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## Why A Profession?

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# Why A Profession?

*E. Blythe Stason\**

According to sophisticated thinking, a profession is an activity not only requiring special learning for those who participate in it, but also offering an opportunity for service to the public. This opportunity becomes the duty of those who hold themselves out as truly professional in the best sense of the term.

Tonight I wish to talk about our professions.

- (1) Why do we find them rewarding?
- (2) What is involved in the idea of professional responsibility?
- (3) And very especially, what are the obligations of our universities with respect to education for this responsibility?

Since we in this gathering are related to two different professions, law and medicine, I shall, with admittedly limited understanding of the latter, address myself to both of these major fields of human endeavor.

## I. WHY ARE THE PROFESSIONS OF LAW AND MEDICINE REWARDING?

At the outset, I want to pay tribute to both of our professions and particularly to state why I get very great satisfaction out of my own legal profession — why the more than forty years in it have been truly rewarding. I lay aside as obvious the satisfactions that have come from teaching, research, consultation, writing, and the other activities involving the handling of legal materials. This has been fun — the kind of activity to which I have been able to dedicate myself completely and without reservation. There are, however, certain less obvious matters that seem to me well worth underscoring.

*First of all, I like the history of the law* — the sense of depth that one enjoys. Looking back into legal history, I find that I get satisfaction out of reading about the professional and public accomplishments of such men as Elihu Root, Charles Evans Hughes, George Wharton Pepper, and Louis Brandeis. I like the

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way this depth of history is reflected in the opinions of Holmes, Brandeis, and Cardozo on the United States Supreme Court, and Burch, Rosenberry, and Thomas McIntyre Cooley on the state supreme courts. Or to go back even further into history, the opinions of Marshall, Mansfield, and Coke, and the dreams of Sir Thomas More's Utopia have great appeal. I do not mean to say that all legal history is exciting. I share with most law students the view that the common law forms of action are no great thrill. Moreover, I find the record of professional resistance throughout all but the most recent years in opposition to reform in judicial procedure far from creditable. On the other hand, I get real satisfaction out of the rather free-wheeling attitude of the profession toward its responsibilities, for example, the tradition of defense of the indigent, of minorities, of unpopular causes, as well as the vested interests with their more generous fees. Lord Erskine's defense of Thomas Paine's "Rights of Man," and Charles Evans Hughes' exposure of the insurance business in New York City are satisfying. And speaking of Sir Edward Coke, may I pay tribute to Catherine Drinker Bowen's "Lion and the Throne," and excellent historical record of a vigorous leader in a great period in the history of the law. The space age of the future is all very well. It is intriguing, and 1984 will doubtless see many new and exciting legal activities on the face of the earth. New law is in the making. But by and large I happen particularly to enjoy the legal past, which, after all, is the prelude to the future. Wigmore's *Panorama of the World's Legal Systems* I find a fascinating volume. I like the history of the law, the sense of depth in time.

*Second, I like to talk to lawyers.* By "lawyers" I mean to include not only actively practicing members of the bar, but also teachers, judges, corporate attorneys, and all the rest. I find that many of my friends at the bar have truly broad interests and understanding. They do not fall into uniform molds. I find conflicting ideas everywhere in the profession, and this is stimulating. Non-conformity is rife — in law, in political theory, in economic theory, in politics. Diversification of professional activities leads most of us off the beaten path of narrow professional craftsmanship, and almost invariably I find that I learn something new and exciting from my friends at the bar. This is gratifying.

I have one lawyer friend who is a devotee of classical music. He has the most magnificent library of classical hi-fi records

that I have ever seen — he calls it “my extravagance.” But more than that, he has a Stradivarius violin which he plays with the skill of a concert performer. I have another lawyer friend who is an expert on Japanese art; still another who has learned a truly amazing amount of nuclear physics and who is now spending his spare time on the exploration of the scientific problems of space. I can well recall many interesting and horizon-broadening hours with Arthur Vanderbilt, whom I counted as a close friend — an outstanding lawyer, a leader in the profession, and a learned devotee of Lord Mansfield and the historical developments of his era in British law.

Conversation with such friends is a valued privilege. It is not a “lost art” as many fear. Of course, not all lawyers are choice companions. There are the bores at the bar as well as elsewhere in society — for example, the tedious characters who insist upon expounding at length the dull details of their latest case, not overlooking the expounder’s cleverness in getting a favorable decision on a motion for judgment notwithstanding the verdict, or in some other way. Doubtless there are equivalents in the medical profession. Nevertheless, I am willing to defend the proposition that members of our profession average out far better in regard to breadth of intellect, knowledge, and understanding than do those of most other groups in society. I find that talking with lawyers — the right kind of lawyers — whether in the law office, or in the drawing room, or on the golf course, brings the breadth of the universe into the pathways of the mind — exciting, stimulating, educational. I like to *talk* to lawyers!!

*Third, I like to work with lawyers.* I have found some of my greatest satisfactions out of the spirit of inquiry which is always present when one works alongside a forward-looking and constructive-minded member of the bar. He is forever seeking new pathways, searching out new alternatives, never accepting the status quo, always reaching for the better way. There are dead-heads, of course, but for flexibility joined with toughness of mind and mentality, the really good lawyer is hard to beat, and those who have been well trained have developed their powers of reasoning, inductively, deductively, and analytically, to a point where I find it is a joy and delight to work with them — or at least with the *best* of them. I recall so well sitting around the table with members of the Council of the Administrative Law Section of the American Bar Association and working on the drafts of the Hoover Commission Code of Administrative Pro-

cedure, which has now emerged as S. 1070, currently under consideration in the United States Congress. These extended discussions rate among my top intellectual experiences, involving, as they did, careful and objective, exhaustive, not to say exhausting, inquiry into the means of adjusting a multitude of conflicting interests, reconciling governmental need for efficiency in regulation of persons and business with private desires for due process of law. Putting together S. 1070 was a major achievement in dealing with a tremendously complex framework designed for the guidance of many agencies and myriads of officials dealing with hundreds of thousands of different kinds of human transactions — a top-flight intellectual challenge. The spirit of inquiry was always present. The status quo was not sacrosanct. I like to *work* with lawyers, especially when this spirit of inquiry prevails and new horizons are in view.

*As to the medical profession*, I am certain that if I were a member of the medical profession I would find equivalent satisfactions in that field as well. I have had many prized friendships with doctors of medicine. One gave me a most exciting evening over the history of anesthesia; another, a distinguished biologist, a “lay-level” picture of the gradual growth of understanding of bacteria, viruses, together with the tools of the profession for combatting them.

I am sure that doctors, like lawyers, take utmost satisfaction from the intellectual content of their profession and also from the cultural interchange with their fellows. These are characteristic of professional life. These things make professional life rewarding.

## II. WHAT IS MEANT BY PROFESSIONAL RESPONSIBILITY?

I speak first of the legal profession. I find that I am a member of a profession which has a highly developed set of skills applied in behalf of clients, but, in addition, many of its members dedicate large portions of their time to what I call the *statesmanship* as distinguished from the *craftsmanship* of the profession. I include in statesmanship such activities as these:

- Service in connection with law reform;
- Representation of unpopular causes;

- Seeing that legal services are available for all who need them, regardless of ability to pay;

Serving as corporate counsellor, exercising influence to the end that the corporate entity serves the public as it should;

Engaging constructively in public service — not only office-holding, but also all manner of *pro bono publico* tasks — drafting statutes, serving on boards and commissions, etc.;

Being a good citizen and helping to mold public opinion in the interest of general welfare.

To an ever-increasing extent lawyers are, to their great credit, playing a constructive role in these developmental activities within the body politic, and indeed, such participation has become very definitely a major professional responsibility of the lawyer. We find it in both professional and non-professional affairs, and at local, state, national, and even international levels. I like to call this the *architectural* role of the lawyer, as a result of which he plays his part in pushing *outward* the frontiers of jurisprudence and *upward* many new and useful legal and governmental structures, designed to improve the body politic in relation to both internal and external affairs. At no time in our history has this constructive role of the lawyer been needed more than it is in this latter half of the twentieth century, when technological processes and scientific developments are so dangerously outrunning man's ability to take care of his social problems, not to mention the frightening inability of nations to coexist peacefully with other nations. Recent weeks, what with U-2 spy planes, summit debacles, and international intransigence, have been especially disturbing. The country needs legal architects.

It is not without significance that in the 84th Congress, sixty lawyers sat in the Senate, representing sixty-three percent of the entire membership, and in the House there were 244 lawyers, or fifty-five percent of the total. The responsibility of the legal profession looms especially large in the governmental scene. Yet such professional responsibilities are by no means limited to legislative halls. The architectural role figures in many ways — for example, on schools boards, in municipal affairs, in state activities, in advisory commissions, in bar associations, yes, and in politics — mostly *pro bono publico*, but rewarding just the same.

On the personal side, I regard as among my most satisfying extracurricular activities such tasks as constructing the Michigan state tax legislation of the middle 1930's, the work on the

United States Attorney General's Committee on Administrative Procedure in the early 1940's, the work with the Second Hoover Commission in the early 1950's, and the studies of the unique legal problems of atomic enterprise during the last eight years. These have meant much to me. These illustrate my own architectural adventures in the law, but they are rather modest amidst the welter of similar activities of my fellow lawyers.

It is a fact that such opportunities are legion for our profession. Many thousands of members of the American bar are making important contributions in such fields. We may regard all of this with satisfaction, but also as a serious obligation to the body politic. Our country would be far better off if the number so contributing were doubled and tripled. This we can hope for in the future, as the idea of professional responsibility is ever more widely understood and accepted by the bar, and especially by the younger members of the profession.

I cannot but contrast this phase of the work of the American lawyer with the corresponding position of the lawyer in the Union of Soviet Socialist Republics, with whom I had some little contact two years ago. The Soviet lawyer is almost never a leader. Instead, he is a relatively low grade craftsman who, it is true, represents clients in courts, but usually with respect to relatively trivial cases — labor grievances, divorce cases, household occupancy cases, and minor criminal offenses. There are about 60,000 lawyers in the Soviet Union in government legal offices and the huge government corporations. There are about 13,000 more in private practice. However, the Soviet lawyer typically does not lead his fellow men, either in community life or in government. He is just a servant, a sort of high grade clerk; but neither he nor the law itself nor the administration of justice is of great significance behind the Iron Curtain. They are merely inferior tools of Soviet administration. The contrast with the corresponding elements of American life is ever so much to our advantage. I might add that, in the Soviet Union, doctors also are "second class" professionals. They are "repair men" in society — high grade "plumbers," so to speak, keeping the party members in good physical condition. Our professions do not rate highly under communism.

This brings me to the point of discussion of bar organizations and their contribution to American life. I happen to like bar associations and their activities, and I hope you do too. Although,

like all human institutions, they have their faults, and occasionally their decisions are not decisions that I myself would make, about forty years of observation convince me that the organized bar in this country — particularly at the state and national levels, but including also the associations in the larger cities — have made and are making a contribution of truly significant value in improvement of administration of justice and in upgrading professional life. I used to ask myself why some of my friends in the organized bar were willing to devote so much time, literally months and even years of time and effort, to bar activities. I have long since come to realize that they have an impelling desire to make the world a little bit better place in which to live. This is cause for professional satisfaction and pride!

May I tell you about the American Bar Foundation, of which I will become the Administrator after leaving the Michigan Law School next September. The Foundation is a symbol of civic consciousness on the part of the organized bar of the country. It is a significant manifestation of the architectural role being assumed by the American bar. Created about five years ago, it was established as an arm of the American Bar Association, with three principal objectives: first, to engage in research looking toward improvement of the law and administration of justice; second, to improve the legal profession itself by helping to upgrade its quality and to promote its honor, integrity, and prestige; and third, to maintain a professional research center and library with clearing house and service functions, in aid of Foundation and bar activities. These three functions are carried on in the American Bar Center located on the Midway in Chicago. The Foundation has a most valuable future from the standpoint of favorable development of the law.

Yet the American Bar Foundation is only one of several major organizations contributing in large measure to improve our world of jurisprudence and administration of justice, and to make our country a better place in which to live. I could also mention the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the American Bar Association, and the numerous state and local bar associations. All are doing their bit. Concededly there is a long way yet to go. Perfection is never fully attained. Mistakes are made; wrong decisions occasionally come to light; and yet when one looks at the entire scene of these professional and quasi-professional activities, we can be gratified that we have come a long way from

the status of being mere craftsmen, taking care of affairs of clients and piling up fees, as important as these functions really must be. The bar is a potent force for betterment all along the line. We are on our way. I like the architectural work being done by lawyers. This is one way of fulfilling our professional responsibilities.

The medical profession, of course, has its counterpart activities which in a very real sense parallel the quasi-public professional activities of the lawyer. At the same time medicine offers some contrasts of a most interesting character. Medical education, like legal education, is composed of both craftsmanship and statesmanship. Obviously the care of patients requires the acquisition of a tremendous mass of knowledge and the development of acute diagnostic and therapeutic skills. But at the same time, and in addition, the medical profession is assuming even wider responsibilities connected not only with the health of individual patients but also with that of the community and the nation. I assume that at a very minimum the statesmanlike qualities of the medical profession include such matters as:

Responsibility and care for indigent patients.

Responsibility for the care of all patients in the broadest biological and social sense — that is, doctors not only address attention to specific curable ailments, but also they take account of such matters as the social orientation, the attitudes, and the values of the individual. Responsibility is assumed for many of the larger characteristics of community health — sanitary conditions, prevention of disease, promotion of health among school children, and other related activities.

Responsibility with respect to community, state, and national organization for the protection of the individual as against the vicissitudes of ill health — that is, such developments as Blue Cross, Blue Shield, and the more recent Major Medical Plans.

Finally, the responsibilities of the medical profession extend to legislative halls to deal with questions of legislation and regulation involving public health. Matters at the national level are concentrated very largely in the Department of Health, Education, and Welfare; in the states in Departments of Public Health.

All of these, and doubtless there are others, constitute the very great professional responsibilities and obligations of the medical profession. Albert Schweitzers are not numerous, but when they appear on the scene they not only contribute very greatly to the sum total of social values, but they provide a tremendous inspiration for others both within and without the profession. I have no doubt that the medical organizations, such as the American Medical Association, contribute very greatly to the promotion of ideas of professional responsibility in medicine. Furthermore, the medical schools themselves are increasingly concerned with the subject. Indeed, the rapid evolution of scientific medicine has long since proved the wisdom of the fundamental recommendation of the Flexner Report to the effect that medical education should become a university discipline, where it could profit by close association with both the natural sciences and those other sciences related to the nature and behavior of man, his aspirations, his pleasures, his sorrows, and his achievements.

All of these values are in interesting conformity with the equivalent obligations of the legal profession. Also, like the legal profession, there are undoubtedly in medicine instances of mistakes that have been made, of failures in connection with the assumption of the full measure of professional responsibility. Some of the editorials now appearing concerning the activities of the American Medical Association vis-à-vis the Forand Bill, and more recently the Eisenhower Administration's health plan for the care of the aged, are bringing the scope of medical professional responsibility into sharp focus. I do not pretend to evaluate the conflicting considerations, but I can say with assurance that one of the professional responsibilities of medicine, as is true of the law, is to approach problems of legislation relevant to our respective fields with a wisely balanced judgment, taking account both of the great public needs of the day and also the capability of our respective professions for serving these needs. This we have not always done, and to this extent we fail in fulfilling our professional responsibilities. Yet when all is said and done, we can say with a good deal of confidence that both of our professions — law and medicine — are most earnestly seeking to travel the high road as we see it in the assumption of our respective professional responsibilities.

### III. OUR OBLIGATIONS WITH RESPECT TO EDUCATION FOR PROFESSIONAL RESPONSIBILITY

Now for the obligations resting upon education. At this point I must, because of my own background, concentrate more or less exclusively on the legal profession. I wish to speak rather specifically about the obligations which rest upon the law schools of the country to educate future generations of lawyers so they may assume the professional obligations that we have been talking about — obligations that properly rest upon them as members of the bar.

Clearly, we must educate our law students so they will see themselves as professional men upon whom the special obligations of professional responsibility rest in our society. At the same time they must be properly equipped to discharge these obligations. It is impossible to go into great detail — to do more than attempt suggestions with respect to possible trends. The burden resting upon the law schools is not an inconsiderable one, and the difficulty of execution is very great. In a real sense it is not possible to “teach” the ideal of professional responsibility. Moreover, the ramifications of responsibility are so numerous that even if the idea could be imparted, one would hardly know where to begin in the teaching of detail. Of one thing we may be certain. Broad gauge statesmanship is required as a condition precedent to the assumption of professional responsibilities. The two go hand in hand.

Notwithstanding the difficulties, we on the faculties of the law schools can make progress by inculcating in ourselves the sense of responsibility to which I refer. We can perform our own obligations, and, having done so, we will gradually inject into our teaching and our other contacts with students both the ideals to be achieved and the ways and means of doing it. In short, we can teach by example, by leadership, and by developing in the students who work under us the internal fires of self-motivation.

All of this is very general, and it is desirable to become more concrete. I wish to refer to two specific areas in which I can see some valuable possibilities for improvement at the law school level in training future lawyers to assume their professional responsibilities. The two are, first, the teaching of the law of

corporations in its modern setting, and second, the general area of international and foreign law.

*The law of corporations.* In regard to the first of these fields, namely the law of corporations, I am going to take most of my inspiration from a recent and excellent article written by William T. Gossett, Vice President and Legal Counsel of the Ford Motor Company. The article is entitled, "The Corporation Counsel and Social Responsibility." Mr. Gossett sketches briefly the development of modern regulatory legislation, in which the social responsibilities of the government are exercised for the general welfare. By way of example, he refers to workmen's compensation legislation, unemployment and old age security legislation, the Fair Labor Standards Act, the Taft Hartley Act, and others of similar nature. All of these laws, he recognizes, are the natural evolutionary result of the democratic process at work under present day conditions. The corporation "is in dead center" of the body politic. Mr. Gossett asks and answers the question, "What are the obligations of corporation counsel, who sits in a position of responsibility from day to day in connection with the activities of his client corporation?" He notes that "counsel must be judging constantly the pace and direction of progress of the free society in which his company exists. His constant observation and appraisal of new ideas of conduct, as they become current, must be sound. His estimate of their long range vitality as compared with temporary spurts of liveliness must be wise and objective."

What does this mean in terms of the intellectual equipment that corporation counsel brings to his job? What must he get from legal education? He must be not only learned in the law and able to evaluate and advise respecting the present legal position of the company, but he must have an effective understanding of the relation of his company to the society of which it is a part. He must, of course, be knowledgeable with respect to the laws that are on the books at the present time so far as they affect the affairs of his client. But in addition he must be able to project himself into the future and predict the relationship of the activities of his client to the body politic and to new laws that may be enacted in the future on behalf of public welfare. Further than that, he must be able and willing to cooperate candidly and fairly with legislative authorities in the development of such new legislation as public needs may require. This is his professional responsibility, and yet much more than crafts-

manship is required. Statesmanship of the highest order is called for as well. Moreover, all that Mr. Gossett had in mind for corporation counsel also applies to a greater or less extent to outside counsel who are called upon to advise corporate managers on their legal problems.

In the law schools, however shortsighted we may have been in the past in restricting our vision to examination of existing law, we can honestly say that today many schools are, to an ever-increasing extent, extending their horizons and trying to predict what the law should and will likely be in the future. We are helping our students to acquire the necessary understanding so they may participate actively and wisely in the evolutionary processes. With respect to the corporate law studies, candor compels the admission, however, that in most law schools we still have a long way to go to inculcate in our students the full measure of statesmanship and resulting professional responsibility that will be best both for the profession and for the public in the years to come. We need to get our own house in order by further efforts in this regard.

*The World Scene — International and Foreign Law.* And now, turning our attention to another subject, namely the law school's obligation with respect to the world scene, let us try to become even more concrete by suggesting specific law teaching subject matter that could well figure even more importantly in the curricula of the future than it has in the past. The infiltration of ideas and substance of professional responsibility may occasionally take the form of separate courses or seminars, but it is more likely, perhaps, to be found merely as parts of existing courses and seminars. Some of it may come in by way of sponsored or directed research. This infiltration is needful not only in the larger law schools, but also, although perhaps to a lesser extent, in smaller schools that play such a large part in the education of the bar of the country. May I suggest the principal subjects that seem to me indicated for special attention in connection with education for statesmanship as well as craftsmanship in the international scene.

(a) We already have our standard courses in International Law and Comparative Law. These will become commonplace fixtures of ever-increasing vitality and interest for law students of the future, with ever-increasing emphasis upon the growth of the law, which always involves statesmanship and professional responsibility.

(b) Certainly we must expect to offer some kind of introduction to the civil law. One can hardly qualify as a statesman in the international legal field today unless he possesses some degree of familiarity with the principal institutions of the civil law and their relationship to the common law.

(c) We should be dealing with the multitude of legal problems created by the many specialized world financial agencies. The Economic and Social Council, the Technical Assistance Board, the International Monetary Fund, the Export-Import Bank, the International Bank for Reconstruction and Development, etc., together with their general organization and objectives, will come to have increasing value as a part of the equipment of the members of the legal profession, and will call for statesmanlike attention in our law school programs.

(d) We must also treat the legal and organizational problems connected with the United Nations and the world regional organizations—the Organization of American States, the European Economic Community (the Common Market), the European Coal and Steel Community, the European Atomic Energy Community (EURATOM), and the North Atlantic Treaty Organization (NATO), etc. These organizations are in their elementary stages at the present time, but we can be certain that the future will bring them more and more into focus in the lives not only of diplomats but also of lawyers in the United States. Legal education for statesmanship and enlarged professional responsibility in this area will be required. Clients, as well as the general public, are expecting lawyers to have ideas and to lead in these fields.

(e) The legal problems of foreign trade and investment, covering not only the legal forms for investment abroad, but such matters as taxes, anti-trust implications, and related problems, all becoming of increasing significance, also the financing problems, monetary problems, foreign exchange controls, export-import controls, the effect of government incentives — all of these will figure importantly in legal education for statesmanship in the future.

(f) Foreign tariff and customs problems, for example, those involving the General Agreement on Tariffs and Trade (GATT) and other related treaties and conventions, will call for high level law school consideration.

(g) Atomic energy is presenting international as well as domestic aspects — problems affecting foreign commerce and trade, problems arising from radioactive accidents or activities that cross international boundary lines, or affect international waters or fisheries. Seminars in this subject are already emerging, and the need of statesmanship is apparent.

(h) International communications by airplane, radio, television, as well as the more conventional means, are already involving many hundreds of members of the profession, and in the future many, many more will be involved. Some degree of educational emphasis can be expected, and again, in such a rapidly evolving field, lawyers must be statesmen as well as craftsmen. I will not mention space problems because they are too speculative, but doubtless in due course they too will come to the fore. Satellites, interplanetary missiles — yes, and U-2 airplanes — must be fitted into the rule of law if the world is to survive in reasonable peace and comfort.

(i) Then, too, we must not overlook the Iron Curtain countries. They present but few conventional legal problems today, although I recently received a letter from one of our alumni, stating that he was going to Moscow for a client, and asking me to introduce him to some of those whom I met on my trip of two years ago to the Soviet Union. As yet we have no conception whatsoever of the legal problems that may emerge when trade and commerce exist between the Western World and the Soviets or Red China. We may be certain that they will be unique, numerous, and frustrating. This is a frontier of legal education which really demands more statesmanlike attention than it is receiving today.

In all of these areas, then, and possibly others as well, it would seem beyond a reasonable doubt that there rests upon the law schools of the country the obligation to extend their programs as far and as fast as they wisely can, in view of other needs, thus to embrace these challenging frontiers of the future and to develop the necessary statesmanlike qualities to permit us to discharge our obligation of professional responsibility in the world scene.

#### CONCLUSION

Now to conclude. Is it not clear to all of us that the civilized world is moving by mass action and with inexorable force to

satisfy its great public needs? We want stability, but the world does not stand still. In the Western world we prefer to seek the solutions through democratic processes. Elsewhere they are reached by means that have little regard for the dignity of man. It follows, accordingly, that in our part of the world the highest qualities of intellectual leadership are demanded to assure wise progress into the future. Nowhere are we more likely to find this leadership than in the professions — law and medicine. As we lawyers acclaim the rule of law and you doctors make use of modern science for the welfare of mankind, the duty rests clearly and squarely upon our professional schools of law and medicine to motivate future lawyers and doctors toward their professional responsibilities. Modern corporate activity and wise treatment of the world scene are but two illustrations of the manifold duties resting on our shoulders today and tomorrow.