of lawyers of eminence, and where their work is done if their conclusions can be submitted to the bar that we have here, if that can be done when the work is completed, we will have a statement of the common law of America which will be the *prima facie* basis on which judicial action will rest; and any lawyer, whose interest in litigation requires him to say that a different view of the law shall be taken, will have upon his shoulders the burden to overturn the statement.

Instead of going back through ten thousand cases it will have been done for him; there will be not a conclusive presumption but a practical *prima facie* statement upon which, unless it is overturned, judgment may rest.

If such a thing is done it will tend to assert itself and to confirm itself and to gather authority as time goes on. Of course it cannot be final, for times are continually changing and new conditions arise, and there will have to be revision after revision; but we will have dealt with the past and will have gotten this old man of the sea off our shoulders in a great measure.

It is a great work. It is a work before which anyone might well become discouraged. Unless the work can be done greatly it is worthless. It is of no use

to produce another digest, another cyclopedia. That kind of work is being done admirably. It is no use to duplicate the work of the West Publishing Company, which has done so well. It must be so done as to carry authority, as to carry conviction of impartial judgment upon the most thorough scientific investigation and tested accuracy of statement.

Can it be done? If it cannot, why we must go on through this swamp of decisions with consequences which we cannot but dread. The great work of the Roman law had imperial power behind it; Theodosius and Justinian could command and all the resources of a great empire responded. In the simpler and narrower work of the Code Napoleon, again, imperial will put motive power behind the enterprise. What have we? No legislature, no Congress can command; no individual can do the work. Men who come and go, who spend a little time from their ordinary occupations, and go, cannot accomplish it.

Means must be raised for an adequate force, for continuous application. Participation in the enterprise must be deemed highly honorable. Selection for participation must be deemed to confer distinction, it must be recognized as a great and imperative public service. How can it be done? It can be done only if the public opinion of the American democracy recognizes the need of the service, and that public opinion you here today represent and can awaken and direct.

That is why the Committee solicited your attendance here, to ask you whether you will put all that you represent behind the undertaking, so that the American democracy may be behind it.

You will perceive that it is a simple task in statement, that it stands by itself, and that the organization required is an organization specifically adapted to this particular work.

I have received a number of letters from friends in various parts of the country suggesting that certain other things ought to be done, especially that there should be a reform of the administration of the law, that there should be a reform of the criminal law. To that I agree, we all must agree. But that is another story. The American Judicature Society, a most excellent institution, is addressing itself to the subject of administration. There is a most excellent society in connection with the criminal law, which is dealing with criminal law. The trouble with the criminal law is chiefly a trouble of administration. In both branches of the law, civil and criminal, there are these existing organizations, which it is not desirable to duplicate or to substitute ourselves for; but further than that, to deal with defects of administration, great defects, requires an organization especially adapted to that purpose, and quite a different organization from one which would be available and effective for this purpose of the scientific study and restatement of the substantive law.

Defects in administration have been receiving the attention of The American Bar Association and of most of our State Bar Associations for many years. The trouble with reforming them comes when you run against the legislative bodies that have the power to pass the laws necessary to reform them. In my own state most thorough and excellent work has been done on the subject, and when it runs up against the legislature there is always some little thing that the reform hitches on and fails to make progress, and the legislature adjourns without action; and that goes on year after year.

I busied myself for years in the Senate of the United States in trying to get through reforms in procedure that had been discussed and recommended

over and over again by The American Bar Association. Quite often I would get a favorable report from the Judiciary Committee; but always there was some little difficulty which prevented their being enacted into law, and the trouble is plain that the motive power behind the demand for reform is not strong enough. You get the real motive power of a people that demand reform behind the demand and no little hitch will occur in the legislature, either of the state or of the nation.

But while we are all for reform, we are mildly for reform; we don't put any beef behind it, we don't put any power behind it. Nobody is in danger of being run over by it if he gets in the way. That is the trouble with the demands for reform of judicial procedure, civil and criminal, because almost anyone in the State Legislature or the national Congress can stand in the way and stop it without danger of consequences to himself.

Perhaps we can help. The gathering of the distinguished leaders of opinion of America here in this hall today will help; the making of a permanent organization to accomplish this restatement of the law, with the earnest and real interest in the subject on the part of real men, will help; and as time goes on the organization which you have made may accomplish such relations with other organizations and such additional duties, and avail itself of such opportunities, as to aid all along the line in the reform of law and the reform of procedure. But at present it seems plain that the thing to do is to form an organization adapted to this specific thing. Institutions which try to do everything do nothing. This great, difficult task will be load enough for us to carry if we can carry it.

Gentlemen, many competent observers, many thoughtful students of history, are beginning to fear

that the competency of mankind to govern is not keeping pace in its development with the ever-increasing complexity of life in this new era of universal interdependence.

I have faith that our people will prove themselves equal to the ever-growing, ever-increasing demands upon them, of life, of these strange new years. I have faith; but they cannot do it by lying down. No free people, no democracy—and I include in this the American democracy—can maintain its institutions, its freedom, its justice, its opportunity for the future, unless there be general, practically universal effort, willingness to serve, desire for knowledge, determination to grapple with and deal with the difficult problems that confront humanity.

We may not succeed; but we can try. Here is one thing we can try. It is something the need of which is universally recognized. It is something the responsibility for which rests especially upon us. It points the pathway where we will be acknowledged the natural leaders of the democracy in its struggles towards better life, towards permanency of institutions. If we fail, who shall succeed? And if none succeed what becomes of the law which we are, each one of us, from day to day, appealing to, and demanding the application of, in the interests of our clients? What becomes of the great system of American law to which we have undertaken to devote our lives?