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Proceedings of the Annual Meeting of the State Bar Association of North Dakota

North Dakota State Bar Association

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The Annual Convenion of the State Bar Association of North Dakota, was called to order at 9:30 o'clock a.m. of Thursday, August 5, 1954, in Central High School, Grand Forks, North Dakota, Vernon M. Johnson, President of the North Dakota State Bar Association, presiding.

The invocation was given by Reverend Woodrow Hughes, Grand Forks, North Dakota.

PRESIDENT JOHNSON: Before we start the committee reports I have a letter from J. H. Newton saying he will be unable to attend this convention.

(Whereupon President Johnson reads the letter.)

We are going to open with committee reports. First we will have the report of the Mineral Laws Committee by Arley Bjella, Chairman.

Report
Mineral Laws Committee
State Bar Association

The Mineral Laws Committee of the State Bar Association held two regularly scheduled meetings during the past year, each of said meetings being held in the city of Bismarck, the first on March 6, 1954, and second on July 15, 1954.

At both of the meetings above referred to, the Mineral Laws Committee spent considerable time discussing the legal question involved in the Messersmith v. Smith case, that was decided recently by the Supreme Court of North Dakota. After discussion our Committee feels that amendments to Section 28-0119 NDRC 1943 should be enacted, which amendments will be as follows:

I—Any action, defense or counterclaim for relief on the ground that a certificate of acknowledgment regular on its face is false in fact must be commenced or interposed within one year next following the date of filing for record in the office of the proper Register of Deeds, the instrument bearing such certificate, if filed for record after this act takes effect. As to any instrument bearing such certificate previously filed for record, such action, defense of counterclaim must be commenced or interposed within one year next following the effective date of this act. After expiration of one year as hereinbefore provided every certificate of acknowledgment regular on its face shall be conclusively presumed to be correct and valid for all purposes, and evidence to contradict any such certificate shall be admissable in any action or proceeding in the courts or elsewhere. This act shall control all cases falling within its provisions nothwithstanding non-residence or legal disability of

any party who might otherwise have the right to question the truth of a certificate of acknowledgment regular on its face. Nothing in this act shall alter liabilities of or remedies against any acknowledging officer.

II—Sections 1-0401-2-3-4, NDRC of 1943 should be up-dated about ten years to January 1, 1953. Likewise with Section 1-0421 NDRC of 1943.

It is the thought of the Committee that said amendments should be presented by the Legislative Research Committee, at their meeting, with the recommendation that they be presented to the 1955 Legislature for enactment. It is felt that these amendments, above referred to, will greatly assist attorneys in North Dakota in examining titles involving acknowledgments. Again I might state we have received information from the Legislative Research Committee that the next meeting is in progress.

The second matter that was discussed at some length by the Mineral Laws Committee was the general laws of the State of North Dakota, relative to conservation and tax laws. It is the opinion of your Committee that such laws as are now on the statute books in the State of North Dakota relative to oil and gas are fair and equitable to the land owner, to the state, royalty owner and producer. It is further the thought of the Committee that these laws shall be retained in their present form so as to encourage the future development of the oil industry in the State of North Dakota.

Some discussion was held as to the feasibility of creating a separate department of the State of North Dakota to handle oil and gas resources, with the office to be at Bismarck. It was the concensus of the Committee that while in the future such a change will be required, such a recommendation would not be practicable at this time, and that this matter should be referred to the new Mineral Laws Committee for discussion and such attention as they feel it may merit.

The next major item discussed by the Mineral Laws Committee, and one we feel should have immediate attention, is relative to procedures to be established in determining mineral ownerships under oil and gas leases that will expire within the next one or two years, or new ones of years thereafter. The problem that will be presented when hundreds of oil and gas leases expire within the next couple of years is that the mineral ownerships will be divided among a great many owners, many of whom will be out-of-state owners. It is the thought of the Mineral Laws Committee that in many cases it may be impossible to secure a lease from the various and diverse owners, and in some areas this may seriously impede the development for oil and gas. While the Committee has discussed this problem at great length, no unanimity has been reached as to procedures and laws to effectuate a solution. The problem here presented is so complex that it is the thought of our Committee that the new Mineral Laws Committee to be appointed by the State Bar Association be requested to immediately start work on this problem; and our further recommendation is that the

State Bar Association be requested to provide an appropriation so that funds will be available for the necessary research and study that will have to go into this problem before a practical soltution can be found.

This matter, if given proper attention, may result in legislation that can be presented to the next legislative assembly. We deem this to be of paramount importance.

Respectfully submitted,
William S. Murray
Clifford Jansonius
Robert A. Birdzell
Arthur N. Ohnstad
William R. Pearce
Kenneth G. Pringle
Theodore P. Clifford
Arley R. Bjella, Chairman

MR. BJELLA: Mr. President, I move the adoption of this report.

JOHN HJELLUM: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: The motion is carried. At this time I am going to appoint a Resolutions Committee and the Auditing Committee.

Resolutions Committee:
John A. Stormon, Chairman
L. H. Oehlert
S. E. Halpern
Harold D. Shaft
Donald C. Holand

I might say that if you have any resolutions please contact these men as soon as possible.

Auditing Committee:
George A. Soule
August Doerr
Kenneth J. Eckes

The audit is at the desk for the committee for examination and for anyone who wants to look it over.

The next committee report will be that of Business Corporations Committee. This report will be given by Mr. L. T. Sproul as Chairman.

Report of Committee on Business Corporations

This association at its 1953 annual meeting instructed this committee to bring to the 1954 convention a complete report of our corporation laws and *one* of the following recommendations:

1. The adoption of a Model Business Corporation Act.
2. The adoption of a Business Corporation Act similar to the Minnesota Act.
3. Specific changes in our North Dakota corporation laws.

For reasons hereinafter stated we now unanimously recommend the adoption of the Model Business Corporation Act prepared by Committee on Corporate Laws of the American Bar Association, revised in 1953, with the necessary changes, amendments and modifications which we set forth in this report, and further unanimously recommend that this Association endorse and approve the same for passage by the North Dakota Legislative Assembly meeting in 1955.

It is our finding that during the past 25 years, through both desire and necessity of change, 21 states have completely revised their business corporation laws, and Virginia and the District of Columbia are considering following. Many more, including North Dakota, now have such complete revision under consideration. This trend has come about because of a gradual change in the attitude of the people toward the corporate form of business organization. The original system of creating corporations by special legislative acts gradually gave way to the system of incorporating under general laws. Then as fear of corporations in the business world disappeared, there followed a period of competition among the states in passing laws to make the state attractive to corporations. That period has also passed and we are now living in a period of a new trend in business corporation acts. It is now realized that many corporations have been caused to leave their home states by unnecessary restrictions in local laws. Many needless barriers to the corporate form of business exist in many states, including North Dakota. This period in our business and industrial development is well described by Mr. Ray Garrett of Chicago, Vice Chairman of the Corporation Section of the American Bar Association, in his article appearing in the 1952 summer issue of the Baylor Law Review, as follows:

> "It was observed that antiquated statutes and haphazard amendments no longer sufficed for the complex developments that had taken place in corporate organizations and practices; the doctrines of ultra vires and de facto corporations were becoming obsolete; provisions were required for the new developments in stock without par value; voting rights had to be restated; and the liabilities of directors needed redefining.
>
> It was observed that the state as such had little interest in the internal affairs of corporations, which were largely matters of the relationship between the corporation and its shareholders and creditors, and that many protective devices were contained in other new laws, such as blue sky, stock transfer, and anti-monopoly laws."

Some years ago, to assist states in the revision of their business corporations laws, the Conference of Commissioners on Uniform State Laws, after several years of study, approved a Uniform Act. However, this Act has not been effective either for uniform adoption or as a model and is now not being used. Consequently we have the Model Act as drafted after considerable work and study by the Committee on Corporate Laws of the American Bar Asso-

ciation. The initial draft of this Model Act was in 1946. It has been revised in 1950 and again in 1953.

This committee prefers the Model Act over the Minnesota Act for the reason that we feel the Model Act has been kept up to date and because it was drafted many years later than the Minnesota Act and we would in the Model Act have laws that would better serve our growing and expanding business and industry in North Dakota. The Minnesota Act was drafted in 1933 and was at that time based on the old Uniform Act and also on the statutes of Deleware, Ohio and California as then existing.

We have rejected the idea of trying to bring our present Code up to date by specific changes in specific sections because the changes would be too many and we feel it would be impossible in this way to give us an up-to-date corporation law that would keep abreast of the industrial and business changes. Following are a few of the many specific changes in, and amendments to, our present law which, in our opinion, should be made: (Some of these suggestions were outlined in the 1953 report of this committee.)

1. The North Dakota statutes should be amended to permit the directors of a corporation to purchase its own shares out of surplus after giving certain protection to preferred stockholders. At present our laws in effect provide that a corporation may purchase its own shares out of surplus provided that the shareholders authorize such purchase.

2. We have at present no statute with respect to voting trusts. Our statutes should provide for voting trusts and a reasonable limitation ought to be placed on their duration.

3. Our statutes do not give the directors the right to remove an officer. Such right should be incorporated in our law.

4. Section 10-0519 of 1943 Code makes provsion for the removal of a director but the section is obscure and is quite obviously in conflict with our constitutional provision with respect to cumulative voting.

5. Our statutes should be amended to give greater protection to minority stockholders where a sale of substantially all of the assets of a corporation are made, or a merger of one corporation with another is accomplished.

6. Our statutes should be amended to relieve directors of a corporation from personal liability to corporate creditors where debts of the corporation are in excess of subscribed capital.

Our statutes relative to dissolution of corporations should be redrawn so that dissolutions can be accomplished in a much better and more satisfactory manner than this step can be taken at the present time.

8. Section 10-0211 should be amended to make it clear that where "a meeting" is referred to, a meeting of the stockholders is meant.

9. Our present laws should be amended to provide for the use of waivers in connection with meetings in more instances than exist at the present time, especially a meeting for the increasing or diminishing of capital stock. Likewise, the 60 day provision in Section 10-0330 is too burdensome and should be changed. (At our last June primary election the provision in our constitution, Section 138, in respect to the 60 days was taken care of.)

10. Section 10-0202 of our 1943 Code should be amended to provide for a flexible number of directors.

11. Section 10-0204 of our 1943 Code should be clarified to require signing of the Articles by three only, regardless of the number of directors and also to eliminate the residence requirements of incorporators.

12. Many sections of our corporation law refer to "meeting" of the corporation. These sections should be amended to specify what meeting is meant, whether a stockholders meeting or directors meeting.

In our opinion, the Model Business Corporation Act, above referred to and which we are recommending, does incorporate all the desirable changes that should be made in our present laws and at the same time would give us a well phrased statute—instead of one that is clear, well planned and correlated. It would bring us up to date with modern business trends and give us a law which appears to us very workable and satisfactory to all parties concerned. We feel that in every instance it gives the proper protection to shareholders and investors and is fair to all parties concerned with and interested in the corporate business. To date Texas, Oregon, Maryland and Wisconsin have followed closely, and the District of Columbia and Virginia are considering the Model Act in a complete revision of their business corporation laws. At the present time it is very probable that Alabama will adopt the Model Act. The new acts of Indiana, Pennsylvania, Illinois, Missouri and Oklahoma are all direct ancestors of the Model Act in that the new acts of those states were followed closely by the American Bar Association Committee in drafting the present Model Act which we recommend.

This Model Act is not a Uniform Act but is to be used and followed as a model and consequently can be changed and modified in any way we see fit.

We now make the following comments and recommend the following amendments and modifications to the Model Act as it appears in Handbook A, of which you all received a copy. In this discussion the terms "New Act", "Act" and "Model Act" wherever used refer to the same, namely the Model Act which we are recommending.

1. This New Act is approved by this Association and, if finally made law by the North Dakota Legislature, will undoubtedly be incorporated in Title 10 of Code. However, we must keep in mind that the New Act covers only business corporations, meaning cor-

porations for profit, both domestic and foreign. It does not in any way attempt to repeal any of the sections of Title 10 with respect to sale of securities, corporate farming, benevolent corporations, orphan homes, cemetery associations, fraternal corporations, mutual aid corporations, electric cooperatives or cooperative associations. There are, of course, other sections of our Code relating to corporations which would not have to be repealed by this Model Act. In effect this new Model Act covers all profit corporations that may be organized for any lawful purpose, unless from the context of any statute a different intention plainly appears. For instance, such intention plainly appears from our statutes on banks and banking, insurance companies and railroads. It is the opinion of this committee that this Model Act does not in any way repeal, amend or modify Chapter 98 of the Session Laws of 1953, relating to foreign banks or trust companies acting as fiduciaries in North Dakota, for the reason that a bank or trust company serving as permitted in said Chapter 98 is not, in our opinion, "doing business" in the State of North Dakota within the meaning of Section 99 of the Model Act.

2. It is our opinion that the New Act must necessarily repeal all of the sections of Title 10 pertaining to business corporations, meaning corporations for profit, both domestic and foreign, except that Section 10-0108 and Section 10-0109 shall be added to and become a part of Section 142 of the Model Act (which sections pertain to the power of the legislature over corporations).

3. With reference to sections of our Code that refer to parts of the business corporation law which are being repealed, it is the thought of this committee that we must first consider the approval and adoption of this Model Business Corporation Act. After that has been done, then, if it is necessary to make changes in, for example, the chapter with respect to orphan homes or the chapter with respect to electric cooperatives, that can be done after the adoption and approval of the Model Act so that these sections referred to are specifically keyed to the New Act. We think this feature or detail is the work of the legislative draftsman.

4. Section 3 of the Model Act relating to purposes should be changed to read as follows:

> "Corporations may be organized under this Act for any lawful purpose or purposes unless from the context of any statute a different intention plainly appears."

5. The committee has checked the New Model Act and, in our opinion, there are no provisions thereof that are in conflict with our North Dakota constitution, as amended.

6. Under Section 90 of the Model Act the Court to have the power to liquidate the assets and business of a corporation should be the District Courts of the State of North Dakota.

7. Sections 121, 122, 123, 124, 125 and 126 of the Model Act relating to franchise taxes and fees should be amended in order to bring the same in harmony with our existing fees and franchise taxes as follows:

Section 121 of the Model Act should provide as follows:

"Section 121. Fees for Filing and Issuing Certificates.

The Secretary of State shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, eight dollars.

(b) Filing articles of amendment and issuing a certificate of amendment, six dollars.

(c) Filing restated articles of incorporation, five dollars.

(d) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, five dollars.

(e) Filing an application to reserve a corporate name, five dollars.

(f) Filing a notice of transfer of a reserved corporate name, five dollars.

(g) Filing a statement of change of address of registered office or change of registered agent, or both, one dollar.

(h) Filing a statement of the establishment of a series of shares, five dollars.

(i) Filing a statement of cancellation of shares, five dollars.

(j) Filing a statement of reduction of stated capital, five dollars.

(k) Filing a statement of intent to dissolve, one dollar.

(l) Filing a statement of revocation of voluntary dissolution, proceedings, one dollar.

(m) Filing articles of dissolution, one dollar.

(n) Filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing a certificate of authority, eight dollars.

(o) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority, eight dollars.

(p) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, two dollars.

(q) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this State, two dollars.

(r) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, seven dollars.

(s) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, one dollar."

Section 122 of the Model Act should provide as follows:

"Section 122. Miscellaneous Charges.

The Secretary of State shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper reating to a corporation, twenty-five cents per one hundred words or folio fraction thereof and one dollar for the certificate and affixing the seal thereto.

(b) At the time of any service of process on him as resident agent of a corporation, three dollars, which amount may be

recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

Section 123 of the Model Act should provide as follows:

First unnumbered paragraph should provide as follows:

"The Secretary of State shall charge and collect from each domestic corporation license fees, based upon the amount of capital stock which it will have authority to issue or the increase in the amount of capital stock which it will have authority to issue, at the time of: - - - -"

The rest of the section to be the same.

Second unnumbered paragraph should provide as follows:

"The license fees shall be at the rate of $25.00 for the first $25,000.00 of its authorized capital stock, or fraction thereof, or the sum of $50.00 for authorized capital stock in excess of $25,000.00 but not exceeding $50,000.00, and the further sum of $5.00 for every additional $10,000.00 of its authorized capital stock, or fraction thereof, in excess of $50,000.00."

This wording while leaving the fees the same as at the present time also clarifies our present section on license fees.

Third paragraph under (c) should provide as follows:

"The license fees payable on an increase in the amount of authorized capital stock shall be imposed only on the increased amount of authorized capital stock, and the amount of previously authorized stock shall be taken into account in determining the rate applicable to the increased amount of authorized capital stock."

Section 124 of the Model Act should provide as follows:

First paragraph—same change as in first unnumbered paragraph of Section 123.

Second paragraph—same change as in second unnumbered paragraph of Section 123.

Third paragraph should provide as follows:

"The license fees payable on an increase in the amount of authorized capital stock shall be imposed only on the increased amount of such authorized capital stock represented in this state, and the amount of previously authorized capital stock represented in this state shall be taken into account in determining the rate applicable to the increased amount of authorized capital stock."

Last paragraph should provide as follows:

"The amount of authorized capital stock represented in this state shall be that proportion of its total authorized capital stock which the sum of the value of its property located in this state and the gross amount of business transacted by it at or from place of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted. Such proportion shall be determined from information contained in the application for a certificate of authority to transact business in this state until the filing of an annual report and thereafter from in-

formation contained in the latest annual report filed by the corporation."

With reference to Sections 125 and 126 of the Model Act—these sections should be redrafted and the only change would be to provide for an annual franchise tax of $2.50 with a penalty of $1.00 in case of failure to file timely. The draftsman for the legislative committee can redraft these two sections in harmony with the foregoing.

8. We now refer to Section 145 of the Model Act which is entitled "Repeal of Prior Acts". In the opinion of this committee this section for the Model Act must provide for repeal of the following chapters of the 1943 North Dakota Code: Chapters 10-01 (with the exception above noted), 10-02, 10-03, 10-05, 10-14, 10-16, 10-17 and Subdivisions 4, 5, 8 and 9 of Section 54-0904 (these Subdivisions of Section 54-0904 will be superseded by Section 121 of the Model Act) and all other acts or parts that are inconsistent with the provsions of this Model Act as finally passed and approved. It is the further opinion of this committee that if by repealing some of the sections contained in any of the above chapters we have repealed a law that might be necessary in our practice, then such law properly belongs in some other chapter of our Code and the sections of such other chapter would necessarily have to be amended accordingly. For instance, if by repealing all of the sections of Chapter 10-14 we are repealing the requirement of allegation of incorporation in complaints and such allegation is necessary, then such requirement should be made in our laws on pleading and not in our laws on corporations and our laws on pleading should be amended accordingly.

If this report is adopted as filed, or adopted with amendments made at this convention, then a committee of the Bar Association can be appointed to encourage the passage of this Model Act by the 1955 Legislative Session. If such recommended Model Act becomes law, then it is the further recommendation of this committe that the North Dakota Bar Association continue a Business Corporation Committee for the purpose of carefully studying all future amendments that may be proposed to the New Act at future sessions of the Legislative Assembly with authority to favor or oppose the passage of such proposed amendments.

Respectfully submitted,
Philip B. Vogel
John Hjellum
Franklin J. Van Osdel
Robert E. Fredericks
L. T. Sproul, Chairman

MR. SPROUL: I move the adoption of this report.

PHILIP VOGEL: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: The motion is carried.

JOHN HJELLUM: He is not only a committee chairman but he has done twice as much work as the rest of us and I think we

ought to give Mr. Sproul a big hand for his work on this committee report.

(Applause.)

PRESIDENT JOHNSON: The next report will be on The Rules of Civil Procedure. Mr. Ray A. Ilvedson, Chairman of the Committee, will give this report.

Report of The Rules of Civil Procedure Committee to the State Bar Association of North Dakota

Your committee was appointed by President Vernon Johnson of the State Bar Association immediately following the annual meeting in August, 1953.

As most of you know, there has been a movement and a demand among many members of our Bar Association for a number years to model our rules of civil procedure after the Federal Rules of Civil Procedure . Many of you have been suggesting and hoping that the day would come when the North Dakota lawyer could practice in both the state and federal courts with the confidence and knowledge that the rules of civil procedure in both courts are the same for all practical purposes.

Commencing in the late fall of 1953, a study was begun by your committee of the Federal Rules of Civil Procedure and the new rules of civil procedure promulgated by the Supreme Court of Minnesota in June, 1951, and comparing these rules with our own North Dakota rules and statutes relating to civil procedure.

The Minnesota Rules were carefully considered because that state spent a great deal of time and money in adopting its new rules and with the express purpose of patterning its state rules upon the federal rules of civil procedure in order that the procedure in the state courts of Minnesota would be as near to that of the federal courts as feasible. Your committee benefited greatly by the Minnesota tentative draft as prepared by the Minnesota committee that formulated and worked on the matter. Its detailed explanations and recommendations regarding every rule was very helpful and enlightening.

In January, 1954, your committee commenced to coordinate its studies with the studies of the committee on rules of civil procedure of the Judicial Council of the State of North Dakota. This latter committee was composed of the Hon. Eugene A. Burdick who is also a member of this committee, Frank F. Jestrab, chairman, and Norman Tenneson. It had already commenced its drafting of proposed rules of civil procedure for the State of North Dakota and accordingly, we coordinate our efforts with the Judicial Council's Committee by studying the draft upon which they were working.

We wish to emphasize that the proposed draft of the Judicial Council's Committee was read and argued section by section, along with the present rules of our state, the federal rules, the Minnesota rules, and also from time to time various other authorities. The meetings of your committee now making this report to

you were numerous. We would usually meet at one or another's home where we sat around card tables with plenty of elbow room for our North Dakota code, and all the other books and references to which we constantly referred to in our studies. These meetings continued until sometime in the middle of June. The attendance of the committee members was excellent.

There were numerous changes and recommendations that came out of our committee meetings. After all, when a number of practicing attorneys sit around a table, men who really make their living practicing law, if there is anything about a proposed rule that doesn't seem particularly good, beneficial, or practical, you can bet your life that at least one of these attorneys will speak up and make his objection. That's the way it was with our committee. There is no question but that on the whole the recommended rules conform to the federal rules. The only difference is that we feel that the proposed draft of the Judicial Council's Committee of rules of civil procedure are better than either the Minnesota rules or the federal rules. We have had the benefit of the experience of others.

We have made it a point to retain features of our North Dakota practice when we have felt that our state practice was better than the federal practice. An illustration of this may be seen in the method of commencing a lawsuit. It has always been the North Dakota practice that a lawsuit is commenced by the service of a summons. The summons is always issued by counsel for the plaintiff. Under the federal practice, an action is commenced by the filing of a complaint, and the summons was issued by the clerk of court. Your committee felt that the existing North Dakota practice was far superior to the federal practice in that it relieves the clerks of court of certain work burden, is simpler and easier for the attorneys, and promotes and facilitates settlements. For this reason, your committee has recommended that the North Dakota practice in this regard be retained.

In regard to other recommendations made by your Committee to the Judicial Council Committee in regard to their proposed draft, some of the recommendations have already been included in the proposed draft, and as for the others, the Judicial Council Committee have indicated that they will go along with our recommendations, including the aforesaid suggestions by your committee that we keep our North Dakota practice in the manner of the issuance of a summons. At the end of this report, you will find that it is being recommended that a joint committee be appointed from both the Judicial Council and the State Bar Association. If this is done, we will present to the Joint Committee our other recommendations, and we have little doubt but that they will be accepted in view of the mutual accord on these matters between your committee and the Judicial Council Committee.

On May 10, 1954, at a meeting of the Judicial Council in Bismarck, the committee of the Judicial Council presented to the council membership its report, together with its draft of proposed

rules of civil procedure for use in the district courts and county courts of increased jurisdiction in the State of North Dakota. In connection with this report, certain specific recommendations were made by that committee; its report was adopted by the membership of the Judicial Council; and its recommendations were unanimously adopted by the Judicial Council.

Your committee is of the opinion that the rules of civil procedure as contained in the proposed draft of the committee of the Judicial Council should be adopted in the State of North Dakota. Your committee is of the firm opinion, after observing the use of the rules in the federal courts and the State of Minnesota, that the adoption of the rules would expedite litigated matters to the benefit of the public and the bench and bar. The members of the profession in the State of North Dakota have had an opportunity to observe the federal rules in action since their adoption by the federal courts in 1938. The Minnesota Bar has been utilizing its new rules of civil procedure since 1951. One of the great advantages is that lawyers will need to learn only one procedural system. In times past, lawyers in the smaller communities were often at a decided disadvantage when they had matters in the federal courts, compared to the lawyer with federal court experience and practice. It was like learning the practice of law all over again to find yourself in federal court. However, the most important advantage in the viewpoint of your committee for the adoption of rules that conform to the federal rules is the fact that these federal rules were adopted by the United States Supreme Court only after years of careful and thoughtful consideration and effort on the part of eminent jurists, lawyers, and professors of law to get together a set of rules, as simple as possible in themselves, discarding technicalities, and facilitating the determination of each controversy on its merits. It has since been held that federal rules should be liberally construed for the purpose of promoting the easy and speedy disposition of causes of action, the elimination of surprise to each party, and the quest for substantial justice. Surely, as practicing lawyers, that's what we want. Furthermore, if the recommended draft is eventually adopted in this state, we lawyers will have the great advantage and benefit of the thousands of federal decisions, such as you will find under the various rules in United States Code Annotated. These decisions cannot but help you on many occasions, solve your problem, and save you from paving the way.

Accordingly, your committee joins in and specifically adopts the report of the committee of the Judicial Council on Rules of Civil Procedure which was approved by the Judicial Council on May 10, 1954. Further, your committee specifically joins in the recommendations of the committee of the Judicial Council as adopted and followed by the Judicial Council as follows:

1. That the State Bar Association place itself on record as favoring the adoption of the proposed rules of civil procedure as promulgated in the proposed draft heretofore submitted to

such amendments as the Supreme Court and the committee to be formed may think desirable.

2. That the Judicial Council and the State Bar Association form a joint committee composed of eleven members, five of which have already been appointed by the Chief Justice from the Judicial Council, six to be appointed by the president of the Judicial Council, six to be appointed by the president of the State Bar Association, to meet and consider and present to the Supreme Court of this state for adoption pursuant to applicable statutes, a draft of rules of civil procedure for the district courts of the State of North Dakota.

The five members of the proposed committee appointed by the Chief Justice from the membership of the Judicial Council are as follows: Hon. A. J. Gronna, Hon. Eugene A. Burdick, Frank F. Jestrab, Norman Tenneson, and Dean O. H. Thormodsgard.

In closing, may we say that if you see fit to adopt these committee recommendations, the joint committee of eleven will again go over these rules; the rules finally recommended by this joint committee will be printed and mailed to every member of the State of North Dakota and sometime thereafter, a hearing will be set by the Supreme Court to consider and hear any protests or objections to any rule or rules from any of you.

Dated this 14th day of July, 1954.

Respectfully submitted,
Hon. James Morris
Ralph W. Bekken
Hon. Eugene A. Burdick
E. T. Conmy, Sr.
E. J. McIlraith
Halvor Halvorson
Richard H. McGee
Joseph P. Stevens
Roy A. Ilvedson, Chairman

MR. ILVEDSON: This report has been approved by all members of the committee. Hon. James Morris is not sure it should be adopted by the convention but ruled on by the legislature. It is a very far reaching change studied at many meetings. The time spent going over these rules is not sufficient but as you can see by the recommendations the procedure we wish to have followed is to have this joint committee go over them and any or all of you can make suggestions. We know in the past there has been a lot of talk and not much has been done because of the work entailed and as far as our committee is concerned we give a great deal of credit to the Judicial Council Committee since without its aid my committee wouldn't have gotten so very far.

Mr. Chairman and members of the State Bar, I move the adoption of this report and also that we go on record as saying that under the recommendations I made here that the Bar association is in favor of the adoption of the proposed rules subject to

amendments made later and that the President appoint six members to this joint committee of eleven to go at it again.

HON. ALBERT LUNDBERG: I second the motion.

JOHN F. LORD: I would like to know if the Rules of Civil Procedure Committee provides for costs. Is that included in the work being done.

MR. ILVEDSON: I couldn't tell you now without looking it up. Frankly, I came to this matter in regard to costs and being faced with our statute providing for $5.00 for trial of issue, I think decidedly something should be done about costs. I don't think it is in here. Should it be there? I don't think so. The attorneys and lawyers in the state are going to have time and opportunity to make a protest and I am sure the legislature is going to rule.

MR. LORD: It is probably the work of the Committee on Legislation.

MR. ILVEDSON: I would say Legislation.

E. T. CONMY, SR.: Why does Judge Morris feel the legislature should rule on these?

MRS. ILVEDSON: His letter says:

> "I find nothing to criticize in the entire report. I will say, however, in regard to the last paragraph, it seems to pertain to ruling by the Supreme Court, but whether it is advisable to proceed through the Supreme Court or through the Legislature has not been definitely determined."

He doesn't say yes or no but that can be ironed out later.

PRESIDENT JOHNSON: Judge Morris is interested in the course of action. It might be determined by what we do here. I feel it is a proper matter for consideration whether we would rather have the Supreme Court in its rule making power adopt the rules or whether we would submit it to the legislation. Well, would you care to express yourselves?

MR. CONMY: I think we went to a lot of trouble to get power in the Supreme Court and as far as I am concerned the Supreme Court is by far a better body to pass on rules than the legislature. It is the most competent body to do it and that's what we went through way back when the United States Supreme Court was empowered to pass rules. I think this Bar Association should go on record as saying the work should be done by the rule making power in the Supreme Court and having the power there.

ALVIN C. STRUTZ: The Legislative Committees know the less we appear there as lawyers the better it is. I would second the motion along the line suggested by Mr. Conmy.

PRESIDENT JOHNSON: Just so we keep the record straight. The matter before us is the adoption of the Report of the Committee on Rules of Civil Procedure. Is there anyone who wants to be heard on that?

All in favor say aye. (Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. Would you care to make a motion so as we are on record on the adoption of these rules?

MR. CONMY: I move, Mr. President, that the Bar Association favor the Supreme Court exercising its power given it under the law in adopting these rules of civil procedure.

ALVIN C. STRUTZ: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. The next report is the Report of the Committee on Ethics and Internal Affairs by Philip R. Bangs, Chairman.

Your committee on Ethics and Internal Affairs, consisting of myself as Chairman, and Cyrus Lyche, George Longmire, Edward Peterson, Harold Hager, Elton Ringsak and William T. DePuy, fortunately has not found it necessary to have many meetings during the past year.

We have acted promptly on all complaints and other matters submitted to us for attention, and we have completed our investigations and rendered final decisions on all questions except one, namely; is it ethical, or permissable, for a States Attorney to represent a plaintiff in an action when he knows, or should know, that the Unsatisfied Judgment Fund will be involved?

The answer to the above question is dependent upon the meaning attributed to the following provision in Section 39-17041 of the 1953 Supplement, reading as follows: "In the event the States Attorney of the County in which the case is to be tried is not disqualified to appear and defend the Unsatisfied Judgment Fund, then the Attorney General shall appoint such States Attorney to defend the Fund, and in such case the States Attorney shall receive no fee for his services rendered therein."

The members of this Committee, pursuant to written request of the Chairman, copy of which is attached, without benefit of discussion at a meeting, informally decided by a vote of five to one, that it is not ethical for a States Attorney to represent a plaintiff in an action, when the knows, or should know, that the Unsatisfied Judgment Fund will be involved.

The above conclusion is not binding on anyone and is merely reported as an item of possible interest to the Attorney General and the States Attorneys.

Most of the other matters that came before this Committee for determination, were of the usual type of complaint, namely:

Failure of attorney to answer letters;

Failure of attorney to make prompt remittance;

Alleged excessive charges;

Unauthorized use of name on summons by collection agency;

Right of a States Attorney, in his private practice to represent the plaintiff in an action to quiet title when one of the defendants is the County.

However, there were two complaints that came before the Committee, of a more serious nature, with respect to which we

issued a reprimand in one case; and in the other case, we took no action on account of lack of proof. This case is now being further investigated by the State Bar Board, pursuant to complaint filed with the Supreme Court.

In conclusion, the Committee expresses its thanks to the Executive Director, R. N. Davies, for his valuable assistance.

Respectfully submitted,

Cyrus Lyche
George Longmire
Edward Peterson
Harold Hager
Elton Ringsak
William T. DePuy
Philip R. Bangs, Chairman

(Following is a copy of the letter referred to in the above report:)

TO COMMITTEE ON ETHICS AND INTERNAL AFFAIRS.

Gentlemen:

With respect to the Unsatisfied Judgment Fund, 39-17041 of the 1953 Supplement authorizes the Attorney General, at his discretion, to appoint special counsel to defend the Fund, and then provides: "In the event the States Attorney of the County in which the case is to be tried is not disqualified to appear and defend the Unsatisfied Judgment Fund, then the Attorney General shall appoint such States Attorney to defend the Fund, and in such case the States Attorney shall receive no fee for his services rendered therein."

It has been suggested that under this Section, the States Attorney of the County where the action is to be tried, cannot act as attorney for the plaintiff in any proceedings against the Fund.

The Statute quite clearly states that the Attorney General shall appoint the States Attorney to defend the Fund, in the event the States Attorney of the County in which the case is to be tried is not disqualified to appear and defend the Fund."

Is it ethical, or permissible, for a States Attorney to represent a Plaintiff in an action when he knows, or should know, that the Unsatisfied Judgment Fund will be involved?

Is it ethical, or permissible, for a law partner of a States Attorney to represent a Plaintiff in an action, when he knows, or should know, that the Unsatisfied Judgment Fund will be involved and that the States Attorney, his law partner, will be appointed by the Attorney General to defend the Fund?

If it is ethical and permissible for an attorney who has an a partner a States Attorney, to proceed with such action, even though the Unsatisfied Judgment Fund will be involved, would the States Attorney thereby, be disqualified to appear and defend the Fund?

The Executive Director, R. N. Davies, has asked this

Committee to render an opinion, which opinion is to be sent to the entire Bar of North Dakota.

I am sending this letter to each member of the Committee and would ask you to please send me your opinion, and after I get your opinions, I may call a meeting of the Committee, so that we can discuss the matter and arrive, if possible, at an unanimous opinion.

Yours very, truly,
PHILIP R. BANGS

MR. BANGS: I move the report be adopted.

E. J. WOLFE: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. The next report will be the Report of the Committee on American Citizenship by Herman Weiss, Chairman.

American Citizenship Committee Report

Commencing with the 1954 committee assignments of our North Dakota Bar Association, the Constitutional Awards branch of the American Citizenship Committee was divided into its own committee. Since this worthwhile project nearly fully occupied the time and efforts of the American Citizenship Committee, a new program, aimed to stimulate an active and useful American Citizenship program in North Dakota, was investigated by the new committee.

With the thought in mind of finding some workable plan to endorse by the committee, our committee first met in Jamestown, North Dakota, on January 14th, 1954, at which time several worthwhile projects were evaluated. Several of the members of the committee, in studying the Texas plan used in 1953, felt that North Dakota could benefit from at least the adoption of a portion of their successful venture and conduct a program entitled "Governmental Open House."

The proposed plan was to have all local Bar Associations in North Dakota conduct an open house of government offices in their area, asking assistance of city, county, and state government offices to set aside one day, or in larger areas a series of days, at which time any one desiring to see these officers in operation would be encouraged and given opportunity to tour the respective offices and learn a little more about them. Civic groups, service clubs, patriotic organizations, schools, and Parent-Teacher Associations, would be encouraged to aid the program in executing the plan. It was felt by the Committee that many people would be impressed with a new insight of government in action, and with a new understanding of their government be a better citizen.

The Committee again met in March in an effort to iron out a few of the late details, and still later, when the program was well thought out and formulated, the committee felt that there was insufficient time remaining during the school term to conduct the program in such a manner as to allow schools to make full

use of the program. Hence it was agreed that the program would be shelved for the time being and recommended as part of the program for the next year of this committee.

Therefore, the Committee recommends that early plans be completed toward this end in 1955, and that the "Governmental Open House" program be conducted at a time during the year when the greatest number of people will take advantage thereof, and in particular that the schools be considered in setting a time therefor.

It is the further recommendation that standing American Citizenship Committees be appointed by local Bar Associations to assist judges in conducting naturalization proceedings, keeping in mind an impressive ceremony, not only for the benefit of those becoming citizens, but also for the benefit of friends, relatives and the general public in attendance.

We further recommend that this Committee study the feasibility of organizing a program whereby our American Youth reaching voting age are given a fresh contact with their responsibility as a voter. The "Montana Plan" as originated by Lester H. Loble, Chairman of the American Citizenship Committee of that state, would be of great help, and as a source of studying this program, see the American Bar Association Citizenship Bulletin for May, 1954, on page 52.

This committee is an important committee and should be continually working toward better citizenship. We as attorneys should meet our responsibilities as the leaders in this great state toward this end.

Respectfully submitted,
Emanuel Sgutt
James E. Leahy
T. E. George
Leslie R. Burgum
Cytella D. Rittgers
James R. Jungroth
Herman Weiss, Chairman

MR. WEISS: Mr. President, I move the adoption of this report.

ARTHUR W. STOKES: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: The motion is carried. Now we will have the Report of the Constitutional Award Committee by James E. Leahy, Chairman.

As chairman of the Constitution Award Program, I herewith submit a report concerning that Program for the year 1953-54. The Program this year was separate from the American Citizenship Committee's Program.

As has been the usual practice in recent years this Program was started by an announcement poster being sent to all North Dakota high schools. This poster was sent in November, 1953. follow up letters were mailed urging participation until we received

word that 257 schools would participate. Of this number 2 schools actually did not choose an award winner, thus we had 255 actually participating. This figure represents an increase of 23 schools over last year's total.

The response from the schools has been most gratifying in that this award is now considered an important part of the curriculum of many schools and our files contain many letters of appreciation from various school officials.

Whenever possible, the actual presentation of the awards was made by a member of the Bar. Approximately 200 attorneys participated in the Program this year, it being necessary of course to assign more than one school to some attorneys.

When an actual presentation of the award is made by a member of our organization the Bar benefits greatly, as does the individual attorney. It is definitely a step forward in the field of good public relations. To the best of my knowledge, this year only two awards were not presented at the time originally arranged for by the various schools.

This Program was allotted a budget of $750.00 and of that amount the sum of $657.21 has been expended to date for bronze keys, postage, stationery and secretarial services. We have on hand 226 bronze keys for next year.

It is recommended that:

1. The program be continued;
2. That coincident to the presentation of the award at the various schools in May, 1955, and thereafter, a newspaper release be given to the local newspaper in the area where the award is being presented, giving the name of the winner, the attorney presenting the award, and the name of the State Bar Association as sponsor. This was done at Mandan this year and we are grateful for the newspaper clipping sent us by Attorney J. P. Fleck.

Respectfully submitted,
James E. Leahy, Chairman

MR. LEAHY: Mr. President, I move the adoption of this report.

FRANKLIN J. VAN OSDEL: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: The motion is carried. We will have the report of the Probate Code Committee, by Mr. R. J. Bloedau.

Report of Probate Code Committee

Throughout the past year your committee has invited suggestions and criticism relative to the probate code. Practically no suggestions have been submitted, and it appears that in general there is no great dissatisfaction as to our present probate laws. Considerable changes and improvements have been accomplished during recent years.

However, your committee again suggests that a uniform set of probate forms be adopted, and that a special committee (possibly of County Judges) be appointed to prepare such set of probate blanks. Also it has been urged that further legislation is necessary relative to probate of estates of persons not heard of for seven years, since under present uncertainty, it is difficult to find anyone willing to take the risk either as administrator or surety in such cases.

Respectfully submitted,
Everett R. Dawson
E. C. Lebacken
Adrian O. McLellan
A. J. Pederson
S. E. Halpern
August Doerr
R. J. Bloedau, Chairman

MR. BLOEDAU: Mr. President, we move the filing of this report.

FLOYD B. SPERRY: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. Now, we will have the report of the Committee on the Junior Bar Association by John C. Gunness, Chairman.

There were no meetings held of the Committee on the Junior Bar because of apparent lack of interest on the part of the younger members of the bar for a separate Bar Association. Mr. Howard Moum is President. He tells me he is planning to have a meeting of the Junior Bar tomorrow morning and he said to contact George Longmire as to where it is going to be. At that time the Committee will meet with members who are interested and if there is sufficient interest we will proceed. If not, we will work with the older lawyers more than as a separate group. In the meantime the younger lawyers might think about this problem and tomorrow morning present any ideas they may have. Thank you.

PRESIDENT JOHNSON: Thank you for the report. Are any of the men here that are on the Retirement Fund Committee? Mr. Miller, Mr. Eckes, Mr. Muggli? If not, that report will be read by our Executive Director, Ronald N. Davies.

Report of Committee On Retirement Fund Federal Legislation

The Committee on Retirement Fund Federal Legislation met at Dickinson, North Dakota, on July 6, 1954. Present at the meeting were: Hon. Harvey J. Miller, W. L. Eckes and Norbert J. Muggli, who composed the entire Committee in this matter.

The Committee took under consideration the present proposed Retirement Fund legislation now pending in Congress. This proposed legislation consists of a bill commonly referred to as the

"Individual Retirement Act" and is also referred to as the Koegh-Reed Bill.

The substance of the proposed legislation is to permit the self-employed taxpayer, as well as employed taxpayer not now covered by pension plans, to defer taxes on certain portions of their current income which is invested to secure retirement benefits. The general limitations, however, are that the tax deferment shall not exceed 10% of the earned income of the tax payer or Seventy-five Hundred Dollars, whichever is less. The bill generally provides for a voluntary pension system for self-employed taxpayers as well as employed taxpayers not now covered by pension plans which comply with Section 165 of the Internal Revenue Code. The main purpose of the bill is to bring about some degree of equity for taxpayers who are not now covered by pension plans approved by Section 165 of the Internal Revenue Code.

The Committee in studying the proposed legislation took into consideration the report made by the Committee on Retirement Benefits of the American Bar Association. Your Committee was unanimous in its approval of the report of the American Bar Association Committee on Retirement Benefits as submitted at the annual convention of the American Bar Association. A portion of this report reads as follows:

"FIRST. That the present high progressive income tax rates make it most difficult, if not impossible, for recipients of earned income who are not covered by corporation pension plans to make adequate provision by savings for their old age and possible retirement. This is true, not only of lawyers, doctors, architects, accountants, independent engineers, artists of all kinds, and other professional men, but generally of all those who depend on earned income as a source of savings.

"SECOND. Professional men and other self-employed are discriminated against by the Federal statutes in comparison with officers and employees of corporations. This results from tax advantages granted by Section 165 of the 1942 Internal Revenue Code to assist in the creation of corporation pension plans. The tax advantages granted by said Act are roughly as follows: (a) Contributions made by a corporation are not taxed to the corporation. (b) Even though the officer or employee obtains a vested interest in such contribution when made, it is not taxed to the officer and employee in the year the contribution is made. (c) The income of the pension fund is not taxed as it is earned. Why, when this Act was under consideration by Congress, no comparable provisions were made for members or partnerships, or for professional men or other self employed, is hard to understand. It is this glaring omission and this discrimination which it is now aimed to correct.

"THIRD. The principle of the Keogh-Reed Bills ("Individual Retirement Act of 1953") is to remove the above mentioned discrimination by permitting the postponement of income tax

with respect to a limited portion of earned net income paid into a so-called "Restricted Retirement Fund". The amount so excluded plus each participant's share of earnings in the fund would be taxed in later years when the retirement benefits were withdrawn, just as in the case of the corporation pension plans now provided for under Section 165.

"FOURTH. There is need for some such legislation as the Keogh-Reed Bill (now known as the Individual Retirement Act of 1953"), irrespective of whether or not lawyers and doctors are included in the Social Security System. The Social Security acts are aimed to take care of the low income groups. Corporation pension plans under Sec. 165 of the Code are on top of, and are meshed in with, the benefits under the Social Security Act. Even though it is decided hereafter to include lawyers and doctors under the Social Security System, a bill encouraging voluntary savings on top of, and in addition to, the Social Security benefits is just as necessary for the self-employed as in the corporation pension plan for officers and employees of a corporation who also have social security coverage now."

The Committe found it unnecessary to go into the matter of the present Social Security law, as only recently the House of Representatives passed an amendment to the Social Security Act extending the coverage under this Act to include attorneys. The Senate Committee at the present time has amended this Bill making it optional for attorneys to be included under this Act.

In conclusion, your Committee recommends that the North Dakota State Bar Association go on record as favoring the passage of the "Individual Retirement Act" (Keogh-Reed Bill),which is now pending in Congress.

Respectfully submitted,
Hon. Harvey J. Miller
W. L. Eckes
Norbert J. Muggli, Chairman

RONALD N. DAVIES: On behalf of the committee I move the report be received and filed.

JOHN A. STORMON: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. We will now have the Report of the Committee on Uniform Laws by Judge John C. Pollock, Chairman.

Report of Committee on Uniform Laws of North Dakota State Bar Association for the Year 1953-1954.

MR. PRESIDENT: Your Committee on UNIFORM LAWS for the year 1953-1954 begs leave to report:

Inasmuch as there was no session of the State Legislature in 1954 your committee feels that it might be of interest to the members of our Bar Association that at this time we call attention to the Uniform Laws now included in the codes of our State.

Commencing in 1899, when our Legislature adopted the Uniform Negotiable Instruments Act, down through the legislative session of 1953 our State has adopted and placed in the statute Thirty-two new Uniform Acts and Amendments to Two previously adopted Uniform Acts, making a total of Thirty-four. These acts and the years in which they were adopted are as follows:

Year of Adoption:	Title of Act:
1899	Uniform Negotiable Instruments Act;
1911	Uniform Desertion and Non Support Act;
1913	Uniform Proof of Statutes Act;
1917	Uniform Sales Act;
	Uniform Warehouse Receipts Act;
1923	Uniform Declaratory Judgements Act;
	Uniform Aeronautics Act;
	Uniform Fire Arms Act;
	Uniform Illegitimacy Act;
1927	Uniform Act Regulating Traffic on Highways;
	Uniform Motor Vehicle Anti-Theft Act;
	Uniform Motor Vehicle Registration Act;
1929	Uniform Air Licensing Act;
1931	Uniform Veterans Guardianship Act;
1933	Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases;
1935	Uniform Motor Vehicle Operators and Chauffers License Act;
1937	Uniform Business Records as Evidence Act;
	Uniform Judicial Notice of Foreign Laws Act;
	Uniform Official Reports as Evidence Act;
1943	Uniform Amendment to Acknowledgment Act;
	Uniform Bills of Lading Act;
	Uniform Fraudulent Conveyances Act;
	Uniform Narcotic Drug Act;
	Uniform Pistol Act;
	Uniform Simultaneous Death Act;
	Uniform Stock Transfer Act;
	Uniform Transfer of Dependents Act;
1945	Uniform Trust Receipts Act;
1951	Uniform Divorce Recognition Act;
	Uniform Photographic Copies of Business and Public Records as Evidence Act;
	Uniform Reciprocal Enforcement of Support Act;
1953	Uniform Amendment to Narcotic Drug Act;
	Uniform Single Publication Act;

Thus it is evident that our State Legislature since 1899 has recognized the worth and value of uniform laws. For Fifty-five years the courts and members of the Bar of our State have had the benefit of the Uniform Negotiable Instruments Act. That act was promulgated and offered to the States in 1896 by the National Conference of Commissioners on Uniform State Laws with the

approval of the American Bar Association with which the National Conference has always been closely associated.

The other acts, above listed, have a wide diversity of use being of interest to lawyers, businessmen, peace officers and welfare personnel.

The National Conference of Commissioners on Uniform State Laws was organized in 1892. Its origin dates from action of American Bar Association in 1889 when a committee of the A.B.A. on Uniform Laws was appointed. In 1890 the Legislature of New York adopted an act authorizing the appointment of "commissioners for the promotion of uniformity of legislation in the United States." In the same year, 1892, the American Bar Association appointed a special committee which presented a resolution that the A.B.A. recommend the passage by each state, and by Congress for the District of Columbia and the territories, for the appointment of Commissioners to confer with commissioners from other states on the subject of uniformity in legislation on certain subjects. As a result of such action the first National Conference of Commissioners was held in August, 1892, for three days immediately preceding the annual meeting of the American Bar Association. At the present time and for many years past, the Forty-eight States, the District of Columbia and the territories have been represented by Commissioners to the National Conference.

The object of the National Conference is stated in its constitution to be:

> "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable."

All proposals of subjects for uniform legislation are referred to a standing committee on Scope and Program. After due investigation, which may include a hearing of persons interested, such committee reports whether the subject is one upon which it is desirable and feasible to draft a uniform law. If the National Conference decides to take up the subject it is referred to a special committee with instruction to report a draft of the uniform act.

With respect to some of the important acts, it has been the practice to employ expert draftsmen. This was done for the preparation of the Uniform Commercial Code upon which the National Conference in conjunction with the American Law Institute worked for more than ten years. At the annual meetings of the National Conference each act is considered and debated section by section. When finally approved by the Conference it is sent to the House of Delegates of the American Bar Association for approval; following approval there, it is sent to the several states for appropriate legislative action.

In addition to uniform acts, the National Conference also drafts, in the same manner, Model Acts which any state may adopt with such alterations as local conditions warrant.

A more complete history of the National Conference and its work will be found in four excellent articles which have appeared

in Bar Briefs, issued by our State Bar Association and North Dakota Law Review. These articles are found in;

Bar Briefs, April, 1947, page 13;
Bar Briefs, January, 1948, page 8;
Bar Briefs, January, 1949, page 33; and
North Dakota Law Review, July, 1954, page 185.

North Dakota's participation in the National Conference dates back to the year 1918, just Thirty-six years ago, when former Supreme Court Judge H. A. Bronson, of Grand Forks, was appointed a Commissioner from this State; in 1928 C. L. Young, of Bismarck, was appointed and is still acting as Commissioner; in 1946 O. H. Thormodsgard, Dean of the School of Law was appointed and is still acting; in 1948 John C. Pollock, Judge of the First Judicial District, was appointed to fill the vacancy caused by the death of Commissioner Bronson, and is still acting. All of these appointments were made by the Governor.

Our Legislature has never adopted the Unifrom Act for appointment of Commissioners, which act, if adopted, would make provision for an annual financial contribution by our State for the support of the National Conference and for the actual expense of the Commissioners who attend from our State.

However, for a number of years recently our State Bar Association has paid the actual expense of the Commissioners and has made the annual contribution for the support of the National Conference. Funds for the support of the National Conference are made by the American Bar Association, by legislative appropriations of some of the states, or from several state and local bar associations.

Your committee recommends that the following acts be introduced into the 1955 Session of our Legislature:

The Uniform Commercial Code;
The Uniform Rules of Evidence Act; and,
The Uniform Amendments to the Uniform Reciprocal Enforcement of Support Act.

The Uniform Commercial Code is a modernization of the Negotiable Instruments Law and all other acts dealing with commercial transactions. Consideration of the Code was completed by the National Conference and the American Law Institute in 1952, and received approval by the House of Delegates of the American Bar Association in that year. It was adopted by unanimous vote of both houses of the Pennsylvania Legislature in 1953. The code has the approval of the American Bankers Association and many other interested national organizations. It his also been introduced into the legislatures of Massachusetts, California, Connecticut, and Illinois. New York has a special commission studying the advisability of adopting the Code.

Copies of the Uniform Commercial Code together with complete explanations of the action in Pennsylvania and other data have been furnished to Chas. C. Wattam, Secretary of the North Dakota Bankers Association. It is hoped that the North Dakota

State Bankers Association will adopt a resolution approving the Code.

The School of Law at our State University in the Fall Semester of 1954 is offering a course in Legislation, to be conducted by Professor Tisdale, which will use the Uniform Commercial Code as a text supplementing the case books; the students taking the course will prepare the repealer clause, necessary to be added to the bill when it is introduced into the legislature, setting forth all of the present statutes of this State which will be supplanted by the Uniform Commercial Code.

Uniform Rules of Evidence Act:

The Model Code of Evidence promulgated by the American Law Institute in 1942 departed too far from the traditional and prevailing common law rules of Evidence and was, therefore, unaccepted by the Bench and Bar. In 1949 the National Conference, by resolution, determined that a new Uniform Rules of Evidence Act should be prepared. For four years a Special Committee on Uniform Rules of Evidence has been preparing such rules. The new act, to a large extent, retains certain portions of the former Model Code, but has rejected, revised, and modified the remaining portions of the former Model Code. These new Rules of Evidence conform to the policy of clarifying the existing rules of evidence.

The skilled draftsmen of the Special Committee had as their objectives, to prepare rules, which would be acceptable to the Bench and Bar and would be uniform throughout the United States. Hence the Special Committee limited the number of rules to Seventy-two basic principles, which would be used frequently by trial attorneys.

The completed Unifrom Rules of Evidence Act has been approved by the National Conference and the House of Delegates of the American Bar Association. If adopted by our Legislature this Act would simplify the work of North Dakota lawyers who practice in other states or have reason to investigate the rules of evidence in force in other states. Your Committee recommends the introduction of the Uniform Rules of Evidence Act at the 1955 Session of our Legislature.

Uniform Reciprocal Enforcement of Support Act:

This act was adopted by our State Legislature in 1951. The Act is now on the statutes of Forty-eight out of Fifty-two states and territories. Nineteen of such jurisdictions have adopted the Uniform Amendments to the Act. Adoption of such amendments will place North Dakota on an equal basis with those jurisdictions which have adopted the amendments. The adoption of the amendments will facilitate the administration of the act by our District Courts.

Your committee recommends that the Amendments to the Uniform Reciprocal Enforcement of Support Act be introduced at the 1955 Session of our Legislature and that the passage of such amendments be urged.

In closing your committee desires to thank the Legislative Committee of our Association for its cooperation in past years in procuring introduction of Uniform Acts at Sessions of our Legislature and wishes to express the hope that the incoming Committee on Uniform Laws of our Association may continue to have the same cooperation.

Dated July 27th, 1954.

Respectfully submitted,
COMMITTEE ON UNIFORM LAWS 1953-1954,
C. L. Young
C. Emerson Murry
O. H. Thormodsgard
John C. Pollock, Chairman.

JUDGE POLLOCK: I move the adoption of the report.

JUDGE LUNDBERG: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. Our next order of business is going to be an address by Brigadier General Albert M. Kuhfeld, Assistant Judge Advocate General, United States Air Force, from Washington, D. C.

He hardly needs an introduction. We all know him for his excellent work as Chairman of our Code Revision Committee. We are all indebted to him for his work on the 1943 Code and he stayed almost long enough to complete the job. He went into the service in 1942.

General Kuhfeld was a very prominent member of the Bar before he entered military service. He is going to talk on the general subject of procedures and his experiences under the Uniform Code of Military Justice adopted in 1951.

Brigadier General Kuhfeld:

President Johnson and Members of this North Dakota Bar Association Convention: I want to begin by thanking you for the very kind introduction, and I want to say from, the bottom of my heart, that I appreciate what a few people did in making it possible for me to be here today. They met me down at the airport and it has been like old home week. I don't know when I have had such a good time in such a short while, meeting my friends from my old law practice days in North Dakota. I intend to stay until the banquet is over, and am looking forward to shaking hands with a few of the other people I haven't yet met. It is really a pleasure to me to get back home to North Dakota and meet with you folks.

I don't have the time to outline in detail the various facets of the law with which we deal in The Judge Advocate General's Department of the Air Force. I am going to choose one facet of our work and demonstarte something to you, if I can. At the present time there are in the service a very considerable number of young men who fit into the age group in which we find our greatest crime potential. There has been no recent change in the man-

power requirements of the United States Armed Services and, hence, practically every young man we see, every one you meet on the street, is faced with the obligation to do his military tour. As a result the communities throughout the United States are becoming more and more service-minded. As they become service-minded they start to wonder more and more just what happens if the boys get into trouble as a certain number of them are bound to do. A lot of people are under a misapprehension about that. They think the so-called brass is bearing down hard on the young men, and that for nothing at all, this, that and the other thing is done to them. My purpose today is to try to show you just how these things are handled in the services — the procedures when a young man gets into trouble — because as civilian lawyers you are going to be consulted by your friends in your communities about the little difficulties sons of people you know have gotten into in the service. I want to show you if I can — and I am sure I can — that there are greater safeguards in the Uniform Code of Military Justice, the military code now administered in the Armed Services, than in any code in any state in the United States. If I had time to trace for you, from the time of the Revolutionary War up to the present time, the evolution of the administration of military justice, I would have a better chance of letting you see what I am driving at, but I won't have sufficient time for that today.

I am going to try in the time alloted to me to explain the Uniform Code of Military Justice which was adopted in 1951. It was the result of a study made by very eminent men in the legal field, Professor Morgan and a group of very eminent individuals on many committees which held hearings and tried to rectify any difficulty brought to their attention. There had been, after World War II, many complaints, just as there were complaints about service criminal law after every war. The committees studied those complaints and finally formulated the Uniform Code. The Army and the Air Force for some time had been operating under a system somewhat similar to the Uniform Code but the Navy was administering justice under the Articles for Government of the Navy which had been in effect without change for a long, long time. The Uniform Code was adopted for the government of everyone in the Armed Services, including the Coast Guard which is part of the Navy in time of War, and of theTreasury Department in peace time.

The Uniform Code provides in practical effect, every safeguard that is provided in any constitution or statute in any state, for the individual who offends against military law in the service. Most of the major changes we now have first appeared for the Army as a result of legislation shortly after World War II. They were written into the Elston Act of 1949 and are carried over, with some additional changes, into the Uniform Code. People like Ron Davies and a number of others I see here in the audience who served in the Judge Advocate General's Department of the Army, as I did, during World War II, would have to relearn everything they knew about military justice.

I would like, if time were available, to make a detailed comparison between the procedures which we find in civilian law and the procedures we have in the military for safeguarding the rights of the individual, but I am not going to waste your time in talking about procedures in civilian law. You all know more about that than do I. I am going to talk, however, about military procedures and I ask you as I go through our procedural provisions to compare them with procedures as you know them in civilian life. I am going to ask you, then, individually, to arrive at your own conclusion as to whether the individual in the service has equal protection of his rights as does one who is not in military service. An individual in the service has more protection than does a criminal in civilian life with regard to protection against unreasonable searches and seizures and as far as protection against self-incrimination is concerned. I could demonstrate this statement by decisions of Boards of Review and of the United States Court of Military Appeals and would be glad to give such decisions to anyone who may ask me for them. But, to demonstrate my point, let us get right into the system under which the criminal code of the services is administered. When the Air Force first came into being as a separate branch of the service, Major General Reginald C. Harmon was appointed The Judge Advocate General. He has been The Judge Advocate General ever since and has built an outstanding legal department in the Air Force. He has always said that it does not make any difference how good a set of rules is — it is the group of people administering the rules that determines whether they are going to be considered good rules or bad ones. A lot of study was given in the Air Force to what was required to make the 1920 laws work as they should, to make the Elston Act of 1949 operate, and to insure the successful accomplishment of what the Congress intended from the Uniform Code of Military Justice — the real protection of the rights of every person brought under military law. Here let me read something — just a little excerpt I got from a book entitled "Psychiatry and the Law" written by M. S. Guttmacher and H. Weihofen and published by the W. W. Norton Company of New York in 1952: "Although we might expect the Armed Forces to employ in courts-martial a more summary procedure than do the civil courts, the fact is that the Armed Services today employ a level of scientific jurisprudence which the civilian courts have not yet attained." I agree, and before I finish what I have to say today, I believe you will also.

The military system employs three different kinds of courts. First, we have the summary court-martial. This is analogous to a police court. It has one officer as the judge. It is used only for minor offenses and the maximum sentence it may impose is thirty days confinement and forfeiture of two-thirds of a man's pay for one month. Second, there is the special court-martial. This court consists of three or more officers and the punishment it can impose may not exceed confinement at hard labor for six months and the forfeiture of two-thirds of pay per month for six months. It may

impose a bad conduct discharge, a punitive separation, from the service. Third, and the court of general or unlimited jurisdiction in the criminal law of the Armed Forces, is the general court-martial. It consists of not less than five members. On every general court-martial there is a law officer who compares to the judge in a civilian court. He rules finally on all questions of law, instructs the court, and, generally, runs the trial. The general court-martial can consider or try any kind of offense against the military code. Its jurisdiction as to punishment is unlimited except by a Table of Maximum Punishments established by the President, and I won't go into these maxima now.

The 1951 law makes definite provision with respect to counsel in setting up of special courts-martial and general courts-martial. There had been many cases in which lawyers were assigned to prosecute cases but no lawyer to defend. Therefore, it was contended by many, the lawyer almost always won a conviction and the accused was not properly represented. To eliminate this contention and the criticism incident thereto, the Code provides that in every general court-martial the accused must be represented by a lawyer, and in practical effect in the Air Force, the Code is administered as though the law set out the same requirement as to special courts-martial. That lawyer must be a graduate of an accredited law school and a member of the bar of the highest court of a state or of a Federal District or circuit court and in addition, he must have been certified by The Judge Advocate General as competent to act as such defense counsel. Lawyers can come out of law school, go into the service, and be in one of the offices of a staff judge advocate for years before being considered capable of defending cases. Generally, however, after six months in the service, they have shown that they are capable of taking over as defense counsel. An accused, as we view it, is entitled to be represented by a lawyer, by a real lawyer, one determined to be competent and capable, and so certified by the highest legal officer in the Air Force. The bench is represented by a lawyer too. In a general court-martial, it is the law officer mentioned briefly before. He must be an officer certified by The Judge Advocate General as capable to perform the duties of a law officer, and to act as judge in a case. He acts the same way as does a civilian judge except that he does not determine what the sentence should be. The sentence is determined, within established limits, by the officers or airmen on the court-martial. Parenthetically, an airman who so requests is entitled to have on any special or general court-martial which tries him, at least one-third of the membership enlisted men. The law officer rules on all questions of law, such as the admission of evidence, and on all motions or objections which arise during a trial. With two exceptions, not here material, his rulings are final. The law officer in a general court-martial, or the president of a special court-martial, must instruct the members of the court-martial, in open court, and on the record, as to the elements of any offense before the court, and of the law applicable in the case.

The courts hear cases under a system established to rigorously protect the rights of those brought before them for trial. But, it is sometimes said, the members of the special court and of the general courts are appointed by a military officer, by, usually, one of the general officers in the Air Force. Doesn't this make for command influence—isn't this some kind of a system to control the courts? First, let me point out that everyone on the court, including the law officer, is subject to challenge for cause and grounds of challenges for cause are more comprehensive in the military than in civilian courts. Then, in addition to being subject to challenge for cause, each member of the court-martial is subject to peremptory challenge. The only number who cannot be challenged peremptorily is the law officer. The one on trial can challenge members of the court-martial without giving reasons. The statute gives him that right.

What happens when we have a case involving an alleged crime? First, the commander of the person accused is advised of the allegation against the individual. The commander checks into the allegation to determine if there is anything to it. He usually talks it over with the man after first advising him of the nature of the accusation against him and telling him that he does not have to make any statement at all and that any statement he makes can be used against him. Such a warning is required by law, and if such warning is not given, any statement made by an accused or suspected person cannot be used against him no matter how voluntary it might be otherwise. This protection against self-incrimination goes much further than does the Fifth Amendment. The commander, if he finds the allegation to be true, must decide what, if any punishment is merited. He may either talk to the man like a Dutch uncle or punish him under Article 15, by, for instance, giving him two weeks restriction to the base. If the offense is more serious, formal charges may be required. In such a case, he arranges for preparation of the charges, and the charges allege specifically exactly what offense, or offenses, according to the Code, informal investigation indicates have been committed. Those charges are referred to an investigating officer. We do not have a hearing before a committing magistrate—that is true—but we do have a complete formal investigation by and a hearing before a military impartial officer, generally a Major or above. He interviews all witnesses and examines all documentary evidence in the presence of the accused. The accused is advised of the evidence against him, and he is advised of his right to be represented by counsel at all stages. He or his lawyer can cross-examine every witness. In other words, the entire case is laid before him and he is given every opportunity to explain. Isn't this protecting his rights? You who have been on criminal cases compare the situation with what you know happens sometimes in civilian life where much of the prosecution's case at the trial comes as a complete surprise to the defendant. With us, every single story, every single scrap of evidence, every statement by every witness against the

accused is laid out before him and his counsel. He knows the entire case at the time of the pre-trial investigation. A large percentage of charges, too, is thrown out as a result of the care with which this pre-trial investigation is conducted. We want no charges referred for trial unless the investigation discloses beyond preadventure that there is evidence in existence to more than establish a prima facie. Let us assume that we have a case in which the investigating officer has determined an accused did commit an offense; and we deal with the whole gamut of offenses, with murders, rapes, robberies—every kind of crime. There is, as I said, a situation we must all recognize, a great crime potential in the age group we have in the service. If, in the case we are assuming a serious crime is involved, murder, rape, willful disobedience, desertion, or some other serious matter and it is concluded there is a basis upon which that case should go to trial, it would be referred for trial to a general court-maartial. Before that, however, those charges and the report of that investigation must be given to the staff judge advocate, himself a lawyer, and a senior and experienced officer in the Judge Advocate General's Department, to determine whether there is evidence which shows the probability that the crime has been committed and to determine whether the charges are properly drawn, and accused's safeguards have been honored throughout. The officers in that position are Lieutenant Colonels or Colonels. Practically all of of them have had civilian experience at the bar as I have and as General Harmon has had, and came into the service at the beginning of World War II. The staff judge advocate must examine the case file, must write a statement to his commander that there is substantial evidence of a crime committed by the accused and that his rights have been safeguarded before the charges can be referred for trial. The case file is then reviewed by the commander who invariably discusses the entire matter with his staff judge advocate.

If the case goes to trial and the accused is found guilty and sentenced to one year or more or if the sentence includes a punitive discharge, bad conduct discharge or dishonorable discharge, the case is sent to the office of The Judge Advocate General for appellate review. Such cases come into our office in the Pentagon from all over the world—Germany, France, England, Japan, Korea; but right here I should say that the case does not come up to us unless after reading and rereading the verbatim record, the staff judge advocate is convinced the guilt of the accused has been proved beyond reasonable doubt in a trial free from any prejudicial error. There are in our office eight Boards of Review, each consisting of three officers. Each Board is made up of officers who have been selected personally by General Harmon. They are men of outstanding capabilities as lawyers in the service. The Boards of Review are, in effect, the Circuit Courts of Appeals of the Air Force. They write the opinions in the cases after full consideration of the records of trial and after examining the assignments of errors and briefs and listening to arguments by counsel

in the cases. The accused pays nothing for this appellate review. The law provides we will furnish each accused defense counsel throughout the whole appellate review of his case. If a defendant wants appellate defense counsel, he simply says so. We have in our office an Appellate Defense Counsel Division made up of lawyer officers thoroughly familiar with appellate work. They represent all accused who request counsel before the appellate agencies. The defendant never pays them. I don't care what case they appeal. I don't care what errors they wish to assign. That is all up to the Appellate Defense Counsel. He studies the record and makes his assignment of error. Neither General Harmon nor I control their activities in any way. This assignment of error goes to the Appellate Government Counsel and he makes a reply and files it with the Board of Review. In many cases, we have civilian counsel appearing for accused. Very eminent members of the bar appear before the Boards of Review and present cases as they do before the Circuit Courts of Appeals. An outstanding lawyer, whose name I will not mention but about whom I just read a fine tribute in a Washington newspaper, came into my office a few days ago and told me he never got such fine treatment from any court in the United States as he received from the Board of Review and he emphasized that the members of the Board really knew their business.

The Board decisions are published and are available to everyone the same as are the decisions of the highest court of every state. The Vice President of the Lawyers Cooperative Publishing Company came into my office one time and told me he thought I would be interested in what his attorney-editors had repeatedly stated to him. I said, "Sure, I'd like to know." He said his law editors have repeatedly stated that our Board of Review decisions in the Air Force compare very favorably with the decisions of the highest court of any state in the United States. The United States Supreme Court, in its decision in the recent Burns and Dennis habeas corpus appeal, commented on the manner in which appellate review of those cases was conducted. Bear in mind that each accused has a right to be represented by counsel, by civilian counsel if he wishes. He must, however, pay civilian counsel; military counsel, and I emphasize again, good military counsel, is furnished free of charge. I mention that again because a lot of you people may be consulted with regard to a case involving military justice. Many civilian practitioners have been engaged to represent military people before a Board of Review and in the trial, itself. And I will say this: our rules of procedure in the trial of cases by courts-martial are the same rules generally speaking as those employed in the Federal courts. If you are employed to appear in a court-martial, you will know the rules before any court-martial in the Air Force. They are run and operated in that fashion. Law officers in general courts-martial are going to be ruling down that line the same as any judge in any United States District Court throughout the country.

Each Board of Review decision is served upon the accused. He then has thirty days in which to appeal to the United States Court of Military Appeals and he is definitely and clearly advised of that right, and that an appeal will be made without cost to him unless he wishes to employ civilian counsel. This was provided for in the 1951 Code. The Court of Military Appeals is made up of three judges selected from civilian life anad appointed to fifteen year terms. The present judges were appointed for five, ten, and fifteen year terms and the judges who succeed them will be appointed for fifteen year terms. One of these judges is a former Governor, a former member of the bench of Rhode Island. Another member of the Court of Military Appeals was a member of the Supreme Court of Utah. One has been Dean of a Law School in Louisiana. This is a very capable group of men and they are the supreme court as far as the Services are concerned in military justice matters.

An accused has thirty days within which to appeal. If he decides to appeal, does he have to hire a lawyer? Let me say again he needs only to ask for a lawyer to represent him before the Court of Military Appeals. The Appellate Defense Counsel will put hard work into these cases and at times the Appellate Counsel have to be kept from flying at each other's throats. Appellate Government attorney-officers become so interested in their cases, can see only their sides of them, that personalities come into the picture. If any of you is retained by an accused to appear for him in the appellate review of his case, our Appellate Defense Counsel will be glad to assist you. It is best to go over the case with our people who have had court-martial experience and have them assist in arguing the case before a Board of Review or the Court of Military Appeals.

The accused can appeal to the Court of Military Appeals but it has a certiorari jurisdiction. Every death case must be reviewed by the court. Each case involving a flag or general officer is reviewed by it. Other cases may be appealed; and often petitions for review are prepared by civilian lawyers. The Court examines the petition and if there is any question of law involved, the Court of Military Appeals accepts the petition. If a petition is granted, briefs are filed with the Court, cases are set for argument, and the Court prepares its decision.

Those are the procedures under the Uniform Code of Military Justice. Now what of the human side of the matter—the man being tried for the various military offenses. When we started in this business of running military justice in the Air Force, it looked to us that in these courts-martial more attention should be paid to the appropriateness of the sentence, that it was not enough to be sure the accused had been proved guilty beyond a reasonable doubt and that there was no prejudicial error in his trial. We had a considerably greater responsibility to the public than that. Fine young fellows were coming into the service with no record against them, serving six or eight months, and then too many were being

kicked out with dishonorable discharges or bad conduct discharges tagged on them. They were infinitely worse off than when they put on the uniform. That should not happen except as a final alternative. We visualized our job for the Air Force especially in the face of the country's need for manpower as that of giving back good boys, boys better than when we got them. We were not just dealing with piles of papers or with numbers; we were considering matters of vital importance to people. General Harmon told our Air Force judge advocates throughout the world that he wanted them to do a post trial investigation in every case and give him a report, full and complete, about the boy involved in that trial. We have a chaplain talk to him, medics talk to him, and non-commissioned officers, and other people in his unit are asked about the accused. The judge advocate, the lawyer, should know how to evaluate people; that is a part of his training. We insist that he sit down and have a heart to heart talk with the accused after the trial is all over. Then the staff judge advocate reports to us the results of all these conferences. We in Washington want the whole story. We want to have the impression, when we study that post trial investigation, that the accused is standing before us. The judge advocate's report must paint a picture of the individual and give us his story, what made him commit the offense, what is his home background, what are his chances in life. By the word pictures painted by the chaplain, prison officer, doctors, and accused's friends, and by the accused, himself, we can see him as a person. These reports of post trial investigation, like a probation officer's report secured by a judge before passing sentence, have definitely served a purpose since we started the proposition in the Air Force and that is all I am speaking for. We have statistics to prove it if anyone is interested. The sentences as finally approved by the Air Force are considerably smaller than those imposed for the same offenses in Federal courts generally. The Air Force approves a comparatively small sentence for a delinquency in order to get our airmen back to duty or out as soon as we can. There is no use keeping him in jail unless it is a very serious matter and public protection is required.

We have an average, just bear in mind, of better than 350 cases a month. Our Boards of Review consider more than 350 convictions per month involving sentences for one year or more or dishonorable discharge or bad conduct discharge. They are pretty busy. They are putting in long hours and getting a lot of work done.

Under what we might call the Air Force philosophy, an average of eighteen per cent of the cases start with a reduction in sentence. The convening authority, the general out in the field, reduced the sentence imposed by court-martial in 866 cases out of 4,795 cases handled during the last fiscal year. They have no right to increase the sentence but can reduce it. Last year in twenty-eight per cent of the cases, or 1,360, execution of the discharge was suspended. The accused were placed on probation in many

cases out of the Air Force with an honorable discharge and not a dishonorable one. Boards of Review, let me point out, and this is different for appellate courts in civilian life generally, have the statutory right to weigh the evidence, determine controverted issues of fact, and judge the credibility of witnesses, bearing in mind that the court saw and heard the witnesses. Boards of Review often disaffirm weak cases even though legally the case is technically good. The Boards of Review have the right to decide the appropriations of sentences. In three per cent of the 4,795 cases I mentioned, or 162 cases, the Boards of Review reduced sentences on the basis of appropriateness and in 128 more cases, sentences were reduced for legal reasons. Sentences were reduced by the Judge Advocate General when they came in to him under the clemency powers which the Judge Advocate General has under the Code and implementing Air Force Regulations in 12 cases, and under such power, he suspended execution of discharges in an additional 151 cases. The Code authorizes the Secretary of the Air Force to substitute an administrative discharge for a punitive discharge imposed by the court, and the Secretary made such a substitution in 43 cases wherein accused, for cogent reasons, could not be restored to duty but had a war record which indicated the inappropriateness of a punitive discharge. When they couldn't be kept in and wouldn't be able to make a go of it, became an alcoholic or something like that, an administrative discharge was substituted for the punitive one.

You can see from what I have said that the procedure is detailed and does take time. But the rights of an individual accused of a violation of the law are fully and carefully protected and the young airman is given painstaking consideration by a group of officers having his best interests at heart. Compare this with the procedure in civilian life. Our boys, I believe, are given every protection and every consideration; more, I submit, than in any civilian community. A lot of success and good luck was had with this program in the Air Force. It returned to duty a lot of fellows who under the old system would have been kicked out with a dishonorable or bad conduct discharge. Many stay in the service and do a bang-up job in the Air Force. They are treated as individual cases, not as just a bunch of papers or numbers, and as a result my wife—and I am sorry she couldn't come with me today because of the illness of my Mother—and I know that one compensation for staying in the United States Air Force is the opportunity of sitting home and reading some of the letters we receive from some of these young men. I wouldn't take a thousand dollars for those letters from these young men whose cases come up before me in Washington. Some of them don't express themselves so well and their spelling may not be so good, but I will tell you those letters are the outpouring of hearts from young men all over the country benefitting from this Air Force system of the administration of what we believe to be real, true justice.

There is always a group of kids we can't do anything with.

They enlist to avoid the draft and when they get in they want to get out. They are always crying for their "BCD". We try to convince them that a bad conduct discharge or dishonorable discharge is going to be held against them all their lives. We should like the help of you lawyers in trying to impress upon young men all over America that a period of honorable service to their country, terminated in an honorable manner, is one of the greatest assets in the world. An honorable discharge from the service as everyone knows is a valuable thing for any young mana. A dishonorable discharge is one of the worst liabilities conceivable. We are trying to keep punitive separations from the Air Force to a minimum.

Now, if any of you have any questions after the meeting I will be glad to answer them. I appreciate more than words can tell the opportunity of being here and talking to you and I am very, very sorry my wife couldn't come along no this trip. Old familiar faces and old friends are the best friends after all and that is what you people out of North Dakota are to me.

PRESIDENT JOHNSON: Thank you, General Kuhfeld. That was an excellent demonstration. You are in a position which has rendered a service to all the people of this country. We want you to know we appreciate the fine message we received and we are very happy to know you are going to be with us throughout the balance of the convention. We are looking forward to seeing you again and having all the others meet you during your stay.

We now stand adjourned.

WHEREUPON, the meeting was adjourned until 1:30 P.M.

FRIDAY MORNING, AUGUST 6, 1954

The convention was called to order at 9:30 a.m. in Central High School, Grand Forks, North Dakota, President Johnson, presiding, and the following proceedings were had.

PRESIDENT JOHNSON: We will have two reports by Dean O. H. Thormodsgard. First the Report of the Committee on Judicial Selection.

THE COMMITTEE ON JUDICIAL SELECTION

Grateful acknowledgment is made of the invaluable assistance rendered The Committee on Judicial Selection by Ronald N. Davies, Executive Director, Miss Bonnie Jones, Miss Jane Berg and Miss Ardia Berg, cutting stencils, preparing the ballots, using the addressopragh and mailing out the ballots. The Committee on Judicial Selection could not function with speed and efficiency, unless the members resided in the same city as that of the Executive Director.

O. B. Burtness,
Harold D. Shaft,
O. H. Thormodsgard, Chairman.

The Committee on Judicial Selection Begs Leave to Submit the Following Report:

From time immemorial the King appointed the judges. This was also true in England. During the colonial times in this country, England provides the Colonies with judges under its appointive system. Following independence, The American government adopted the appointive system. However, with the experiences with some of the royal judges, the framers of the Constitution adopted a safeguard by providing for appointment of Federal judges by the President only with the consent of the Senate.

After the Revolutionary War, the states did not adopt a uniform system of selecting judges. In Connecticut, Rhode Island, New Jersey, South Carolina, Virginia, and Vermont judges were selected by the legislative assembly. In Massachusetts, New Hampshire and Maryland appointments were made by the governor's council. In New York a special council of appointment consisting of the governor and certain members of the legislature made the appointments to the Bench. Georgia was the first state in the Union in 1777 to provide for popular election of judges. In 1832 Mississippi adopted the election of Judges by popular vote. By 1860, 22 of the 34 states elected their judges.

There have been many modifications in several states as to the method of selecting judges since the Civil War. The present method of selecting state judges in several states may be classified under six broad headings:

FIRST: In the Commonwealths of Arizona, Arkansas, Idaho, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Washington, West Virginia, Wisconsin and Wyoming all of the judges are elected by the electors.

SECOND: In three states, Massachusetts, New Hampshire and New Jersey, all of the judges are appointed and none are elected.

THIRD: In two states, Delaware and Maine, nearly all the judges are appointed except the register of wills and probate judges.

FOURTH: In three states, California, Florida and Missouri, the supreme and appellate judges are appointed subject to confirmation by a commission.

FIFTH. In five states, Connecticut, Rhode Island, South Carolina, Vermont and Virginia the legislature selects most of the judges.

SIXTH: In fifteen states, Alabama, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee and Texas, most judges are elected and few appointed.

Even though in North Dakota all judges are elected, the record

will disclose that with the increasing age of the judges and the numerous cases of death and incapacities in office due to age, the majority of the district court judges are originally appointed by the governor. To a lesser extent, this is also true as to the supreme court judges. Therefore, there has been a trend in recent years for local and state bar associations, especially in those states where judges are nominally elected but as a matter of fact are customarily appointed by the governor in the first instance, to take an interest in sponsoring qualified lawyers for judicial positions. One method in use is to take a poll of the lawyers to determine who should be recommended to the governor for appointment.

On October 9, 1953, the Executive Committee of the North Dakota Bar Association passed the following resolution:

> "Mr. E. T. Conmy moved that the President appoint a committee of three to comprise a committee on Judicial Selection and Tenure whose duty it would be to conduct plebiscites for all Judicial appointments within the state of North Dakota, the mechanics to be handled out of the Executive Director's Office. Mr. Christianson seconded the motion. It was duly put and unanimously carried. Thereupon, President Johnson announced the following Committee on Judicial Selection and Tenure:
>
> O. B. Burtness of Grand Forks; Harold D. Shaft of Grand Forks and O. H. Thormodsgard of Grand Forks, Chairman."

President Vernon Johnson through the Executive Director, Ronald N. Davies, notified the Committee on February 8 that a poll of the lawyers would be immediately taken for nominees for recommendation by the Bar for appointment as the second United States District Judge in North Dakota. On February 12, nominating ballots were mailed out to all licensed attorneys in this state as certified by J. H. Newton, Secretary of the State Bar Board. All nominating ballots received up to 2 p. m. on February 20 were counted that evening. Sixty-seven lawyers were nominated. The Committee selected the ten names receiving the greatest number of nominations and placed them on the second ballot, which was mailed that same evening to all licensed lawyers. On March 1, 1954, the second ballots were tabulated and the Committee certified the three names having the highest rated votes to President Vernon Johnson. Those names were: J. F. X. Conmy, Ronald N. Davies and Mack V. Traynor.

Due to the death of the Hon. A. M. Christianson and the immediate need for filling the resulting vacancy on the Supreme Court of North Dakota, ballots were also mailed to the lawyers on February 13, 1954. All nominating ballots were due on Thursday, February 18, 1954, and were counted that evening. Fifty-five lawyers were nominated to the State Supreme Court vacancy. The Committee selected the ten names receiving the greatest number of nominations, which were placed upon a second ballot and mailed out that same evening. On the evening of February 24, 1954, the received second ballots were counted, 436 in number, and tabu-

lated. The three nominees receiving the highest rates votes were: A. J. Gronna, Nels G. Johnson, and Harold B. Nelson. The Committee certified the names of the three nominees to President Vernon Johnson.

On March 26, 1954, the Committee on Judicial Selection mailed to all members of the State Bar Association residing in the Second Judicial District a ballot for the purpose of securing nominations for the vacancy of the District Judge in the Second Judicial District occasioned by the resignation of the Hon. H. B. Nelson. Thirteen lawyers were nominated and sixty-one votes received. The seven nominees having the highest votes were placed on the second ballot, which was mailed out on April 7, 1954. All the second ballots received by the Committee by April 15, at 5 p. m. were counted. The one receiving the highest rated points "did not choose to run," and the next three highest nominees, A. Benson, L. C. Grimson and John Storman were certified to the President of the State Bar Association.

Due to the retirement of the Hon. J. J. Kehoe, the Committee mailed to all members of the State Bar Association residing in the Second Judicial District on May 17, 1954, nominating ballots. On May 25, the 62 ballots, which were received for seven nominees, were counted and the second ballots, with the names of the five persons receiving the highest number of votes, were mailed on May 26 to all members of the State Bar Association residing in the Second Judicial District.

On June 3, the Committee again assembled and tabulated the votes of the 60 ballots cast and certified to President Johnson the names of the three persons who had the highest rated points, who were T. I. Dahl, John A. Stormon and Obert C. Teigen.

Your Committee felt that the consensus of the bar would be best secured by permitting but not requiring the members to indicate on the second ballot their first, second and third choice, and that in the tabulations of the votes, first choice would be rated at three points, second choice at two points and third choice at one point. No complaint has been received as to such ratings.

The Committee also decided that in the cases of state wide plebiscites the ten lawyers receiving the highest votes would be placed on the final ballot. In the case of district vacancies we felt that the six highest should be placed on the final ballot. However on the ballot to fill the Nelson vacancy two tied for sixth place so we placed seven names on the final ballot. In the case of the one to fill the Kehoe vacancy only seven were named on the first ballot and the sixth and seventh were so low that we concluded to place only five on the final ballot.

One practical difficulty encountered is that sometimes a person receiving a high enough vote to be placed on the final ballot would refuse the appointment if tendered. Your Committee tried to contact by telephone all lawyers receiving such a vote and did not include on the final ballot the names of those indicating they would not accept appointment. However, in some cases contact was im-

possible and in other cases the lawyer had not reached a final conclusion, so some lawyers were included on the final ballot who later decided they were not interested.

The Committee is of the opinion that the lawyers had a real professional interest in these four plebiscites. From two-thirds to four-fifths of those eligible to vote did vote. In effect under the plebiscites, the function of making nominations is turned over to the State Bar Association as a unit for Supreme Court and Federal vacancies and to the members of the Association residing in the separate judicial districts for vacancies on the District Bench.

The question has been asked by some whether it should be the function of a State Bar Association to take a poll for a federal judgeship. The argument has been made that if such polls become the general practice, it would not be possible for a Republican Administration to appoint a Republican as a federal judge in the "deep south" or for a Democratic Administration to appoint a federal judge in some of the northern jurisdictions. Obviously the plebiscite is not binding upon any appointing authority.

Bar activities, whether on a national level or through the state bar associations, have a tendency toward the formation of the guild system. That is equally true in many vocational groups, whether it be medicine, law, plumbing, electricians or hair-dressers. The State is licensing vocational and professional groups. Such groups directly or indirectly by legislation are determining educational standards, professional standards, restricting those who may not practice and now in the case of the legal profession attempting to limit the selection of prospective judges to those approved by the Bar Associations.

All members of the Association, probably without exception, have a desire to keep judicial offices on the highest possible plane. Presumably with that purpose in mind the membership by a very large majority voted for the holding of plebiscites for all judicial appointments within the state. Your Committee has simply adopted some rules as to the mechanics such as providing for the number to be deemed nominated and accordingly listed upon the final ballot, the ratings of first, second and third choice, etc. and then acted as tellers and advising the President of the Association of the results.

Whether the method adopted less than a year ago and used in four cases is serving the purpose intended is for the membership to determine. Your Committee is no better qualified to judge the results so far than any other member of the Association.

Respectfully submitted:

O. B. Burtness, Grand Forks, N. D.,
Harold D. Shaft, Grand Forks, N. D.,
O. H. Thormodsgard, Chairman,
Grand Forks, N. D.

DEAN THORMODSGARD: I move that the report be accepted and filed.

DAVID DREY: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried.

Now, we will have the Report of the Committee on Legal Education and Admission to the Bar by Dean Thormodsgard.

The Committee on Legal Education and Admission to the Bar Begs Leave to Submit the Following Report:

I. The American Bar Association has adopted certain specific educational standards and policies. One standard is that it does not approve of office law study as a method of securing a legal education. There are 25 states, two territories, and the District of Columbia which do not recognize law office study. To be eligible to take the bar examination in those 28 jurisdictions, a person must be a graduate of an "approved" law school.

In 11 states, a person may qualify to take the bar examination by studying law in a law office for a period of four calendar years. In 12 states, a period of three years of law office study qualifies a person to take the bar examination. Minnesota and South Dakota have adopted the standards of the American Bar Association and do not give recognition to law office study. The Committee on Legal Education and Admission to the Bar recommends for legislation in 1955 that law office study, either under a judge or an attorney, should not qualify the person to take the North Dakota Bar Examination. The Committee favors the standards and the policies of the American Bar Association.

II. The Committee recommends that the program of Continuing Legal Education for lawyers carried on by the North Dakota Bar Association should be encouraged and supported by all lawyers. The Committee feels that the program represents one of the most valuable and significant developments in the field of legal education.

Respectfully submitted,

C. L. Foster of Bismarck,
Herbert G. Nilles of Fargo,
Chas. H. Shafer of Hillsboro,
O. H. Thormodsgard of Grand Forks.,
Chairman.

DEAN THORMODSGARD: I move that the report be accepted and filed.

LOWELL O'GRADY: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. We will have the report of the Committee on Law Office Management by A. I. Johnson, Chairman.

REPORT OF THE COMMITTEE ON LAW OFFICE MANAGEMENT

In attempting to make a study and report on Law Office Management your Committee has held various meetings and conferences in an effort to determine what subjects should be included in such a report as well as what subject material should have consideration and be submitted to the Convention. Needless to say the subject itself covers a tremendous field and cannot possibly be fully considered in a limited study such as this. Books have been written on the subject and every lawyer present undoubtedly has his or her own private opinion as to what constitutes necessary and good office management.

The committee wishes it clearly understood that most if not all of its report is not original, that its recommendations and suggestions are not absolute and exclusive, that the committee recognizes a great variety of ideas both applied in practice and dreamily played with by members of the bar. The committee also recognizes that a report on a subject of this type will almost unavoidably encroach upon other fields of legal practice.

In approaching the subject it was found that there were so many avenues for investigation that the committee was broken down to make separate studies with the result that this consolidated report, conveivably, is not necessarily a 100% concensus of opinion. It is to be hoped that some of the ideas and suggestions will catch the attention of the members of the bar and be of some benefit to them.

The practice of law is not a profession which can be made to conform to set rules. It is highly individualistic and any attempt to confine its office management phase within hard and fast lines is ridiculous. It is entirely conceivable that a lawyer could become a slave to office routine, to the budgeting of his time, living by the clock and by the rules he himself has laid down to his utter discomfort and a very disagreeable social and professional existence. On the other hand it must be frankly admitted that too many lawyers operate "by guess and by gosh," without regard to many factors which in business would be disastrous. The legal profession can be both interesting and rewarding if a proper balance is maintained.

This study or report is giving no consideration whatsoever to the personal conduct of the lawyer, his public relations, his civic and political activities, though all of these are large factors in his professional success. The report is confined to the physical and tangible aspects of managing the practicing lawyer's office. It is readily understandable that the problems of such management differ widely in each office, with the nature of the specialties, the size of the firm, the prominence of the members of the firm, the location of the office, etc. The office management problems of the sole practitioner in a one-lawyer city differ widely from those of a large city firm. The committee recognizes such distinctions.

One of the major problems in any law office is keeping track of the great variety of matters which may come to a lawyer's desk.

At this convention there is a special panel headed by Attorney Norman Tenneson dealing with the subject of check lists and allied subjects. It is absolutely essential that a lawyer not rely upon his memory only.

In most types of legal proceedings certain orderly steps are required. Proper check lists should be used to see that such steps are properly taken and in proper season. This is true whether the procedure is a mortgage foreclosure, a bankruptcy proceeding, a probate or most any other legal work. Books have been written, and printed forms provided to keep track of these procedures, though we fear not many are used. There is perhaps more justifiable criticism of members of the bar for failure to take care of matters entrusted to them in proper season than for any other cause. Procrastination is not only the thief of time, but often the nemesis of the lawyer. In connection with check lists and punctuality special emphasis should also be placed upon an adequate tickler system. I am sure we all have at some time or other realized that some matter has been permitted to lie dormant when it should have had attention. No doubt larger firms with divided responsibilities require constant alertness, but the individual practitioner requires even greater care in keeping track of his business. As a personal observation I would like to say that these two problems of watching so that everything is done that must be done, and, that matters are not permitted to drag, constitute my greatest headache, both in my office and in dealing with lawyers in almost every corner of the State of North Dakota. It is a real pleasure to deal with lawyers who are prompt, accurate and punctilious in their dealings.

It has been calculated that the average lawyer, in order to have a reasonable annual income must make a minimum charge of $7.00 to $15.00 per hour for his services. The difficulty, of course, is that services cannot always be calculated on a time basis like that of a laboring man. However, clients often are critical of charges for what would appear to be a minor service, but which nevertheless takes considerable time. To overcome such criticism by clients and the public generally many lawyers maintain daily logs. There are a number of daily logs that have been put out by various publishers; for instance, those published by the Kirsten Publishing Company of Fort Dodge, Iowa, Charles H. Baker of Jackson, Michigan, and Colwell Publishing Company of Champaign, Illinois. Some lawyers have devised their own Time Logs. Some such logs can also be used as appointment books and even as cash books. This would be entirely unsatisfactory in a larger office. Time Logs should preferably be of the loose leaf type as this simplifies the making of charges and filing the daily sheets as a permanent record. Bound volumes become too cumbersome. Such Time Logs are very useful in arriving at a proper charge, and even in cases where the fee has been agreed upon in advance it will serve to satisfy the client as to its reasonableness in many cases. If he is shown the actual amount of time spent on a particular matter he can more readily understand and approve the charge. As I understand it, it is a common prac-

tice in larger offices to enter client charges from the Time Log. Whether such Time Logs are used exclusively or not, I am sure that the average lawyer would be much surprised to find how little he often was charging on an hour basis to many clients. Lawyers' earnings, according to a recent study, have not increased in proportion to the other professions such as medicine, dentistry, and others. The reason no doubt is failure on the part of the lawyer to realize the inadequacy of his charges when considered on a time basis.

On the subject of how to discuss fees with a client it would seem the best practice to discuss openly the various contingencies that may affect the fees. I suppose every young lawyer has at some time or other arbitrarily quoted a fee for certain work only to find that entirely unexpected developments have multiplied his work. The average client will readily understand this if proper preparation and explanations have been given. Even so-called routine matters often result in additional work. The generally established fee with a proviso in case of complications, properly explained in advance, makes for better public relations. Excessive charges are damaging to the legal profession as a whole though made by a small minority of the bar. The honor of the profession and the good will of the public must be safeguarded. Taking advantage of lush fee opportunities is dishonorable. Contingent fee arrangement, while legal and proper, should be carefully screened. Grudge suits should be detected as well as instances of uncollectable judgments from which the fee is to be paid. A retainer with a percentage would seem to be the answer.

While the matter of fees is not within the province of this committee, the matter of how to discuss and arrange for them would seem to be. The committee would urge retainer arrangements wherever possible, thus assuring the bar of some income regularity and rendering a service to the client by constant availability of proper counsel before difficulties arise. Such retainer arrangements could be on an experimental basis until the amount of work is determined. They would also eliminate or reduce the telephone consultation problem.

Every lawyer has had dealings with "shoppers," either over the telephone or by office calls. If the members of the bar generally could be made to realize that fee cutting and inadequate charges are detrimental to all the members of the profession, including those who indulge in such practices, the results would be most salutary. There is no method by which such practices can be terminated except by all quoting the minimum fee schedule as a minimum. "Shoppers" ordinarily are not very satisfactory clients in any event.

Something should be said about personnel. A good secretary or stenographer is a very valuable asset to an office, relieving the lawyer of much detail and routine work. Personality *and* ability are requirements. Perhaps no trade or profession needs as intelligent and careful stenographers as the law. Their salaries should reflect these requirements. Also there are rush periods and slack periods in any law office. A few days off during slack periods will improve morale

and will make up for overtime when needed. A stenographer is human and should be so treated, with careful planning of her work as well as the lawyers.

Voice writers are coming into increased use. Several excellent products are available. They have definite limitations in a law office, but many advantages. The cost is considerable, perhaps $500.00 to $1,000.00. They make possible dictation at any time, recording telephone conversations, transcribing without waste of time in receiving dictation, assignment of work for absences from office, etc. A surprisingly large proportion of busy up-to-date offices now have such equipment. In a law firm it may save the salary of a stenographer. It would be improper to name specific equipment but the committee would suggest contacting supply firms and lawyers now using such equipment for experience reports.

Law libraries are a headache in all law offices. It is natural that everyone wants available tools for a complete workshop. However, the amount of use of each volume is on the average in most offices rather small. Establishing central libraries has its problems as well as its limitations. Local bar associations in our larger cities or counties could properly give considerable study to establishing such central libraries. I believe it is safe to say that no lawyer or firm in North Dakota can efficiently maintain a complete law library, not only from the original cost standpoint but from the standpoint of rents payable to house such collections. The problem is cumulative and the end is not yet in sight. The committee suggests considerable sales resistance to book salesmen.

There are, however, certain minimum or basic needs of every lawyer in the way of books. Here are our suggestions in the order of their importance:

1. North Dakota Code with supplements.
2. A copy of federal statutes. Inexpensive copies are available from the Government Printing Office at substantial savings.
3. City ordinances.
4. Dictionaries, both law and English.
5. A good form book, especially for the young practitioner.
6. Some Cydopedia of the law. Two are common, American Jurisprudence and Corpus Juris.
7. Reporters. Northwestern would seem to be most essential for a North Dakota lawyer. Appropriate citators such as Shepards will give much help, supplementing Volume 7 of our 1943 Code.
8. A Digest such as Dakota or Northwestern Digest is very helpful.
9. Special publications and services covering Taxes, Wills, Motor carriers, etc. are good but serve a special purpose and are not generally needed.

The library problem differs with the type of work engaged in and the location of the office. Obviously it is not always practical for a lawyer to travel miles to borrow a book. Also lawyers hesitate

to loan books because the missing volume may be the very one needed and all their investment is useless in a given case. Let's not be too critical of the reluctance of library owners to let out books.

Indexing and filing are very important in a law office. I suppose all of us, at one time or another, have visited a brother attorney's office and have noted the problem he has of locating a matter. Disorderliness, while perhaps temporarily convenient, can become very inconvenient and expensive. File folders or file envelopes properly numbered and indexed for all major matters is a must. Miscellaneous matters may be indexed without folders. Abstract opinions and briefs should have adequate indexes, properly cross-indexed. Card indexes are preferable, especially where the files are numerous, as they permit shuffling for easier location. The committe suggests a careful review of the filing and indexing systems as now in use in every law office and urges amplification and/or correction now as it will never be easier.

With the problem of filing and indexing goes the problem of storage or destruction of old files. We have no solution to suggest. Micro-filming has been proposed and perhaps in certain highly specialized offices this would be practical. Files simply will have to be destroyed in time and perhaps we are too squeamish about it. They could and perhaps should be culled before destruction.

A report such as this is not complete without reference to the use of prepared and printed forms. The committee feels that after a form has been prepared and checked and approved by the practitioner it should be used in the future. Recording is simplified and the possibility of errors or omissions in personally dictated instruments is avoided. Public reaction to the use of printed forms vs. dictated forms is cited both ways. Needless typing of standard forms to impress clients would not seem justified even though there may be parts of forms not as we would want them. In this connection we would urge greater care and thought to the preparation of forms for printing. Many now in use should be thoroughly revised and if possible standardized for the state. Building up a properly indexed collection of forms for various purposes personally planned, prepared and tested is a very valuable aid to efficient law office operation.

One more subject should perhaps have some consideration — that of sole practitioners as compared with partnerships. Needless to say both have distinct advantages. Almost unlimited arrangements are possible for a firm. There are no standards. In building a firm, preferences and specialties should be carefully considered similar to that used in building a medical clinic. Preliminary employment on a fixed salary followed, if service is satisfactory, by a share of the earnings is common. The advantages of consultation, vacations, substituting appearances in case of conflicts, illness, office economies, etc. are self-evident. The conflict of personalities is a natural resultant from joining forces. The sole practitioner is more his own boss, can charge himself only with errors and omissions,

engages in a more personal and intimate practice of the law, perhaps, and has more friends (and perhaps enemies) than the more impersonal firm member.

To conclude may we again observe that law, like business, needs good management. Theories are fine but must be activized. Your case may be sound, your proof excellent, but it's the verdict that counts. Your committee hopes these observations will stimulate some thought leading to better law office management.

Respectfully submitted,

Herman Wegner,
Franklin J. Van Osdel,
George A. Soule,
J. Gerald Nilles,
John S. Whittlesey,
Myron H. Bright,
Bessie Olson,
A. I. Johnson, Chairman.

MR. A. I. JOHNSON: I move that the report be accepted.

GEORGE A. SOULE: I second the motion.

(Question put and motion carried.)

PRESIDENT: Motion carried.

We will have the report of the Committee on Public Relations by Harold W. Bangert, Chairman.

REPORT AND RECOMMENDATIONS — COMMITTEE ON PUBLIC RELATIONS — STATE BAR ASSOCIATION OF NORTH DAKOTA

To the President and Members of the Association:

Your Committee is the first of its kind to be appointed by a president of the Bar Association. Because we have had no previous pattern to guide us, we have felt that we should first carefully evaluate the work done in the public relations field by other bar associations before beginning public relations activity in North Dakota. We have therefore held several meetings devoted to a general discussion of PR work and have attended the Midwest Institute on Public Relations for the Bar at Ann Arbor, Michigan.

The Midwest Institute merits particular comment. Prefaced by preliminary meetings commencing November 3rd, the Institute proper consisted of a series of lectures and discussions beginning the morning of November 4th and ending in the evening of that day. Some 150 attorneys from ten states, ranging from Oregon to New York and from North Dakota to Texas, attended the meeting. The Institute leaders included professional public relations men, psychologists concerned with measuring human behavior, representatives of the press, radio, television, the Director of Civic Affairs of the Ford Motor Company representing industry, and several distinguished lawyers who have concerned themselves with the problem of public relations. As might be expected, the various presentations of the lawyers were, in the opinion of your Commit-

tee, the most worth-while part of the meeting. The impression gained at this Institute has influenced the thinking of your Committee members during their term of office.

We have assembled many samples of work done by other PR committees and have studied the most recent publication of the American Bar Association on the subject. "Public Relations for Bar Associations."

Analysis of the Problem

It is currently fashionable in bar association circles for lawyers to excoriate themselves as members of a decadent profession which is rapidly losing, or has already lost, the confidence of the public. Qualified commentators have reached this conclusion as to the profession generally in the United States. We do not subscribe to it as to the profession in North Dakota. We believe that this Committee's assignment is to relate to the public the over-all excellence of the members of our profession and their contribution to the public welfare, rather than through means of advertising aspects of our profession, or through similar means to distract the public's attention from our shortcomings.

We believe in the positive approach. In North Dakota we believe that there is no such job of housecleaning to be done as exists in metropolitan areas where bar associations are particularly active. Our belief is strengthened by the results of public opinion polls in Iowa, Texas, and Minnesota, states having substantial agricultural areas, which disclose that the public does in fact have many favorable attitudes toward lawyers. By this comment we do not mean to minimize the significance of the very substantial group who have negative attitudes towards our profession.

By these assertions we do not deny the existence of a PR "problem" in North Dakota. We believe that lawyers can be raised immeasurably in the public esteem by this Association, and the members of it, doing certain things which have been suggested by the Committee. We have felt it to be the first function of this Committee to act as PR counselors, guiding the present activity of the Bar so that the constructive work of the Association may be brought to public attention.

We hasten to point out that for many years this association has had standing committees charged incidentally with the responsibility of promoting the public relations of the Bar. The particular committees which in our opinion function in this field are Ethics and Internal Affairs, Legal Education and Admission to the Bar, Jurisprudence and Law Reform, Judicial Reform, Judiciary, Legal Service to Armed Forces, Law Office Management, Traffic Safety, American Citizenship, Constitution Award, Juvenile Problems, Unauthorized Practice of the Law, and Continuing Legal Education. As the names of these committees suggest, the function of each one is related to the public's view of our profession as a whole. We conclude that it is not the function of the PR Committee to inject itself into the operations of the foregoing com-

mittees, even though the action of these committees bears on a solution to the "problem."

On these basic premises we have viewed it to be this Committee's function to create a systematic and sustained program directed to the education and re-education of the Public to the fact that in North Dakota ours is an honorable profession whose members are competent and honest and who are leaders in the furthering of the public welfare.

Foundation for Good Public Relations.

> "Neither a committee nor an association can impose or create the ingredients that make 'relations' satisfactory. It is an 'inside' job — one that can be done only by the individual lawyers; not by resolutions or preachments or press releases." Burton J. Thompson of Iowa, 1951.

While our basic premise is a positive one, we believe that to have good public relations members of the Bar can be made more conscious of the part each of them plays in the standing of the Bar as a whole in the eyes of the public and it is the function of this Committee to alert members of the Association to the importance of their individual responsibility. This does not in any manner imply that the Committee has considered itself as the arbiter of the conduct of the individual lawyers in his relations with the public. The Committee should, however, attempt to improve this foundation through the creation of an esprit de corps among the members of the Bar.

Methods

An erroneous assumption that our problem in North Dakota is comparable to the problem in metropolitan areas might well lead us to the adoption of many of the methods used in metropolitan areas to improve the Bar's public relations. We think this would have been a mistake. The Committee has seen many examples of "Bar advertising" in which lawyers "toot their own horns". We question the usefulness of such an approach in North Dakota. On the other hand, the Committee has many examples of advertising by insurance companies, banks—including one excellent advertisement by the First National Bank of Grand Forks—in which the advertising institution explains the importance of lawyers. This seems to us to offer a dignified method of getting our story to the public and we recommend that our successors explore it fully.

Over the years the Association has done a distinguished job in its newspaper series "Know Your Law" and, under the able direction of Mr. Davies it has completed a similar series for radio broadcasts, "This Is This Law". Through the cooperation of the North Dakota Broadcasters Association this series of thirteen fifteen-minute shows has been used by every radio station in the state. We believe that our successor, should now explore the use of Television for similar activity.

Particularly effective work has been done in past years in the preparation of pamphlets which have been circulated through members of the Bar, banks, etc. as an aid to the public's general understanding of common legal problems. The Committee deems it important that this activity be supported and has assembled the preliminary data upon which an expansion of this activity may be based.

In rural communities in Massachusetts there has been developed by the Bar a method of participating in adult education classes being conducted in the public schools. This field should be explored in North Dakota.

Various polls have indicated that persons unfamiliar with our profession hesitate to use lawyers because of a fear of becoming involved in an unsatisfactory fee transaction and that a very substantial percentage of persons needing legal service get along without it or attempt to find a substitute in banks, insurance men, accountants, and others. This situation has been met with great success in many communities through the use of the "Lawyer Reference" Plan. At the Committee's suggestion the Cass County Bar Association has taken the steps necessary to initiate this activity in Cass County, with the expectation that the lessons learned there will be of value to other local bar groups throughout the state.

The Committee has prepared and circulated to lawyers two guides for public relations, "Confidentially for you, Mr. Attorney", and a law office rating chart first prepared by the Wisconsin Bar Association.

The Committee believes that it is important that since each lawyer is an integral part of the public relations activity of the Bar, so each lawyer must be kept currently advised of that public relations activity and therefore it has published a monthly News Letter. The Committee leaves to its successor as an open question whether the sustained effort required by such a publication is warranted. The Committee has received no negative comments on the New Letter, but it has received very few positive ones. Some committee chairmen have taken advantage of the News Letter to keep the Bar informed of their activities. Others have not been heard from. If there are future editors of this publication we can say from experience that they will greatly appreciate such an offering of material for publication so that their jobs will consist of editorial selection rather than digging.

The members of the Committee wish to express their personal appreciation to President Johnson and Director Davies for their continuing willingness to work with the Committee members in considering and evaluating PR proposals for North Dakota, all in addition to their own heavy schedules of Association work.

Respectfully submitted,
Norman G. Tenneson
Mart R. Vogel
Harold W. Bangert, Chairman

MR. BANGERT: I move that the report be accepted and filed.

ROBERT Q. PRICE: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. We will now have an announcement by Henry G. Ruemmele.

MR. RUEMMELE: Through the courtesy of various publishing concerns and friends, we have a number of books to give away. I will read the list of them and proceed to give the books away. The books have been donated to this convention as door prizes without any charge and we are duly grateful to the people who have donated them. The books were awarded as follows:

Robert A. Fiedler — Fort Yates
"Military Tribune and Military Crime"

William S. Murray — Bismarck
"Judicial Humorous"

Sam Dolve — Fessenden
"Lawyer Forms"

George Unruh — Petersburg, Fla.
"Trial Tactics and Experiences"

Ray A. Ployhar — Valley City
"Book of Forms"

PRESIDENT JOHNSON: The next order of business is going to be election of officers. Now, I will entertain nominations for President.

CHARLES L. FOSTER: I nominate John A. Zuger for President.

GEORGE A. SOULE: I second the motion.

CHARLES L. FOSTER: I move that nominations be closed.

JOHN HJELLUM: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: The Secretary has cast a unanimous ballot for John A. Zuger for President.

(Applause.)

PRESIDENT JOHNSON: We will now have nominations for Vice-President.

PHILIP R. BANGS: I nominate Carroll E. Day of Grand Forks.

ARLEY R. BJELLA: I nominate Roland A. Heringer.

HOWARD MOUM: I second the nomination of Roland A. Heringer.

LOUIS NOSTDAL: I second the nomination of Roland A. Heringer.

C. A. WALDRON: It is a great pleasure to second the nomination of Roland A. Heringer.

PAUL AGNEBEGR: I second the nomination of Roland A. Heringer.

GEORGE A. SOULE: I move that the nominations be closed.

PHIL GARBERG: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. While ballots are being passed out we will have the report of the Committee on Law Lists by John A. Stormon, Chairman.

REPORT OF LAW LISTS COMMITTEE

To the State Bar Association of North Dakota:

Your committee on Law Lists reports as follows:

1. During the year we have had one inquiry from a member of the association in regard to Law Lists, which was promptly answered giving such information as was available.

2. We believe that the standing Committee on Law Lists of the American Bar Association is doing effective work, and that the American Bar Association should be commended in its handling of the Law Lists problem.

3. We urge all members of the Association to subscribe only to Law Lists having the Certificate of Compliance from the Committee on Law Lists of the American Bar Association.

4. We urge all members to carefully investigate before subscribing to Law Lists when solicited, and if information is not readily available, to contact the Committee on Law Lists of the State Association, or the Committee on Law Lists of the American Bar Association, as to the National Regional and Local value of the List.

5. Only in this manner can we cooperate and make the work of the State Association and the American Bar Association effective.

6. We recommend that the Law Lists Committee of the State Association be continued as a safeguard to the members of the association.

Respectfully submitted,
Mack V. Traynor
F. E. Foughty
A. R. Jongewaard
John A. Stormon, Chairman

MR. JOHN A. STORMON: I move the adoption of the report.

CLYDE DUFFY: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried.

HERBERT NILES: I move the committee report be sent to the Committee on Law Lists of the American Bar Association.

MR. STRUTZ: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. Now we will have nominations for the office of Secretary-treasurer.

GEORGE LONGMIRE: I nominate Robert A. Alphson.

WARD M. KIRBY: I nominate John E. Rilling.

MR. NOSTDAL: I second the nomination of Robert Alphson.

HERBERT G. NILLES: I second the nomination of John E. Rilling. I believe it should be passed around to the younger members of the Bar. It gives them some motive to interest themselves in Bar activities.

JAMES E. LEAHY: I move the nominations be closed.

HOWARD MAUM: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. I will appoint a ballot committee to count the ballots for Vice-President: Judge Wegen, Bob Wentzel and Obert Teigen.

We will have the report of the Committee on Tax Laws by Ralph W. Bekken, Chairman.

REPORT OF TAX LAWS COMMITTEE

The Tax Laws Committee of the State Bar Association of North Dakota herewith submits its report on its activities during the past years and makes it recommendations.

Your Committee gave considerable attention to the matter of possible revision of Section 57-3711 (2) (b), which is the provision which prohibits "terminable interest" from qualifying for the marital deduction to the surviving spouse under the state estate tax law. It should be pointed out that the 1951 amendment to the state estate tax law had apparently been made with the view of bringing the state policies on estate taxation into line with the federal policy and law. However, in amending the North Dakota provision, the legislature had not adopted the federal practice of allowing a basic exemption to each estate in any amount. It is believed that there has been considerable hardship resulting to rather small estates in which the surviving spouse received less than twenty thousand dollars in property, none of which qualified for the marital deduction because it consisted entirely of terminable interests in-eligible for the deduction. While the legislature may have intended a basic exemption of twenty thousand dollars to the surviving spouse, the law does not presently provide such basic exemption. In considering the suggestion that this Committee recommend an amendment to the law which would provide that such terminable interests would qualify for the deduction to the extent of twenty thousand dollars, with certain limitations, it was pointed out that the terminable interest rule serves a laudable purpose in that it excludes property from the marital deduction which could very easily escape taxation in the estate of the surviving spouse if he or she had not found it necessary to use such property during his or her lifetime, and further that such a provision could very well make a loophole in our tax law. It was felt by all members of the Committee that it would be preferable for the legislature to consider a basic exemption to each estate, without recommendation as to the amount

of such basic exemption, with a repeal of the present exemptions provided for children, adopted children or step-children as contained in 57-7312 (1) (a). Thus each small estate, whether composed of terminable interests or otherwise, would have a blanket exemption up to a specified amount. The basic exemption would take the place of specified exemptions presently allowed to children, but would not affect the marital deduction made to the surviving spouse as presently written in the law. It was indicated also that this step would bring the state estate tax law into harmony with the federal law in this respect. Your Committee, therefore, recommends that it would be preferable for the legislature to consider a basic exemption to each estate, without recommendation by this Association as to the amount of such basic exemption, with a repeal of the present exemptions provided for children, adopted children or step-children.

The Attorney General on August 25, 1953, ruled that the estate tax for the estate of every resident decedent must first be determined by the County Court. This Committee therefore recommends passage of a validating act with respect to estate tax determinations made by the *Tax Commissioner* before August 25, 1953, for estates of *resident* decedents all whose property is owned in joint tenancy.

Your Committee favorably recommends amending sections 40-1304, 40-1904, 57-0233 and 58-0901 to provide for increased compensation for assessors in order to induce capable and qualified persons to accept the office.

It is recommended by the Committee that six percent interest payments be made by the State on refunds of overpayments of real estate tax and income tax and that the tax pay six percent on deficiencies of late payments where a return has been filed.

Your Committee recommends that consideration be given to enactment of a law providing reciprocal enforcement of tax collections between the states.

Your Committee recommends that the members of the Tax Committee appointed for the coming year take under consideration the problem of amending appropriate sections of the use tax law, Chapter 57-40, to require or not a use tax on tangible personal property not originally purchased for use in this state but thereafter used, stored or consumed in this state, the intentions of any such amendments being to put users, storers, or consumers of such property on the same competitive basis as all other users, storers or consumers.

Respectfully submitted,

TAX LAWS COMMITTEE

Ward Kirby
Paul McCann
Kenneth Jakes
Dudley W. Butts
Kenneth Eckes
Ralph W. Bekken, Chairman

MR. BEKKEN: I move the adoption of this report.

A. J. PEDERSON: I second the motion.

(Questions put and motion carried.)

PRESIDENT JOHNSON: Motion carried. Roland A. Heringer has been elected Vice-President.

SENATOR DAY: I move the unanimous election of Roland A. Heringer as Vice-President.

PHILIP R. BANGS: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. The secretary will cast a unanimous ballot for Roland A. Heringer for Vice- President.

Harvey B. Knudson, Chairman of the Legislative Committee, will give the report of that Committee.

REPORT OF THE LEGISLATIVE COMMITTEE

The Legislative Committee has not met since the 1953 convention of the State Bar Association and therefore the committee will not have any definite recommendations to make the 1954 convention of the State Bar Associaton of proposed legislation to submit to the 1955 Legislative Session. However, this committee has for consideration the several matters held over from the previous committee as reported in the report of the Legislative Committee to the 1953 convention of the State Bar Association, which report will be found in the October, 1953 issue of the North Dakota Law Review. These matters should be given further study and consideration by this committee before the convening of the 1955 Session of the Legislature, and where deemed advisable recommend bills to be presented to the Legislature. In addition your committee has received from many members of the bar suggestions of matters for the consideration of this committee and presentment to the Legislature. These suggestions include:

A Short Form Probate of Foreign Wills, similar to that adopted by South Dakota.

A type of validating Act which would be a bar or limitation on any action brought to challenge the absence or inefficiency of addresses of grantees of Deeds.

Favoring an increase in the Lawyers License Fee and that a share of said increase be alloted to the State Bar Board to carry on its functions.

That the law require a publication of "Notice to Creditors" and a suitable time be permitted in which the creditors could file a claim against the one-half interest of which the decedent died possessed, in joint tenancy property.

Changing the personal liability of Directors of North Dakota corporations to that presently used and in effect in the State of Minnesota.

Requiring Hearing Officers employed by boards or commissions of the State to be a lawyer.

To alleviate crowded dockets in certain of the District Courts that either (1) additional judges be secured in those districts, or (2) redistricting so that the case load would be more equally distributed.

Amendment of Section 39-1704 to provide for service of the summons and complaint upon the Attorney General and Highway Commissioner in cases involving the unsatisfied judgment fund, and provide for the appearance of the Attorney General on behalf of the unsatisfied judgment fund as party defendant.

To provide by legislation if necessary for the uniform application of Register of Deeds recording fees in the several Counties throughout the State, because at present the recording fees vary from County to County.

Provide for a landlord's lien permitting the landlord to hold the personal property of a tenant until the payment of rent.

To authorize Municipalities and Counties to discontinue the use of lands for park or recreational purposes which have been set aside and transferred to such Municipalities or established by the Board of County Commissioners as a County Park under the provisions of Section 11-2708 of the North Dakota Revised Code of 1943, and to authorize the sale by the Municipality or the County for any purpose. Also to validate the sale of any such lands by the Municipality or County previously made.

Respectfully submitted,
C. C. Wattam
Carroll E. Day
Alvin C. Strutz
William S. Murray
Ralph G. Beede
Clyde Duffy
Donald H. Crothers
Adam Gefreh
Harvey B. Knudson, Chairman

MR. KNUDSON: I move that the report be accepted.

LINN SHERMAN: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried.

(Whereupon, Vice President John Zuger assumed the rostrum and presented President Vernon M. Johnson, who gave his annual report.)

(Applause.)

(Whereupon, President Johnson read his annual report, as follows:)

ANNUAL REPORT OF VERNON M. JOHNSON, PRESIDENT

This is the joint report of myself and the Executive Director.

During the past two years, it has been my privilege to visit with Bar Association officers and personnel from a great many states. Naturally, you exchange ideas and compare operations and accomplishments.

I have come to three general conclusions as a result of these interviews. First, most State Bar Associations and the ABA in particular, have enjoyed a great revival of interest and activity among their members. Second, our North Dakota Bar Association on its record of accomplishments, compares favorably with the best in the nation. Third, much progress has been made in elevating the standing of the Bar but we have made only a good start in this direction.

Until I attended the Presidents' and Secretaries' Council of the ABA, I never had a proper appreciation of some of the most important achievements of our State Bar and I daresay that that is true of most of our membership. I would like to mention only a few of them. We were the first integrated Bar in the United States. Many Associations are still carrying on a determined fight to accomplish this. Our attendance at our annual meeting is among the best and this meeting is another indication of that. We have excellent participation by our membership in Association activities. We have reasonably adequate financing. Our record of cooperation with the Legislature is the very best on an outstanding program of service to our individual members and to the public. We have one of the highest percentage of ABA members of any State Association. We were sixth in the nation to subscribe our quota to the ABA Bar Center. We have a very able representative on the Board of Governors of the ABA in the person of H. G. Nilles, and there are only fifteen members on the Board. In 1951 we received the ABA Award of Merit based upon our record of service in competition with 24 states. Finally, I am happy to report, we have one of the best Executive Directors in the business.

In analyzing this record, I attribute our success as an Association to three basic facts. First, and foremost, the great and active interest and cooperation of our membership; second, we have reasonably adequate financing and third, because of adequate finances, we were able to employ a part time Executive Director.

In preparing this talk, I reread the reports given by our past presidents and Executive Director commencing with the 1948 convention, the first convention after the enactment of the fee bill. It is significant to note how many of the projects suggested in these earlier reports have been carried forward to fulfillment. The latest example is the Code Revisor which was recommended in 1949. I would like to review with you briefly these projects under two general headings, namely, service to the public and service to our individual members.

As a general proposition, all of our bar activities can be divided into these two classes of service. I think it is also true to say that our public relations and standing as an association is based largely on the quality and extent of these two services. There are several reasons for going into detail on the scope of these services. First, as a preliminary to a discussion of our finances; second, to clarify my recommendations as to a future course of action; third, I covered much of this material in a speech delivered at the meeting of the Second District Bar in Devils Lake two weeks ago and a great many

lawyers came up to me afterward and said they had no idea of the number or scope of activities the Bar had sponsored and was sponsoring for the benefit of the public and our membership. It is my firm opinion that we have faithfully met our obligation of public service as set forth in Chapter 228 S.L. of 1947. Aside from activities within the Bar Association such as American citizenship and constitutional awards, etc., there is the "Know Your Law" series and last but by no means least, the "This Is The Law" series — a thirteen week series over all the stations in North Dakota who donated their time and cost some $1,500.00. This has chiefly been accomplished through cooperation with the Judicial and Legislative branches of our state government.

We have made and are in the process of making great strides in improving the administration of justice in our State. Through the Judicial Council, we earmarked $2,500 for a critical analysis of our Judiciary. Some of the recommendations have been carried out and others are being pressed for consideration at this convention. We have helped revive interest and activity in the Judicial Council. We have materially strengthened our Judiciary at the District and the Supreme Court level by supporting and securing substantial increases in salary, disability benefits and a retirement plan. Through the capable efforts of our Committee on Rules of Civil Procedure, we have had for consideration at this convention new rules patterned after the Federal rules. These rules have been approved as indicated after by the Judicial Council. Our Judiciary Committee report makes recommendations for the creation of the office of permanent Chief Justice, mandatory retirement of Judges at the age of seventy, plus liberalization of the Judicial Retirement Act. This past year, as was indicated by Dean Thormodsgard, we have conducted several plebiscites for vacancies on the District bench and one for a vacancy on the Supreme Court and in each instance, the Governor has filled the vacancy from the list of names recommended through the poll of members of the Bar. All of which has resulted in a better understanding and a closer cooperation between Bench and Bar with the resultant improvement in the administration of justice.

As lawyers, we must maintain a healthy interest and respect for the Legislature and its offspring, the administrative agency and it should be remembered always that a free and representative Legislature is the hallmark of democracy. There were able and impartial courts in the days of imperial Rome but there has never been a free and representative Legislature save in a democratic society.

In my opinion, it is in the legislative branch of our government that we have made the greatest strides in public service. A great deal of credit is due the members of the Bar, who have served and are serving in the Legislature, for many of the reforms and improvements in our Legislative process. Reforms initiated and supported by lawyer legislators include the creation of the Research Commit-

tee, Rules of Procedure, Rules on bill drafting, our up to date Cummulative Supplement, etc.

As an association we have worked in close cooperation with the Research Committee. We have hired and paid for assistants to work with them. We have hired or paid for bill drafters during the legislative session. We have contributed toward the compilation of the Supplement. We have for several years paid the full bill for Commissioners on Uniform Laws including the state fee for participation in the national organization. Your Executive Committee in cooperation with the Legislative Research Committee has agreed to underwrite the salary and expenses of a Code Revisor named by the Research Committee. We have committed ourselves to support this project until the legislature can act next session. Furthermore, if we adopt the excellent report of our Committee on Code Revision, of which you all received a copy in advance of the convention, we are committed to press for legislation providing for additional legislative services and an increase in legislative pay. In addition to this, we have a long standing record as an association of working for the improvement of our laws through such standing committees in special fields of law as Mineral, Taxes, Indian Affairs, Traffic Safety, Probate, Business Corporations, Criminal Law, etc.

It is the responsibility of lawyers and particularly of the organized Bar to observe the workings of the law, to study law in action with its functioning competently and adequately toward the accomplishment of desired ends. In brief, we are vitally concerned with the proper functioning of the legislative branch of our government as with the judicial branch.

In the field of service to our members, the number one program is our sectional meetings. They have proven invaluable and are the principal reason for the success of our annual meetings. The sectional meeting idea is followed more and more by the ABA at their annual and regional meetings. Our Committee on Continuing Legal Education has provided institutes of an excellent quality with more to come. We have this year initiated a public relations program which has great possibilities. This is also the first year of our Committee on Law Office Management. From my contacts, I believe there is a real need for this program. Based on the Minnesota setup, we hope to expand our program on check lists such as the one presented by Franklyn J. Van Osdel on forming and dissolving a corporation, presented at one of our sectional meetings. In Minnesota these check lists cover a great variety of fields. Our Committee on Title Standards under the able leadership of Bud Ruemmele has rendered an invaluable service to the organized Bar. We have many other worthwhile ones rendering similar service to our members such as the Committee on Fee Schedules, Unauthorized Practices, District Bar, AB9 Coordination, Legal Education, Law Lists, Ethics and Internal Affairs, etc.

It was my purpose at the beginning of my year as president to put together emphasis on projects in the field of service to our individual members. It was for this reason that I created the Com-

mittee on Public Relations and Law Office Management. I also stressed the importance of this phase of work in suggesting projects to some of our standing committees. It is my recommendation that we expand our activities in this direction in the future.

Last fall in setting up the budgets for this year, your Executive Committee found that our entire annual income was previously committed. These committments included such fixed items as salaries, office expenses, Law Review, Executive Committee, Uniform Laws, Scholarships, Supreme Court clerk hire, etc. This left us no funds to be used for strictly Bar Association activities unless we dipped into our reserve. This is precisely what had been happening for the past two or three years and our reserve was dwindling each year by five to eight thousand dollars — from some $2,600 to about $1,400. We further found that our income from the filing fees was gradually dropping. It has dropped about $1,000 this last year.

We, therefore, made an exhaustive study of all our expenditures in an effort to ascertain which ones could be cut and which ones might best be shifted at least in part to other agencies in the case of purely public functions. I would like to give you a summary of the decisions made by your Executive Committee to accomplish this adjustment.

In considering this problem and in interpreting these actions taken by the Executive Committee, we must bear in mind that we volunteered as an Association to support these programs at a time when we labored under the mistaken notion we had more money than we knew what to do with or how to spend. I can assure you that that is not the case and we should all bear that fact in mind.

The adjustments made by your Executive Committee are as follows:

(1) That the University be requested to pay $4,000 each year towards the expenses of publishing the Law Review. Since the recommendation was taken the Dean has informed us he has consulted with authorities about their ability to pay an appropriate share, somewhat in the neighborhood of half the cost. The Committee is very much sold on the Law Review for education and pledge our support to the University to payment of our appropriate share, and preliminary to making a decision we found in almost every instance the cost was shared by the universities or states and in very few was the cost paid entirely by the Bar Association;

(2) On August 1, 1954, we discontinued paying the salary of a part time clerk for the Supreme Court. I might also say we notified the Supreme Court if they feel it has any need we have pledged ourselves to any reasonable clerk hire for the coming session;

(3) That all out of state travel must be approved in advance by the Executive Committee;

(4) That the allocation for scholarships, etc. be reduced to $750;

(5) The salary of the Secretary was reduced from $75 to $50 per month;
(6) That hereafter, allowances for expenses of travel, meals, etc., of our association members shall be exactly the same as that provided to state officials with the sole exception that they may charge up to $6 per day for a hotel room, within the state;
(7) That we charge a registration fee for our annual convention sufficiently large to cover convention expenses;
(8) That we consider the program of the Commissioners on Uniform State Laws to be purely a state function and that we would discontinue our financial support of this program after this year; In making this decision we found the program was one which was purely of a public nature and should be paid for by the state generally as is the situation in mose states, and we have advised the Commissioners on Uniform Laws we would instruct them in making a request to the National Assembly;
(9) That we join the Bar Board in requesting that the next legislative session increase our license fees from $10 to $15. The increase of $5 to be divided or allocated as presently provided in the law. Under the present law the Bar Association gets $6.50 and the Bar Board gets the balance and believes before we take action on that particular recommendation we could hear from the Bar Board and stressed the fact that as a consequence their funds are depleted they might ask for additional funds.

We believe that these adjustments will balance our budget and provide for sufficient funds for expanding our program of service to our individual members without materially curtailing our fine program of public service.

I conclusion, I want to thank each and everyone of you for the fine cooperation you have given me. I want to thank the members of the Executive Committee, and the present setup of the Executive Committee where the Presidents are elected for two years has worked out very well. It has been a real pleasure serving as your president.

(Applause.)

PRESIDENT JOHNSON: John E. Rilling has been elected Secretary-Treasurer for the coming year.

PRESIDENT JOHNSON: John A. Zuger will give the report of the Committee on Revisor of Statutes.

REPORT OF COMMITTEE ON REVISOR OF STATUTES

Mr. President and members of the North Dakota Bar Association:

Your committee on Revisor of Statutes submits the following report:

In order to evaluate the action taken by your committee in cooperation with the Executive Committee, and to pass upon its

recommendations, it is necessary to set forth the problem, and the past interest of the North Dakota Bar Association in its solution.

The development of representative government through legislative bodies covers more than three centuries. The establishment of service agencies to strengthen state legislatures is of quite recent origin.

The movement to create services to assist the legislature is a response to a growing need. The legislative function — to determine public policy and establish means for carrying it into effect and the review of the administration of its laws — has been constantly decreased and impaired. If we pause to think of the reasons, they come readily to mind. There is the increased complexity and expanded bulk of the problems requiring governmental consideration. And there is the tradition that the legislature is made up of part time citizen members close to their constituents, meeting often once every two years for a limited session of perhaps sixty days, with no permanent organization, and compensated in such an amount as means a loss or reliance upon other income. There are many others.

The purpose of the creation of the service agencies is to permit the legislature to give more consideration to major questions of public policy and so safeguard their deliberative character.

The members of the bar, more than any other group of the public, are in a position to call attention to the problem and to aid in its solution. The committee is proud to report that lawyers on a national, state and local level have interested themselves in the problem. Oregon won the award of merit last year by organizing a voluntary group of its members to serve at their own expense through the legislative session in giving their legal services. Two members of our Bar, Mr. Vernon Johnson, our president, and Mr. Ralph Beede, chairman of the Legislative Research Committee, attended a Legislative Service Conference sponsored by the Council of State Governments.

Now what concretely, are these legislative services? Statutory and code revision is only one. Others are indexing and summarizing legislative session developments, information and reference services, orientation conferences for legislators, bill drafting, legislative counseling, budgetary and fiscal review and analysis, post-audit, continuing review of governmental programs, legislative housekeeping services and assistance on policy problems.

North Dakota has begun to strengthen its legislature by creating service agencies. The North Dakota Legislative Research Committee was established by act of the 1945 session. It has functioned as a legislative council, serves as a committee on interstate cooperation or North Dakota representative to the Council of State Governments, provides research and reference facilities and a bill drafting and checking service prior to and during session, and is a means of coordinating the legislature with other branches of government, and the public.

Prior to the 1947 session, as a Committee project, with the help of two of our members who are former speakers of the House (Mr. Ralph Beede and Mrs. A. R. Bergeson), an extensive revision of the legislative rules was accomplished. The number of standing committees was reduced, and provision for identical House and Senate committees made possible joint hearings. The work load was more evenly distributed among committees and a great deal of congestion eliminated.

A bill drafting and checking service was made available to the legislature prior to and during the 1947 session. Under a 1947 amendment to Section 46-0311 of the Code, the laws of a general and permanent nature enacted after the Code are compiled in the Code system under the supervision of the Legislative Research committee.

In August of 1948, the Bar Association endorsed the step taken by the legislature in creating the Research committee and stepped in and offered its aid. The offer was accepted. It enabled the committee to employ professional assistance and continue its bill drafting and checking service. After the session the offer was renewed and helped the committee to undertake the compilation of the laws under the Code form.

The interest of the Bar Association and its support have continued. It reached its climax when $3200 of our Bar Association funds were made available to the Legislative Research Committee for its assistance prior to, during and after the 1953 legislative session, as reported to you by President Conmy at our last annual meeting.

A committee on Revisor of Statutes headed by Professor Ross C. Tisdale recommended establishment of a statutory revisor at our 1949 annual meeting. The matter was referred to the legislative committee at that time for further study. The committee was re-created again this year. And, of course, there have been many members of the bar, as individuals, who have interested themselves in the problem and worked on it.

At the last annual meeting the Revisor of Statutes of Wisconsin addressed our annual meeting, explaining the work of such an office and its advantages.

Further, the committee wishes, as a background, to call attention to the relationship of the members of the Legislature and the members of the Bar. You are all familiar with the enactment of the filing fee bill by the Legislature which has enabled the bar to undertake so many projects to improve the administration of the law. The Bar has interested itself in the improvement of judicial salaries and retirement, and it has received excellent cooperation from the members of the Legislature.

With this background, your committee began its work. On October 23, 1953, the chairman of your committee, together with Mr. Vernon Johnson, the President of the Bar Association, met with the Legislative Research committee at Bismarck. There was

presented to the Research committee the advantages of a system of continuous statutory revision rather than a bulk periodic revision. The need for further legislative services for the good of the legislature and the public was pointed out. The establishment of a statutory revisor as a first and most important step, to follow what had already been accomplished, was urged. Not all of the mentioned legislative services were proposed. A review of the steps taken in other states was made. An offer that the State Bar Association would help initiate the project, would support it, and would give it limited assistance with its means was made to the Research committee.

On March 18, 1954, the Legislative Research committee, at its meeting, considered the proposal of the Bar Association and went on record that the establishment of an office of Statutory Revisor within its staff was desirable. The Research committee determined it would introduce a bill to provide this at its next session. Its director was requested to contact the State Bar Association to determine the framework of such an office and what financial assistance might be available from the Bar Association.

Following the action of the Research committee on March 18th, your bar association committee met at Bismarck on April 10, 1954, with Mr. Emerson Murry, director of the Research committee. Mr. Murry stated that the Research committee felt that bill drafting and the office of Revisor would, in their opinion, fall properly within the legislative branch of government, and further that the office should be located on the staff of the Research committee. He stated that the work of the Research committee was largely that of revision, and largely substantive revision which required legislative approval. There was also some form revision now being done by the committee. After the legislative session the director has a period of some three months of fill-in time until the work of the Research committee begins during which time he could work with the Revisor. After the session and commencing about July 1, the Revisor would continue work on revision, and the Director would work with the committee. A year and three months later, or some three months before a session, both the Director and the Revisor would turn their attention to preparing and readying bills for the legislature, including bills to correct discovered errors. This would complete the cycle. In other words, placing the Revisor on the staff of the Research committee with the director will coordinate the work of the two and so accomplish both a revision and a bill-drafting service. The Revisor's office would also serve as a clearing house for errors discovered in the interim between sessions.

Two ways to create the office of a Statutory Revisor were considered; one, by formal legislation creating the office; second, to set the office up under present law creating the Research committee under Chapter 54-35 of the Supplement.

It is the opinion of your committee and of the Research director that this chapter now gives the research committee sufficient powers as the law now stands to handle the code revisor's work.

It is this second alternative that is favored by the Legislative Research Committee and your bar committee.

Assuming the establishment of the Revisor under present law under the Research committee, the matter can be accomplished by merely adopting an appropriation bill earmarking funds for the office of Statutory Revisor. The Research committee itself can, by resolution, appoint a sub-committee on statutory revision of the Research Committee and name the man to administer it. It may also desire to name an advisory committee of outsiders to serve; as example, a member of the Bar, a member of the Courts, and a possible open membership to be filled from time to time by that person best informed, depending on the title of the code under consideration. This manner of accomplishing our end, (*i. e.*, passing only a separate appropriation bill and setting up the office by resolution of the Research committee under its powers under Chapter 54-35), is favored by the Research committee and your bar committee. The other alternative would be the adoption of a statute to set the office up formally. This approach is objectionable as it means setting up another office and is deemed politically more difficult.

Your bar committee unanimously went on record and recommended to the Executive committee the establishment of a statutory revisor and bill drafting service within the staff of the Research committee; that the legislature be urged to adopt an appropriation bill with an emergency clause for the payment of the operation of the service or office, to be followed by a resolution of the Research committee appointing a sub-committee on statutory revision, and a possible advisory committee. The bar committee further agreed to recommend that the bar association support and work to secure such legislative action.

The Legislative Research committee at its March 18, 1954, meeting not only asked that the Bar Association be contacted to determine the framework of such an office, but also what financial assistance the Bar Association could furnish. The Research committee has no funds for this purpose.

It is the opion of the bar committee that the office should be be set and running in advance of the session. In its bill-drafting service and in other ways its value can be demonstrated to the next session which would consider it. It is expected that any appropriation bill, even with an emergency clause, could not be obtained for a month or more after the session convenes. It is further thought that to be most useful the office should commence September 1st or, at the latest October 1st of this year. A limited financial commitment of the Bar Association then from those dates to February 1st is required. Acting on the report of your committee, the executive committee authorized your committee to work with the Legislative Research Committee and its Director in the selection and employment of a man to do this work, within the limits fixed. As this report is written for filing on July 25, 1954,

your committee can only report that applicants and prospects for the position will be interviewed on July 23-24 by the Bar Association committee and the Research Committee together, and if a qualified man is found, he will no doubt be elected to commence on September 1st or October 1st.

The success of the project and the amount of the financial commitment to be made by the Bar Association, and length of it (it has been suggested that the Bar Association give financial aid for a biennium) depends, in plain language, upon the job of selling the public, and the legislature which represents it, on the need of this service. There is no reason why the legislature should not appropriate the full amount needed if the job is properly done.

It is the feeling of the committee that there has not been a proper understanding by the public of the work of the legislature, nor has there been proper attitude to the legislature. Any reluctance we see in obtaining an appropriation for a revisor is only part of the larger problem. It is the opinion of the committee that the Bar Association can make as one of its major projects of the year, a program of assistance to the legislature. The Bar Association is the one group that can and should call attention to the need of improvement of services and public understanding of this very important coordinate branch of our government. With this thought in mind, it is the idea of the committee that the Bar Association will undertake, not only to propose to the public and stimulate opinion to demand of the legislature that it set up a Revisor of Statutes, and a bill drafting service, for its use, but that the State Bar Association will urge the legislature to pass at its next assembly a resolution submitting a constitutional amendment to increase the pay of the members of the legislature. It is a disgrace that the matter has been handled by a small expense allowance to this point.

To carry out such a program it is the thought of the committee that as soon as the November elections are over and the members of the legislature have been elected that each of the district bar associations will convene and hold an evening dinner meeting, inviting to those meetings all the members of the legislature in that judicial district as their guests. The purpose of the meeting will be to have the members of the bar and the members of the legislature get acquainted and rub elbows together. The bar wil then present to the members of the legislature present their program for improving legislative services, legislative pay, and to assist the legislature in a general propaganda effort as to the work and nature of the legislature. It is the thought of the Bar Association will select two members who will appear at each of the these district meetings so that the presentation is uniform and consistent throughout the state. Such two representatives could be (1) a member of the Bar Association and (2) a member of the legislature. It is further thought that at these district meetings the members of the legislature who are in attendance could be

polled and consulted as to whether or not they would be interested in attending a pre-legislative conference, rather than labeling it a school, to be held a few days before the convening of the legislature at the House chambers in Bismarck.

If an interest and demand for such a pre-legislative conference can be developed at the district meetings, we could then proceed to have the conference at the Capitol a day or two before the Legislature convenes. At that time the Bar Association in cooperation with the Legislative Research Committee, would put on, for the benefit of new and older members of the legislature, a series of talks by veteran members of the legislature covering the operation of the legislature, the rules of the different bodies, the functioning of the committees and other mechanics. The director of the research committee believes such a pre-legislative conference could be worked out, and sponsored jointly by the Bar Association and the Legislative Research committee. It is the further thought of the committee that after the district meetings held following the November election, and prior to the convening of the legislature, that a special Bar committee, experienced with the legislature and familiar with the members of the legislature, would be set up and could prepare material for speech purposes, and this material distributed. Members of the Bar throughout the state can then arrange and secure speaking spots at service clubs and other organizations, calling the attention of the public to the functions of the legislature and the need of the legislature for more tools to accomplish and carry on its work.

The committee appreciates that the whole matter would have to be handled carefully and by members of the Bar who are experienced with the functioning of the legislature, the thinking of its members, and its scope, but that if it is properly handled, that it is a program that will be of assistance to the legislature, the public and the bar.

Respectfully submitted,
Ralph Beede
Carroll E. Day
Harvey B. Knudson
Paul Agneberg
Roy Holand
Nels G. Johnson
Clifford Jansonius
Mariod Gletne
Joseph A. Donahue
John A. Zuger, Chairman

JOHN A. ZUGER: Since this report was filed there have been the following developments. The executive committee made a pledge of $400.00 a month to pay the compensation of the man to be selected as Code Revisor from September 1, 1954, to February 1, 1955, or a total of $2000.00 to start it and our thinking is we could not expect action from the legislature until at least 30 days after the legislature convened. We met at Bismarck and

interviewed applicants and William Danger was selected as Code Revisor and will go to work on September 1, 1954. He is a graduate of Notre Dame and admitted to the Bar in North Dakota. There were two other applicants for the job and we were pleased with the quality of the applicants and especially when we were offering at most a five months' commital. The matter has been accomplished to that point and we are asking that the office be set up and legislature act upon it. The Research Committee at those meetings would introduce the necessary legislation to take the mechanical steps.

JOHN A. ZUGER: I move that the report be accepted and filed.

JUDGE LUNDBERG: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried.

(Fred Moulton, of Billings, Montana, President of the Montana State Bar Association, was presented by the president and spoke briefly to the Convention.)

(Applause.)

PRESIDENT JOHNSON: Senator Carroll E. Day will now give the Report of the Judiciary Committee.

JUDICIARY COMMITTEE REPORT
STATE BAR ASSOCIATION
AUGUST 6, 1954

Although your Committee has had various worthwhile projects under consideration, only three are the subject of specific recommendation to this convention. One, judicial retirement; two, permanent chief justice and three, publication of North Dakota Reports.

Judicial Retirement

In order to obtain benefits under our present judicial retirement law a judge must serve 18 years, as such, and be 70 years of age. He may then retire on a pension of one-half of his last salary. Although this is a substantial improvement over what was originally conceived as possible in North Dakota, it is obviously unsatisfactory. The fact that judicial salaries in North Dakota have doubled in the last few years along with a rather good prospect of still further increases has induced younger men to accept judicial responsibility. Nevertheless, we still have judges who have served their state past the point where they should be entitled to retirement but find themselves trying to continue their work rather than accept the meager retirement provisions of our law.

No state at present has fixed their retirement age over 70. Many are using age 65 or 60.

Ten states have acted making retirement compulsory:

CONNECTICUT: At age 70 judges automatically become state referees for life at ⅔ salary. Judges retire on ½ salary after 5 years, but less than 10 years service; after 10 years of service may retire on ⅔ salary.

IDAHO: At age 70 may retire on ½ annual salary at time of retirement. Judges contribute 3% to retirement fund for at least 10 years preceding retirement. Judges on call from Chief Justice to perform such services as commissioners of court or advisors to court.

LOUISIANA: At age 65 if judge of court of record for 20 years immediately preceding date of retirement, may retire on ⅔ pay. At age 70 with 15 years of service, may retire on ⅔ pay. Regardless of age, after 23 years of continuous service immediately preceding retirement, which is then compulsory, judge is entitled to full pay.

MARYLAND: At age 60 annuity is $300 for each year of service up to 20 years. Maximum is $6,000. Retired judges receiving retirement pay cannot hold public office and pay. Retirement is compulsory at 70 years.

MISSOURI: No retirement pay after compulsory retirement at 75 years. On retirement for disability, judge receives half pay for the rest of his term of office.

NEW JERSEY: At age 70 with 10 years of service, may retire on ¾ annual salary.

NEW YORK: Actuarial system into which ½ of benefits are paid by the state. Included under state employees' retirement system. Annuity not more than ½ salary.

SOUTH CAROLINA. At age 65 with 20 years of service; age 70 with 15 years service; age 72 with 10 years service; having served for 25 years; or who without regard to age has served 7 years and while in service became totally and permanently disabled, may retire on $3,000 annually for the balance of his life (The legislature, however, now appropriates $4,500).

VERMONT: At age 70 with 35 years of service, may retire on ½ average salary for last 10 years. Contributing system according to length of service. Included in state employees' retirement program.

VIRGINIA: At age 70 with 10 years of continuous service, may retire on ¾ salary. Judges under 55 contribute 2½% to retirement fund; judges over 55 contribute 3%.

In some states retirement is not compulsory but retirement benefits are forfeited if the judge continues active. In others retirement at one age is voluntary but compulsory at a retirement age.

It is your Committee's recommendation that the laws of North Dakota be amended to provide for compulsory retirement of all supreme and district court judges and judges of county courts of increased jurisdiction at age 70; and that upon retirement a pension for life be provided equivalent to ¾ of the last annual salary before retirement upon completion of not less than 10 years of judicial service in North Dakota, and that a pension on retirement be provided in cases where the judicial service aggregates less than 10 years equivalent to 10% of the normal retirement pay

for each year of judicial service prior to retirement. Thus, if a judge reached compulsory retirement age after serving only 5 years, he would receive retirement pay for the rest of his life to 50% of the amount that he would be entitled to had he served full 10 years prior to retirement.

Permanent Chief Justice

Several Judiciary Committees of this Association in their reports have dealt with the problem North Dakota has had because of the supreme court's failure to decide cases promply. Our old adage "justice delayed is justice denied" has been proved over and over again. Many district judges in the state have also acquired dilatory habits. The contrast in the federal courts is remarkable and may be due largely to the fact that the judges in the federal system do have administration supervision.

Under North Dakota procedure our Chief Justice has no supervisory power and holds office only during the last two years of his term when he needs to be solicitous of support for re-election. In his book, *Minimum Standards of Judicial Administration* (1949), Chief Justice Vanderbilt at page 34 says:

> "The term for which the chief justice of a court sitting *en banc* holds office is of extreme significance for the exercise of *internal* control. In eight states the chief justice of the court of last resort is the judge having the shortest term left to serve, and in eleven states the chief justiceship is determined by seniority, the oldest member of the court in point of service is the chief justice. While in the majority of the states the chief justice holds office until the expiration of his term on the court, in twelve states the term of the chief justiceship is a special limited term, ranging from six months to four years. Effective administration of any sort cannot result when the administrative office is held for short terms and there is rotation of that office."

It is the recommendation of your Committee that the laws of the state of North Dakota and the Constitution, if necessary, be amended to provide for the elective office of Chief Justice at a salary $3,000.00 per year higher than the other Justices of the supreme court and that the Chief Justice be given supervisory authority over all district and supreme court judges including the assignment of cases and terms as far as district court judges are concerned. This would require approval of all salary vouchers by the Chief Justice who would have no authority of approval for any judge failing to cooperate or delinquent in the filing of opinions or the making of decisions under the rules to be provided.

Many problems in connection with the establishment of a Chief Justice with proper authority would have to be considered jointly with the appropriate legislative committees when the Legislature convenes. Attached hereto is a table giving the manner of selection and terms of office of the Chief Justice in the several states. The supreme court itself selects the Chief Justice in 27

states. In seven of these—Kansas, Kentucky, Louisiana, Mississippi, Nevada, Virginia, Wisconsin—the selection is made according to seniority. In eight others, the selection is by the court, without regard to the length of service.

Publication of North Dakota Reports

Section 93 of the Constitution of North Dakota contains the following provision:

> "The legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof."

The publication of the North Dakota Reports since 1919 has been a part of the duties of the Supreme Court Reporter under the direction and control of the Supreme Court. Seventy-seven volumes, all told, of North Dakota Reports have been published and volume 78 is in the hands of the printer and will be ready for distribution in September of this year.

The publication of North Dakota Reports has been a somewhat difficult problem. The cost of publication has become so great as to become practically prohibitive.

Up to and including Vol. 74 an agreement was made with the Lawyers Co-op Publishing Company for the publication of North Dakota Reports.

The demand for North Dakota Reports has decreased very noticeably since the publication of Vol. 74.

For some reason only about 10 per cent of North Dakota lawyers purchase North Dakota Reports.

The North Dakota Reports no longer include reference to the briefs and publication is necessarily delayed many months after the published opinions are available in the reporter system. We are informed that Vol. 78 will cost approximately $7,500. Under the circumstances this expense in the opinion of the Committee is not justified. It is therefore the recommendation of the Committee that the Bar Association request the Legislature to amend the law giving the supreme court much wider discretion in the publication of the reports or in discontinuing such publication.

Respectfully yours,

George Sorlie
Robert G. Hoghaug
F. S. Snowfield
T. P. McElroy, Jr.
Harold B. Shaft
Robert L. Burke
Roy A. Neste
Vernon W. Forbes
Carroll E. Day, Chairman

SELECTION, TERMS AND COMPENSATION OF THE CHIEF JUSTICES OF THE COURTS OF LAST RESORT

State	How Selected	Term of Chief Justice	Compensation of Chief Justice
Alabama	By popular election.	6 years	$ 9,500.00
Arizona	Justice having shortest time to serve and not holding office by appointment or by election to fill a vacancy.	2 years	8,500.00
Arkansas	By popular election.	8 years	9,000.00
California	Appointed by Governor subject to approval of Commission on Qualifications for the unexpired term of his predecessor.	12 years	17,000.00
Colorado	Appointed by court in rotation.	1 or 2 years	7,500.00[1]
Connecticut	Appointed by the Gen-Assembly upon nomination by Governor.	8 years	15,500.00
Delaware	Appointed by Governor, confirmed by Senate.	12 years	15,500.00
Florida	Appointed by court.	2 years	10,000.00
Georgia	Appointed by court.	6 years	8,000.00
Idaho	Justice having shortest term to serve, not holding office by appointment or election to fill vacancy.	1 or 2 years	7,500.00
Illinois	Appointed by court from members who have served 2 years or more and who have not previously served as Chief Justice or whose last term as Chief Justice is most remote.	1 year	18,000.00
Indiana	Appointed by court on a rotating basis.	6 months	11,000.00
Iowa	Appointed by court on a rotating basis every six months.	6 months	10,000.00
Kansas	Seniority of service.	No specific term	10,000.00[2]
Kentucky	Judge with oldest commission is selected as Chief Justice	1 year	9,000.00
Louisiana	Seniority of service.	Until retirement or death.	12,000.00
Maine	Appointed by Governor.	7 years	11,000.00

Maryland	Selected by Governor from present members of court.	Undefined	17,500.00[3]
Massachusetts	Appointed by the Governor.	"During good behavior"	18,000.00
Michigan	Appointed by court on a rotating basis every year.	1 year	15,000.00[4]
Minnesota	Popular election for specific office.	6 years	12,000.00
Mississippi	Seniority in length of service.	As long as he is on the court.	10,000.00
Missouri	Appointed by court.	4 years	12,000.00
Montana	Popular election.	6 years	7,500.00[5]
Nebraska	Popular election for specific office.	6 years	8,500.00
Nevada	Position rotates according to seniority.	2 years	8,000.00
New Hampshire	Appointed by the Gov- and council.	During tenure as judge.	9,500.00
New Jersey	Appointed by Governor with advice and consent of Senate.	7 years, upon reappointment for life.	25,000.00
New Mexico	Justice with shortest remaining term	2 years	6,000.00[6]
New York	Popular election.	14 years	28,000.00
North Carolina	Popular election.	8 years	14,400.00
North Dakota	Each judge elected for a full 10 year term is appointed Chief Justice for the last 2 years of his term.	2 years	6,500.00
Ohio	Popular election.	6 years	12,600.00
Oklahoma	Appointed by court.	2 years	12,500.00[7]
Oregon	Appointed by court.	2 years	9,500.00
Pennsylvania	Justice with shortest period left to serve.	Remainder of term.	23,500.00
Rhode Island	Selected by legislature.		14,000.00
South Carolina	Appointed by the legislature. Usually the senior Associate Judge is elected.	10 years	10,500.00
South Dakota	Appointed by court.	1 year	7,200.00
Tennessee	Appointed by court.	During pleas- of court.	12,600.00
Texas	Popular election.	6 years	12,000.00
Utah	Justice with shortest term to serve is appointed, unless appointed or elected to fill a vacancy.	2 years	7,200.00

Vermont	Elected by joint Houses of General Assembly.	2 years	8,000.00
Virginia	Seniority of service.	Rest of term 2 years	10,500.00 12,000.00
Washington	Appointed by the court	1 year	12,500.00
West Virginia	Appointed by court in rotation.		
Wisconsin	Seniority of service.	Rest of term	12,500.00[8]
Wyoming	Justice with shortest term to serve is appointed, unless appointed or elected to a vacancy.	Generally, two to four years.	8,000.00[9]

SOURCE: Council of State Governments Questionnaire (1950).

1. Judges elected or appointed prior to November, 1948, receive $6,500. Those elected thereafter, $7,500.
2. $10,000 after January 9, 1951. Until then, $8,000.
3. Presumably, however, so long as he sits on the Court.
4. Present compensation, however, is $12,000.00. For judges with terms beginning after December 10, 1948, compensation has been increased to $15,000.00.
5. Legislature in 1948 increased salary to $9,000.00, but increase is not effective until end of present terms in 1953.
6. In addition, each justice receives $3,000.00 per year as a trustee of the State Law Library.
7. After January 1, 1951. Until then, $7,500.00.
8. Salary of present Chief Justice, $10,000.00 annually. After expiration of present term, will rise to $12,500.00.
9. For new and reelected judges. For the other judges, $7,000.00.

SENATOR DAY: I move the recommendations be approved and adopted and I shall recommend our committee be commended for having filed a written report.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

ROBERT B. GRIFFITH: I second the motion.

(The following members spoke on the report: Duane Nedand, Senator Duffy, Louis Nostdal.)

O. B. BURTNESS: I suggest the Chairman of the Committee would change his motion and ask for filing of the report and the recommendations made therein be left to the Executive Committee. I want to assure you I have no objection to being retired at this very moment. I happen to be past 70 years of age.

SENATOR DAY: I have no objection to that. I can withdraw that motion and make a motion that would approve the other two recommendations. We could mimeograph the part you would like to discuss.

JUDGE BURTNESS: As I understand it the report points to an absolute elimination of North Dakota Reports so the law-

yers would have to use the Northwestern system. Is that what it means?

SENATOR DAY: I might quote: "It is therefore the recommendation of the Committee that the Bar Association request the Legislature to amend the law giving the supreme court much wider discretion in the publication of the reports or in discontinuing such publication."

JUDGE BURTNESS: I don't like to see seniles around, but we ought to be able to buy North Dakota Reports and there are a lot of lawyers in North Dakota who can't afford to buy the Northwestern system.

PRESIDENT JOHNSON: To size up this question the membership should have an explanation of the number of North Dakota Reports and the cost to the state and the number taking advantage of it is out of all proportion and isn't fair ot the taxpayers to ask the state to continue publishing the reports for the very few who take advantage of them.

JUDGE BURTNESS: There are three recommendations and if the Association should vote, it should be split into three votes.

PRESIDENT JOHNSON: I would like the Bar Board to be heard on it. I think we can dispense with mimeographing. Our Executive Director isn't interested.

SENATOR DAY: I have several copies.

PRESIDENT JOHNSON: I am going to entertain a motion that we continue the discussion of this report or postpone it until our business session tomorrow morning.

SAMUEL E. PALETZ: It is so moved.

JUDGE LUNDBERG: I second the motion.

(Question put and motion carried.)

ROBERT ALPHSON: I will acquaint Mr. Rilling with the records, and at this time I move his election be made unanimous.

RONALD N. DAVIES: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. We will have the report of the Fee Schedule Committee by Mr. Richard V. Boulger.

MR. BOULGER: The recommendation has been made that an amendment be made concerning the fee to be charged in an action under our Unsatisfied Judgment Act. There has been some criticism by the legislators that too high a percentage has been charged and they look upon it as public money rather than as a private agreement. We recommend a minimum fee schedule to include a flat 25% fee of the amount collected under the Unsatisfied Judgment Act, and at this time I so move that amendment.

ROBERT VOGEL: I second the motion. I think it should be a maximum. I believe it was understood that 25% be considered a maximum fee to be charged.

mum. 25% be considered a maximum fee to be charged.

R. J. BLOEDAU: I second the motion.

(Question put on the amended motion and this motion carried.

PRESIDENT JOHNSON: Motion carried. We now stand adjourned until 1:30.

Morning Session, Saturday, August 7, 1954

At 9:00 a.m. Saturday, August 7, 1954, the meeting was called to order, with President Johnson, presiding.

PRESIDENT JOHNSON: We will start with the report of the Traffic Safety Committee by Alvin C. Strutz.

MR. STRUTZ: How much time do I have?

PRESIDENT JOHNSON: Take your time.

REPORT OF TRAFFIC SAFETY COMMITTEE OF THE NORTH DAKOTA STATE BAR ASSOCIATION

Your Committee on Traffic Safety begs leave to submit the following report:

Your Committee is keenly conscious of the vital interest which the public has in the problem of Traffic Safety. The volume of of traffic on our highways has increased greatly since the close of the Second World War, and more traffic has resulted in the killing of more people. While we realize that a comprehensive survey of the entire problem would include a discussion of adequate highways, as well as problems of adequate safety laws and their enforcement, your Traffic Safety Council limited its consideration to the latter phase of the problem. It was agreed by the members of your Committee that traffic safety would be aided by the better enforcement of our highway laws; by better driver control; by more public education on traffic safety, and by better motor vehicle inspection.

In view of the fact that the North Dakota State Bar Association has a Legislative Committee, it was felt by the members of your Traffic Safety Committee that the only function of that Committee on matters of improving traffic safety would be to recommend to the Legislative Committee such legislation as we feel would improve traffic safety. In line with the idea of better enforcement of highway laws and more public education on traffic safety, your Committee recommends to the North Dakota State Bar Association that it consider the issuance of a pamphlet on "Traffic Courts and Procedure", which pamphlet would be distributed to all the Justices of the Peace of the State of North Dakota, the Police Courts and all Peace Officers, including Mayors, of all of the villages and cities of the State. It is suggested that such pamphlet could also be sent to all of the Homemakers Clubs in the State of North Dakota, who could use the subject of Traffic Safety as a subject for some of their meetings.

The reason why the members of your Committee felt that

such a pamphlet would fill a vital need in this State is that it has come to the attention of the members of your Committee that many of the traffic violations are handled in Justice Court, and that many of the Justices of the Peace who handle such traffic violations have absolutely no knowledge of the Traffic Laws of the State of North Dakota, know nothing about Traffic Courts and Procedure, and do not have any knowledge of what their jurisdiction or authority is. Along that line it was pointed out by one of the members of your Committee that within recent months one of the Justices of the Peace in the State of North Dakota levied an $800 fine for a traffic violation, clearly exceeding his jurisdiction.

The proposed pamphlet, to be prepared and distributed as suggested, should cover the subjects of preparation of cases, including the use of radar and drunk-o-meter devices; a discussion of the authority of the Courts, Police and other Peace Officers, and should also contain certain information on trial procedure.

An outline of the matters to be covered by such suggested Pamphlet is as follows:

MANUAL FOR TRAFFIC COURTS

INTRODUCTION

(Purpose — a few words of judicial wisdom, etc., by officer of Bar Association)

CHAPTER I

Historical Review

Section 85, Constitution of North Dakota
Section 112, Constitution of North Dakota
Section 113, Constitution of North Dakota
Section 114, Constitution of North Dakota

CHAPTER II

Qualifications - Duties

Justice
Magistrate

Jurisdiction and Powers

CHAPTER III

Trial Procedure

1. Dignity of Court
2. Arraignment
3. Pleas
5. Trial — With Jury — Without
6. Witnesses — Examination
7. Rights of Defendant
8. Argument
9. Acquittal or Conviction
10. Judgment and Sentence

WARRANTS AND COMPLAINTS

Bail — Venue — Costs and Fees — Appeals

CHAPTER IV

Dockets — Forms — Reports

CHAPTER V
Questions — Answers — Common Problems
CHAPTER VI
Traffic Laws
State
City

Your Committee suggests that the work of compiling such a Pamphlet be done under the supervision of the Legislative Research Director and the Safety Director of the State of North Dakota. While the work would be done under the supervision of these officers, the actual work could be done either by law students or by members of the Attorney General's office. No doubt individual attorneys in private practice would also be willing to handle any particular phase of the preparation of this Pamphlet, but no private practicing attorney should be asked to prepare the entire manual and to donate his time for that purpose.

After such Manual has been prepared and published, it is the recommendation of your Committee that the distribution of the same be left to the State Director of Public Safety, who has kindly consented to take charge of this phase of the work.

UNSATISFIED JUDGMENT FUND LAW

Your Committee on Traffic Safety, at the express request of your President, the Hon. Vernon Johnson, has also considered very carefully the question of suggested changes in the Unsatisfied Judgment Fund Law. Your Committee is of the opinion that the Unsatisfied Judgment Law fills a vital need in the state of North Dakota, and that recent efforts to repeal such law have been made without a full undersatnding of the great value of such law in our economy. We further believe that no owner of a motor vehicle in the State of North Dakota, if he were fully appraised of the facts, would ever object to paying the small assessment of one dollar now required under the law at irregular intervals. It is the cheapest protection that any person can secure for himself and his family against the negligence of financially irresponsible drivers.

The members of your Committee do realize, however, that certain changes in the present law would be beneficial and desirable, and therefore beg leave to submit to you the following suggestions:

(1) It is the sense of your Committee that the Law be amended so as to specifically provide for giving authority to the Attorney General to call on the highway patrolman, the Sheriff and the Police officers to conduct investigations in cases where the Unsatisfied Judgment Fund may be called upon to pay damages. We realize that the Attorney General has general authority to call on these officers for assistance under the Law now, but we do believe that a specific authorization should be provided for such investigations, with specific authority to be given to the Attorney General to call on these officers in cases where the Unsatisfied Judgment Fund may be called upon for contribution. Such report as is given

by the officers named should be made available to both sides of the lawsuit.

(2) Your Committee further recommends that specific appropriation be made from the Unsatisfied Judgment Fund for the payment of the salary of one or more Special Assistant Attorneys General, who would be in charge of the work in administering the Unsatisfied Judgment Law and for expenses of such Special Assistant Attorneys General. An additional appropriation has been made to the Attorney General's office to cover the additional work required by reason of the provisions of this Law, but we believe that such appropriation for a specific amount for salary for one or more Assistants, and for the cost of administration of this Law, should be made from the Unsatisfied Judgment Fund.

(3) Your Committee recommends that the Law be amended to provide that in all cases where the Fund may be called upon for contribution, that a thirty (30) day written notice before trial be given to the Attorney General, and that the Attorney General be authorized to file an Answer and to enter a defense in such action. It is the opinion of the members of your Committee that such Law should provide that the notice be given 30 days before the evidence is presented, so as to give the Attorney General adequate notice and time to prepare for trial.

(4) Your Committee recommends that the Statute be amended to require the Plaintiff to show that remedies against all possible parties have been pursued, including the driver and the owner of the vehicle claimed responsible in the action. It is the thought of your Committee that a Judgment-creditor must commence and pursue to completion, in good faith, any action he might have against all persons against whom he might reasonably be considered as having a cause of action arising out of the motor vehicle accident. It is further the thought of your Committee that an Unsatisfied Judgment against the driver of a vehicle, for example, could not be collected out of the Fund, if the owner of the offending vehicle, if he is also liable, has not been joined or sued. For example, a no-good son, but father financially responsible.

(5) Your Committee further recommends that a Judgment-creditor, before being able to collect from the Unsatisfied Judgment Fund, be required to show that there is no reasonable possibility of any other claims arising out of the same accident. The purpose of such a provision is to prevent a party who might recover the first Judgment from collecting all of the money payable under the Law on any one claim, resulting in subsequent claimants being barred from participating in the Fund.

(6) Your Committee further recommends that Section 39-1703 Subdivision 4 of such Section, be clarified to require the claimant to show what steps have been taken which he claims constitutes "exhaustive search" of the Defendant's resources as required by that Subsection, and that the Judgment-creditor be required to make the same "exhaustive search and inquiry to ascertain whether the Judgment-debtor is possessed of property, real or personal,

liable to be sold or applied in satisfaction of the judgment" as he would make in attempting to collect a Judgment where the provisions of the Unsatisfied Judgment Fund were not available.

(7) Your Committee recommends that Section 39-1710 be so amended as to place the responsibility of collecting payments ordered by the Court in the hands of the Attorney General of the State of North Dakota. Your Committee would further recommend that such Section be amended to provide that any Order of the Court for installment payments provided for in such section must be on such a basis that the total amount of the judgment, plus interest, at the rate of 2%, be repaid within a period of ten years.

Your Committee further would recommend that some system be devised whereby it would be impossible for a judgment-debtor who has not complied with the Statute for repayment to the Fund of his judgment, to secure a driver's license or a motor vehicle license until he has complied with the provisions of such Statute.

(8) Your Committee further recommends that the Research Commission of the State of North Dakota be required to investigate the original Law of the State of New Jersey which requires uninsured drivers to pay a higher assessment into an Unsatisfied Judgment Fund than those drivers who have coverage, and that if the idea, in the opinion of such Research Committee, has merits, that the matter be presented to the Legislative Assembly for their attention.

It is the thought of your Committee that the Research Committee determine from proper authorities in New Jersey whether this provision in the New Jersey Law would be feasible in the State of North Dakota under the conditions here existing, and we recommend that if such provisions are believed to be feasible, that appropriate legislation be prepared requiring uninsured drivers to pay a larger assessment than is required of insured drivers. We further believe that the uninsured driver should be required to pay an annual assessment, but that the payments as to the insured driver be made as now provided by the Law.

(9) Your Committee further recommends that the Unsatisfied Judgment Fund Law be changed so that the Attorney General be made the Administrator of the Unsatisfied Judgment Fund, with power to make appropriate and necessary rules and regulations to facilitate its operations. We further recommend that the requirement that the Highway Commissioner be served with notice be eliminated.

Your Committee recommends that these matters be submitted to the Legislative Research Committee for investigation and action.

Respectfully submitted,

TRAFFIC SAFETY COMMITTEE,

North Dakota State Bar Association,

A. R. Bergesen,
Daniel Chapman,
E. Forsythe Engebretson,
Richard P. Rausch,
George S. Register,
Clarence Schauss,
Robert L. Vogel,
Alvin C. Strutz, Chairman.

MR. STRUTZ: I move and Robert Vogel seconds that this report be filed.

PRESIDENT JOHNSON: You have heard the report. It there any discussion — any comments.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. I am going to ask Bud Ruemmele to give the report on Title Standards.

REPORT OF COMMITTEE ON TITLE STANDARDS

Your Committee on Title Standards, comprised of Scott T. Rex, Linn Sherman, Einar Johnson, John F. Lord, Frank F. Jestrab, Charles L. Crum, and Henry G. Ruemmele wish to report to this Association its activities since appointment.

Pursuant to the last annual report of this Committee, the adopted Title Standards have been printed, placed in a binder and offered to all the lawyers of the State for a charge of $10.00. To date we have sent out 146 copies, including complimentary copies to the University of North Dakota Law Library, Minnesota State Bar Association, State Bar of Texas, State Bar of Pennsylvania, and the Iowa State Bar Association.

We have collected $1,380 from the sale of the Standards, and paid $1,201.72 for 500 copies. It is anticipated that revenues from the sale of the Standards should make the printing and publication of additions, revisions and corrections self-sustaining.

Your Committee held two meetings during the year, one at Grand Forks on April 24, 1954, at which meeting members Einar Johnson, Scott T. Rex, Charles L. Crum, Linn Sherman, and Henry G. Ruemmele were present, and one at Fargo on June 26, 1954, at which members Scott T. Rex, Charles L. Crum, Linn Sherman and Henry G. Ruemmele were present. As a result of these meetings the proposed additions, revisions, and corrections, copies of which have been mailed to each member of this Association, were considered and recommended for adoption, and that report is included in the report of this Committee.

Many other proposals were considered and either found not suitable for adoption as a Title Standard or were tabled for further study. The Committee urges members of the Association to aid them in their work by proposing title standards, and submitting if possible, the legal foundation for the proposal.

The Committee has also discussed the possibility of the creation of a Real Property Section so that the adoption of additions, revisions, and corrections might be handled through that Section together with all the problems dealing with Real Property. The majority of the members of the Committee felt that it was a bit premature, but it is recommended that the Execuive Committee

be empowered to create such a Section and designate its scope of activity and powers.

Respectfully submitted,
Scott T. Rex,
Linn Sherman,
Einar Johnson,
Charles L. Crum,
John F. Lord,
Frank F. Jestrab,
H. G. Ruemmele, Chairman.

TITLE STANDARDS COMMITTEE PROPOSED ADDITIONS, REVISIONS AND CORRECTIONS

Pursuant to action taken by the 1953 annual meeting of the State Bar Association of North Dakota, there is herewith published the proposed additions, revisions and corrections to the Title Standards, together with the action taken by the Title Standards Committee.

RECOMMENDED CHANGES IN EXISTING STANDARDS

I. Title Standard 1.10 reads:

"In the absence of notice of renewal from possession, record, or otherwise, an examiner may omit from his opinion reference to a recorded lease when the term as expressed in said lease has expired."

The Legal Committee of the North Dakota Oil and Gas Association, requested a revision to remove any implication that the Standard applied to an oil and gas lease. The Title Standards Committee felt it should be broadened to take in any lease containing similar provisions.

It is recommended that Title Standard 1.10 be revised to read:

"In the absence of notice of renewal from possession, record or otherwise, an examiner may omit from his opinion reference to a recorded lease when the term as expressed in said lease has expired. However, reference shall be made to the lease when its continuation or renewal is dependent upon a contingency which may have occurred, such as the occurrence of production on lands covered by an oil, gas or mineral lease."

* * * * * *

II. Title Standard 1.08 reads:

"Attention shall be called to the possibilities of reverter and of rights of re-entry for breach of condition subsequent, duly executed by the party who reserved the same or by his heirs if he dies intestate, or if he dies testate by the party to whom the same were devised, or in the absence of a specific devise by his residuary legatee."

Upon a reading of the Standard it seems to create confusion rather than certainty.

It is recommended that Title Standard 1.08 be revised to read:

"Attention should be called to possibilities of reverter, of rights for re-entry for breach of condition subsequent, and restrictive covenants."

(See Section 47-0902 N.D.R.C. of 1943)

The reference to Section 47-0902 is to call attention to the apparent limitations upon alienation of such interests. In this connection the Title Standards Committee felt that the Marketable Record Title Act should be amended to reduce the period provided therein to 20 years and that Exception (d) which provides:

"This Act shall not be:

1. Applied to bar:

d. Conditions subsequent contained in any deed;"

should be repealed.

* * * * * *

III. Title Standard 2.03 reads:

"As to names no objection shall be made between the use of a full given name or the common abbreviation thereof or the generally accepted derivatives. The addition or omission of 'Jr.' or 'Sr.' following the names should be disregarded."

It appears that as a matter of fact there have been several instances where the chain of title appears to be complete on the basis of the Standard where the title was vested in "Sr." and an oil and gas lease was executed without the addition of the designation. Under the Standard the "Sr." could be disregarded and the oil and gas lease accepted. However, the fact of the matter is that the oil and gas lease was actually executed by "Jr.". Anticipating that this situation could arise in other instruments the Committee felt that a change was necessary.

It is recommended that Title Standard 2.03 be revised to read:

"As to names no objection shall be made between the use of a full given name or the common abbreviation thereof or the generally accepted derivatives."

This recommendation eliminates the words:

"The addition or omission of 'Jr.' or 'Sr.' following the name should be disregarded.

* * * * * *

RECOMMENDED ADDITIONS

I The North Dakota Oil and Gas Association recommended the following Standards:

"Where the landowner is deceased the title examiner should require the administration of the estate or probate of the will as the case may be, and that the lease be properly executed by the proper personal representative and be duly approved by the County Court."

Chapter 230, Session Laws of 1953

Patton on Titles

Bancrofts Probate Practices, 2nd Ed. Vol. 1, Sec. 8.

The Committee recommends the adoption of the following Standard:

"Where the landowner is deceased an oil and gas lease must be executed by the personal representative as provided by staute."

See Chapter 230, Laws of North Dakota, 1953
(Sec. 38-1003, 1953 Supp. N.D.R.C. of 1943)
Patton on Titles
Bancrofts Probate Practices, 2nd Ed. Vol. 1, Sec. 8.

* * * * * *

II The North Dakota Oil & Gas Association recommended the following Standard:

"Where an oil and gas lease covers lands subject to a contingent future interest the oil and gas lease must be executed by the statutory trustee."

See Chapter 231, Laws of North Dakota, 1953
(38-1012, 1953 Supp. N.D.R.C. of 1943)

The Committee recommends the adoption of the above Standard.

* * * * * *

III The Committee recommends the adoption of the following Standard:

"When an oil and gas lease has been executed and no spouse has joined therein, a separate lease or ratification of the existing lease from or by the nonjoining spouse, does not meet the requirements of section 47-1805, N.D.R.C. 1943."

See: Fore v. Fore, 2 N.D. 267, 50 NW 715
Helgebye v. Damen, 13 N.D. 172, 100 NW 246
Garr, Scott & Co. v. Collin etal, 15 N.D. 622, 110 NW 81
Severtson v. Peoples, 28 N.D. 372, 148 NW 1055
Acklin v. First National Bank, 64 N.D. 577, 254, NW 769
Dixon v. Kaufman, 58 NW 2d 797
Mandan Mercantile Company v. Sexton, 29 ND 602, 151 NW 780
Larson v. Cole, 76, N.D. 32, 33 NW 2d 325.

* * * * * *

IV The Committee recommends the adoption of the following Standard:

"A contract for the sale of property is within the restrictions of Section 47-1805, N.D.R.C. 1943, providing for the execution and acknowledgment of the same instrument by both husband and wife."

See Silander v. Gronna, 15 N.D. 522, 108 NW 545
Larson v. Cole, 33 NW 2d 325
Engholm v. Ekrem etal, 18 N. D. 185, 119 NW 38

* * * * * *

V The Committee recommends the adoption of the following Standard:

"A deed from the husband to the wife or the wife to the husband is not within the restrictions of Section 47-1805, N.D.R.C.

1943, requiring both the execution and acknowledgment of the same instrument by the husband and wife to convey or encumber the homestead."

See Wehe v. Wehe, 44 N.D. 280, 175 NW 366.

* * * * * *

VI The Committee recommends the adoption of the following Standard:

"Where a conveyance has been recorded and no spouse has joined therein, a separate deed from the nonjoining spouse does not meet the requirements of Section 47-1805, N.D.R.C. 1943."

(No opinion is expressed as to the validity of Section 1-0412, N.D.R.C. 1943)

The Committee had a long discussion of this Standard and especially in view of Section 1-0412, N.D.R.C. 1943, which provides:

"In any case where a married man or woman, prior to January 1, 1954, conveyed real property which may have been the homestead of the husband, or the wife, or the family, by a deed duly signed and acknowledged by the husband or wife only, but not signed by the other, and the husband or wife, did not join the other in executing the deed, either before or after, by a deed duly signed and acknowledged, conveys the same real estate to the same grantee or a subsequent grantee from him, the conveyance by such separate deed, is declared to be valid and effectual to pass the title to such grantee or subsequent grantee the same as if the conveyance had been made by a single instrument duly executed and acknowledged by both husband and wife."

Several members of the Committee on the authority of
Finlayson v. Peterson, 5 N.D. 587, 67 NW 953
Dever v. Cornwell, 10 N.D. 123, 86 NW 227
Acklin v. First National Bank, 64 N.D. 577, 254 NW 769

felt that the Section was unconstitutional, while others did not feel the Committee should propose a Standard in reliance thereon. All agreed that separate deeds after January 1, 1943, are not valid, with the dissent being as to those prior to January 1, 1943.

VII The Committee recommends the adoption of the following Standard:

"No title shall be considered unmarketable by reason of any claim or defect over 31 years old, if the record title holder has an unbroken chain of title through his immediate or remote grantors by a deed of conveyance which has been recorded 31 years or more, and if the record title holder is in possession of the property, and records an affidavit to that effect.

This Standard shall not apply to:

a. claims of which notices have been filed in accordance with Chapter 47-19A, 1953 Supp. N.D.R.C. 1943.
b. claims which are specifically excepted by Section 47-19A11, 1953 Supp. N.D.R.C. 1943.

Authority: Chapter 47-19A, 1953 Supp. N.D.R.C. 1943.

See: How to Examine an Abstract and Implications of the Marketable Titles Act — Sectional Assemblies Booklet, Annual Meeting of State Bar Association of North Dakota, 1952.

North Dakota Marketable Record Title Act, by James Leahy, North Dakota Law Review, July, 1952, Volume 29, Page 265."

* * * * * *

VIII The Committee recommends the adoption of the following Standard:

"When all the joint tenants contract for the sale of real property, any future conveyance by a surviving joint tenant or tenants will not create a marketable title."

NOTE: Two cases, In re Sprague's Estate, (Iowa, 1953) 57 NW 2d 212 and Buford v. Dahlke, (Nebraska, 1954) 62 NW 2d 252, have held that the making of a contract for sale by joint tenants operates to sever the joint tenancy. Wisconsin in Simon v. Chartier, 27 NW 2d, 752, has held to the contrary. See Swenson and Degnan, Severance of Joint Tenancies, 38 Minnesota Law Review 466, 476-82 (1954). Until such time as a decision on the point is rendered by the North Dakota Supreme Court, the Committee has concluded that a title tendered by a surviving joint tenant in the situation outlined is subject to reasonable doubt and hence unmarketable."

* * * * * *

IX The Committee recommends the adoption of the following Standard:

"The use of the word 'grant' in a deed which releases and quitclaims all the grantor's right, title and interest, or other words to that effect, does not make such a deed one by which an after-acquired title will pass."

See State v. Kemmerrer (South Dakota) 84 NW 771."

The Committee had long discussions on this point, which was brought about by a consideration of Section 47-1015, N.D.R.C. 1943 which provides:

"Where a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereof, the same passes by operation of law to the grantee or his successors."

Section 47-1019 N.D.R.C. 1943 provides for the implication of certain covenants by the use of the word "grant," and on the basis of the two sections some have claimed that a deed which included the word "grant" but released and quitclaimed all of the grantor's right, title and interest, would carry with it an after-acquired title. The South Dakota case cited is exactly in point on the matter and considered identical statutes. It was the Committee's feeling that the limited Standard was well within the authority of the South Dakota case.

RECOMMENDATIONS FOR LEGISLATION

Mortgages

Because of the unsatisfactory solution of Section 35-0313 N.D. R.C. of 1943 as interpreted by Magnuson v. Breher, 69 N.D. 197, 284 N.W. 843, providing for the discharge of old mortgages by an ex parte petition, the Committee recommends that Section 28-0115 N.D.R.C. 1943 which provides that

"The following actions must be commenced within ten years after the cause of action has accrued.

— — —

3. Any proceeding for the foreclosure of a mortgage upon real estate."

be amended to eliminate the tolling of the statute. It is suggested that the Minnesota Statute MSA 5541.03 be adopted. This section reads:

"541.03 Foreclosure of real estate mortgage

Subdivision 1. Limitation. No action or proceeding to foreclose a real estate mortgage, whether by action or advertisement or otherwise, shall be maintained unless commenced within *10* years from the maturity of the debt secured by the mortgage, and this limitation shall not be extended by the nonresidence of any plaintiff or defendant or any party interested in the land upon which the mortgage is a lien in any action commenced to foreclose such mortgage, nor by reason of any payment made after such maturity, nor by reason of any extension of the time of payment of the mortgage or the debt or obligation thereby secured or any portion thereof, unless such extension shall be in writing and shall have been recorded in the same office in which the original mortgage is recorded, within the limitation herein provided, or prior to the expiration of any previously recorded extension of such mortgage or debt, nor by reason of any disability of any party interested in the mortgage.

Subdivision 2. When time begins to run; commencement of proceedings

The time within which any such action or proceeding may be commenced shall begin to run from the date of such mortgage, unless the time of the maturity of the debt or obligation secured by such mortgage shall be clearly stated in such mortgage. Any action or proceeding to foreclose a real estate mortgage, whether by action, by advertisement or otherwise, commenced within the period of the limitation herein provided may be prosecuted to completion notwithstanding the expiration of the period of limitation, and proceedings to foreclose a real estate mortgage by advertisement shall be deemed commenced on the date of the first publication of the notice of sale."

The Minnesota Statute provides for a *15* year period, but the Committee recommends a 10 year period.

It will be noted that the Section will make it possible for an

examiner to disregard a mortgage which falls within the Statute. To further make the matter of record it would seem advisable to repeal Section 28-0509, N.D.R.C. 1943, which provides:

> "No notice of the pendency of an action in a district court shall be required if the action is for the foreclosure of a mortgage or for the enforcement of a mechanic's lien or miner's lien."

Lis Pendens

The matter of a recorded Lis Pendens of ancient vintage has also been troublesome, and the Committee recommends legislation to cure that trouble.

Section 28-0507, N.D.R.C. of 1943 could be amended to provide that

> "On and after January 1, 1956, no lis pendens now of record or hereafter recorded shall be notice, either actual or constructive, of the pendency of any action or of any of the matters referred to in the court files and records pertaining to the action noticed by such lis pendens, after such lis pendens has been of record for six years unless a new notice of lis pendens in the same action is recorded within said six years. Any lis pendens which has been of record for six years on the effective date of this act, may be preserved by the recording of a new notice of lis pendens in the same action on or before December 31, 1955. Nothing in this Act shall increase the effect or lengthen the term for which a lis pendens is notice under any existing law, nor create a right to renew the operation of a lis pendens already barred by some other law."

This proposed enactment is borrowed from Chapter 326, of the 1947 Laws of Minnesota, as codified under Sections 557.021-2-3.

Contracts for Deed

The matter of contracts for deed of ancient vintage where it appears that they have been abandoned on the part of the vendee have often caused a good deal of expense and trouble in an effort to clear the record.

Section 28-0116, N.D.R.C. 1943 could be amended to provide:

> "The following actions must be commenced within six years after the cause of action has accrued:
>
> 1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of section 28-0115, provided, however, that from and after January 1, 1956, no action, suit or proceeding shall be maintained by the vendee in any contract for the sale of real property, unless it is commenced within six years from the date when the final payment provided by said contract shall become due, and this limitation shall not be extended by the non-residence of any plaintiff or defendant, nor by reason of any payment made after the date of said final payment, nor by reason of any extension of time of payment unless such extension shall be in writing and shall have been recorded in the

same office in which the said contract for deed is recorded, within the limitation period herein provided, or prior to the expiration of any previously recorded extension of such contract, nor by reason of any disability of any party interested in the contract. The time within which any such action or suit or proceeding may be commenced shall begin to run from the date of such contract, unless the time for final payment or performance be clearly stated in said contract.

MR. RUEMMELE: I recommend the adoption of the report and the recommendations and revisions contained therein.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

FRANK F. JESTRAB: I second the motion.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried. I will now ask Judge W. H. Hutchinson to give the report of the Committee on Judicial Reform.

REPORT OF COMMITTEE ON JUDICIAL REFORM

This committee was appointed by the President of the State Bar Association in the wake of the report of Professor Ralph Blinn who made an extensive survey of the judicial system in North Dakota and a number of alternate recommendations for improvement of our judicial system.

Your committee not only carefully considered the Blinn Report, but also conferred with Judge A. Besancon of Butte, Montana, a former practitioner of the State of North Dakota, who is familiar with the unified court practice in the State of Montana.

Your committee adheres to the conclusions reached early in this study that provision should be made for the unified court system in the State of North Dakota by consolidating the county court with the district court and at the same time revamping the justice court system. To accomplish this integration it is necessary that certain changes in the constitution be drafted and submitted to the electorate of North Dakota.

Your committee has prepared what they consider to be an appropriate concurrent resolution to be introduced in the next session of the legislature for the submission of the necessary changes to a vote of the people. (See exhibit annexed.)

This resolution in its essential form was submitted to the last session of the legislature in February, 1953. The resolution passed the Senate but met defeat at the hands of the House Judiciary Committee where a number of county judges voiced their opposition to the resolution. While individual committee members of the House Judiciary Committee voiced individual approval of the resolution it was felt that the measure should be given further consideration and reintroduced in the next session.

Essentially the proposed resolution is enabling in character

and does not in and of itself contemplate any changes in the judicial structure of our judicial system. In the event the constitutional amendments are approved the legislature would then be required to pass the legislation necessary to accomplish the integration of the inferior courts.

It is the recommendation of your committee that the committee be continued to the end that the necessary judicial reforms can be accomplished as soon as the legislature and the people of North Dakota perceive the merit of the proposed unification of the courts.

Respectfully submitted,
Eugene A. Burdick,
Wm. H. Hutchinson,
Roland A. Heringer,
John O. Thorson,
W. L. Nuessle, Chairman.

SENATE CONCURRENT RESOLUTION

A concurrent resolution providing for the amendment of the Constitution of the State of North Dakota, relating to the judicial system of the State of North Dakota.

Be it Resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

The following amendment to the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of North Dakota for approval or rejection at the primary election in June 1956, in accordance with the provisions of Section 202 of the North Dakota Constitution, as amended:

SECTION 1.) Section 85 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 85. The judicial power of the State of North Dakota shall be vested in a Supreme Court, District Courts, and such other courts as may be created by law.

SECTION 2.) Section 103 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 103. Except as otherwise provided in this constitution, the District Courts shall have original jurisdiction of all causes and proceedings, in law and equity, the probate of wills, the administration of estates of decedents, and the guardianship of the persons and estates of minors and incompetent persons, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same.

SECTION 3.) Section 108 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 108. There shall be a Clerk of the District Court in each organized county of the state, whose term of office, manner of selection, powers, duties and compensation shall be prescribed by law.

SECTION 4.) Section 112 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 112. The legislative assembly may provide by law for the election of justices of the peace in each organized county within the state. The number of such justices shall be limited by law to the number necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs does not exceed three hundred dollars, and they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall justice of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction elsewhere.

SECTION 5.) Section 113 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns and villages, who shall have jurisdiction of all cases arising under the ordinances of said cities, towns and villages.

SECTION 6.) Section 14 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 114. Appeals shall lie from final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

SECTION 7.) Section 117 of Article IV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 117. No judge or clerk of the Supreme or District Courts shall act as attorney of counselor at law.

SECTION 8.) Section 173 of Article X of the Constitution of the State of North Dakota, as amended, is hereby amended to read as follows:

Section 173. There shall be elected in each organized county in the state, at each general election, A Register of Deeds, County Auditor, Treasurer, Sheriff and State's Attorney, who shall be electors of the county in which they are elected and who shall hold office until their successors are elected and qualified. The legislature shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the powers, duties and compensation of all county, township and district officers. The Treasurer of any county shall not hold such office for more than four year sin succession.

SECTION 9) Section 196 of Article XIV of the Constitution of the State of North Dakota is hereby amended to read as follows:

Section 196. The governor and other elective state officers and judges of the Supreme and District Courts shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases

will not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SECTION 10.) Sections 110 and 111 of Article IV of the Constitution of the State of North Dakota are hereby repealed.

SECTION 11.) The judicial system of the State of North Dakota as now constituted and such courts and offices of the judicial system as are now established under the Constitution and the laws of North Dakota shall continue notwithstanding the adoption of this amendment until otherwise provided by Law. Vacancies occurring in any such existing courts and offices in the present judicial system, until otherwise provided by law, shall be filled by election or appointment as now provided by the Constitution and laws of North Dakota.

JUDGE HUTCHINSON: Judge Nuessle, who is the chairman of our Committee was unable to be here and asked me to present the report. I have here also the proposed Concurrent Resolution which should be sent to the Legislature. I don't know if it is necessary to read that.

I therefore move that this report be approved.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

JUDGE BURTNESS: I second the motion.

PRESIDENT JOHNSON: Mr. Ego of Lisbon.

MR. EGO: Mr. President and Members of the Association, I didn't come here with the idea of taking part in it, but I have given the matter some study and I have some very fixed and pronounced opinions. I think this thing has been studied carefully by the people who are on the committee. I believe their opinions are entitled to careful consideration but you know we all sometimes get the idea we get started on something and follow it until it becomes an obsession, so I think as far as the Julicial Council has been concerned this court reform has got to be more or less an obsession that for over sixty years we've had a judicial system to which people have become accustomed. It has weaknesses and certain reforms are necessary but I question whether the flouting of the entire system and revamping it into what some other state has pronounced to be ideal will fit our tradition and history. I am particularly opposed to the part which deals with the proposal to abolish the county court. I am in favor of abolishing the county courts as they now stand but not complete consolidation with the district court.

My main objection is after all the people who have probate matters and pay expenses would have to wait for the district judge to create an action. We have in this state seven counties that have increased jurisdiction. They're presided over by law trained per-

sonnel. The judge is a lawyer and has the same qualifications as a district judge and is in every way competent to handle probate matters. Other counties are not so situated but I question flouting the entire system since instead of doing that we could have the legislature pass a constitutional amendment making every county court in this state a county court of increased jurisdiction, or if they don't want to pass an amendment, make the qualifications of a county judge so they will all have a law trained judge.

So far as county courts of increased jurisdiction are concerned, and I am talking praticularly to you younger men, before you vote your approval of this committee recommendation I suggest that you take time to reflect what is in store for you in case that is adopted and the legislature carries out the recommendation. You have fifteen district judges. Now, they have plenty to do as it is. Now they suggest an additional district judge be awarded to some districts. Every county who has a county court of increased jurisdiction relieves the court of misdemeanors. Those who do not have increased jurisdiction, run misdemeanors through justice court. For crimes calling for more than 30 days in jail and they plead guilty; they don't want him laying around waiting for the district judge, the states attorney, the sheriff and the clerk of court. Or the district judge must so arrange his matters that he can circumvent the entire district every day or so, and that is out of the question.

Our experience with the county court in Ransom County extends from practically statehood to the present time and I will say from personal experience that in every instance we have had men presiding over that court who were as competent and capable as the men occupying the district bench. They have to have the same legal education and the same experience and by and large the lawyers who live in a county where there is increased jurisdiction make use of that court. And I suggest this, before you put your blanket endorsement on a system that is going to re-vamp the entire judicial system of the state, take your time. I don't cast any criticism on the committee that thinks that is the best thing; I don't think so and I am satisfied lawyers of counties of increased jurisdiction feel the same. There may be one or two examples where that doesn't work out — one or two examples of inefficiency. I have not reviewed the court system all over the state. Now there has been, as Judge Hutchinson says, several attempts to put this system into operation in the state. I have been opposed to it and not because of the personnel who recommend it. I don't think like they do and don't see the way they do. I have practiced for more than fifty years such as it is and it is my candid judgment that instead of abolishing county courts where they have increased jurisdiction we should see to it that every county court has a law trained judge. There are some other things I would like to talk about but I don't want to take up your time. I want a record that I am opposed to that part of the committee report which seeks to have the legislature re-vamp the

entire court system we have gotten along with I think fairly well for more than sixty years.

PRESIDENT JOHNSON: Any one else.

JUDGE HUTCHINSON: I might state that this recommendation provides of course for some changes in the constitution. It will be then up to the legislature to re-vamp the system under that constitutional change. No doubt it would take several years to make the changes that the legislature might desire to make. During those years of course the system will continue as it is now so that this committee isn't providing for any particular system. They are providing for constitutional change that will give the legislature a right to make some of these changes if they see fit.

JUDGE BURTNESS: I seconded your motion. I did so with the understanding that a constitutional amendment was required even if not for the purpose of what Mr. Ego has recommended. If this motion contemplates that this is an instruction to the association to carry out precisely the setup as has been proposed I would want to withdraw my second. I simply seconded your motion to approve the concurrent resolution. A proposed constitutional amendment which is required to accomplish any judicial reform in the state.

JUDGE HUTCHINSON: That's right. An amendment is necessary in order to carry out any reform.

JUDGE BURTNESS: If you want to eliminate county courts a constitutional amendment is necessary.

JUDGE HUTCHINSON: The constitution provides the legislature to abolish them.

JUDGE BURTNESS: I will let my second stand on the assumption that the details will come before the association and legislature at a later date.

PRESIDENT JOHNSON: Any further discussion?

PRESIDENT JOHNSON: Motion carried.

We will have the report of the Criminal Law Committee by Mr. Lee F. Brooks.

REPORT OF THE CRIMINAL LAW COMMITTEE NORTH DAKOTA BAR ASSOCIATION

Your Committee on Criminal Law, being informed that this is the first committee appointed to deal with this phase of the law, is stricken with the usual stage fright of the beginner. Not only have we no precedent, without which lawyers are lost, but we have no backlog of files, correspondence, complaints, or what have you! To further complicate the situation, your chairman and one member, both prosecutors, have found themselves associated with four defense attorneys, and the result has been a modern Tower of Babel. However, we are able to agree on the following:

First: Your committee believes that there should be enacted a modern "Manslaughter by Automobile" statute in this state. With the highway death toll continuing or mounting as it has been in

recent years, more and more manslaughter cases have resulted from traffic accidents. Our present manslaughter statute is a relic of the days prior to the automobile, and is more appropriate to deal with oxen traffic. Other states have recognized this, and have enacted modern "Manslaughter by Automobile" statutes to cover these offenses. We strongly urge the adoption of such a statute in this state.

Second: We are concerned over the confusion relative to the handling of juvenile traffic offenders. Under present law such offenders cannot be tried in the criminal courts unless a waiver of jurisdiction has been obtained from the juvenile court. This procedure is not being followed in many parts of the state, and juvenile offenders are either being tried in the criminal courts, or they are being turned loose rather than being taken into juvenile court. We believe that either of these methods of handling is wrong, and that these youths should be taken into juvenile court to the end that their errors may be corrected; or, if this involves too great a burden on the juvenile commissioners, that other corrective measures be devised.

Third: The attention of your committee has been directed to a situation involving the sentences meted out by the judges of the criminal courts of this state. We refer to the fact that widely divergent sentences are being imposed for the same offense, where the aggravating and mitigating circumstances of the cases do not justify the divergence in sentence. We believe that this is a serious matter, in that it may cause the layman who notices these discripancies to have a diminishing regard for our system of justice. We recommend that the Supreme Court hold a conference of the judges of the criminal courts, to the end that more uniform penalties, considering the circumstances, may be imposed in the various courts.

Your committee has given consideration to other matters involving the criminal law, but is not at this time prepared to make a report or recommendation in connection therewith. These matters will be turned over to the committee for the succeeding year.

Respectfully submitted,
J. E. Hendrickson,
Roy K. Redetzke,
Pat Milloy,
Lyle E. Huseby,
Frank Knox,
Lee F. Brooks, Chairman.

MR. BROOKS: I move the adoption of this report.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

CARROLL E. DAY: I second the motion.

PRESIDENT JOHNSON: Motion carried. I will entertain a motion that the report of the Committee on Juvenile Problems be filed.

SENATOR DAY: I make the motion.

JUDGE LUNDBERG: I second the motion.

PRESIDENT JOHNSON: Motion carried.

REPORT OF THE COMMITTEE ON JUVENILE PROBLEMS

The Committee on Juvenile Problems renders a report which is in the main negative, meaning that no flaws of a serious nature have developed to date in the Juvenile Code of this state which require the attention of the Bar Association at the present time. It is true that comparison with the Juvenile court machinery in existence in other more populous states where funds for personnel and facilities are available to a greater extent than in our own thinly populated area is not favorable. The Committee is also aware of criticism emanating from various sources, notably from city police of some communities and others directly concerned with law enforcement, to the general effect that juvenile courts tend to emulate the proverbial dog in the manger doing much to thwart the enforcement of criminal laws and the maintenance of order as related to juveniles. The Committee believes that these criticisms arise more from a failure on the part of such law enforcement authorities and perhaps on the part of juvenile commissioners to understand and appreciate each others' functions and the necessity of close cooperation between them than from any inherent weakness in the system.

The attitude of young people who are inclined to be slightly indifferent to the law, and perhaps of their parents, exists in some quarters that because a wrong-doer is under the age of 18 years he may violate the law in comparative freedom, and the police and other law enforcement agencies are powerless to interfere. Our Juvenile Court Code lends no support to any such attitude. The juvenile has no more right to commit a criminal act than an adult. The only difference between the juvenile and the adult in this respect is that the adult is taken before the regular courts of the state for punishment as a criminal while the juvenile is, in the language of the statute, taken before a juvenile commissioner or a juvenile court. There is nothing in the code, as read properly, which prevents a peace officer or police officer from arresting a criminal who is under the age of 18. The Committee thinks that this has not been made sufficiently clear to the law enforcement officers of the state and it may be that the members of the bar can assist materially in straightening out this situation by giving advice to those concerned upon this point even though a juvenile court judge or juvenile commissioner may not be immediately available.

The Committee feels that with a few minor exceptions the authority vested by the law in the office of judge of the juvenile court, who is a judge of the district court, and in the juvenile commissioner appointed by and responsible to such judge, is ample at the present time and it is neither feasible nor desirable at the present time to modify this.

There are two or three respects in which developments in

recent years have left apparent lacks in the juvenile court setup. This is especially true in relation to the handling of cases arising from infractions of the traffic laws and the operation of motor vehicles. There is apparently no authority anywhere at the present time for a juvenile court or a juvenile commissioner, or anyone else, to revoke or suspend the operation of a motor vehicle operator's license, which has been issued to a juvenile. The suspension or revocation of an operator's license for infractions of traffic laws is directly authorized only upon a conviction. Since there can be no conviction in a juvenile court it seems to follow that such suspension or revocation is not authorized. This has been a frequent source of difficulty in handling cases of wilful and persistent juvenile offenders in this connection. However, the law does give the juvenile court, which includes both the judge of the juvenile court and the juvenile commissioner acting under him, very wide powers for the control of young persons who are in the court, and these powers if fully exercised tend very greatly to take the place of any such power of absolute revocation. What is meant is that the law expressly gives to juvenile commissioners the power to make any temporary order for the control and restraint of a juvenile which such juvenile commissioner may consider necessary and proper in the particular case. He therefore has the power to forbid the youngster to operate an automobile or motor vehicle of any kind and it seems to follow that he may, as a necessary auxiliary power, require the juvenile to surrender to the custody of the juvenile commissioner or court his driver's license for such period as he may deem necessary and appropriate.

One other apparent weakness is in connection with the power to waive juvenile court jurisdiction in appropriate cases and refer the whole matter back into criminal channels. The present law appears to give this power only to the judge himself after an investigation of each particular case. Some judges have adopted as a general policy the rule that a juvenile who is over a certain age but still under the age of 18 who commits a violation of the traffic laws and other laws relating to motor vehicles is automatically subjected to waiver of juvenile court jurisdiction and may be tried in the regular courts as if he were older, and some judges have expressly authorized one of the juvenile commissioners to act for them in issuing orders waiving juvenile court jurisdiction where the judge, himself, is not immediately available. This eliminates considerable difficulty and delay in some cases. The Committee believes that this provision of the code should be modified so as expressly to grant to juvenile court judges the authority to empower one of his juvenile commissioners to act for him in his absence in this connection.

One other source of difficulty is that the commission of a serious traffic violation such for example as driving while under the influence of intoxicating liquor or aggravated reckless driving and with respect to which the facts are not in dispute, cannot be reported to the State Highway Department or the State Highway

Patrol for the purpose of record in connection with the issuance of future motor vehicle operator's licenses. The law apparently does not now permit the action of a juvenile court to be made the basis for denying to any juvenile any of the usual rights of a citizen. The Committee believes that this situation should be clarified by authorizing or requiring a report to the State Highway Department similar to the certificate of conviction which is now required in the case of action under the laws applying to adults.

The Committee believes however that these difficulties should be made the subject of further study and is not prepared to make definite recommendations for amendments of or additions to the present juvenile court code in this connection. On the whole the Committee does not believe the situation is sufficiently urgent to require any such action at the present time.

Respectfully submitted,
For the Committee:
Ingomar M. Oseth, Chairman.

PRESIDENT JOHNSON: Mr. J. H. Newton will give the report of the Committee on Memorials.

REPORT OF COMMITTEE ON MEMORIALS

To the Bar Association of the State of North Dakota:

Your Committee on Memorials has to report that since our last annual session Memorials have been prepared for nineteen members of the Bench and Bar of North Dakota. These memorials have been prepared for inclusion in the Dakota Law Review.

The great majority of our departed brothers had reached or passed the allotted age of three score and ten, which serves to remind us that those who guided the destinies of our Association in its infancy are fast disappearing and their places have been taken by younger men.

Among those called was Hon. A. M. Christianson, Judge of the Supreme Court—one who had graced the Bench for a greater period than any other judge. Another who answered the final summons was Hon. Aloys Wartner, a Past President of our Association.

On June 3rd of this year Memorial Services under the direction of your Committee were held at a Supreme Court Session for Judges Christianson and Burr with a Memorial by the Bar Association in each instance, and an eulogy for Judge Burr by Hon. C. L. Young and for Judge Christianson by Hon. Benj. H. Bradford.

A list of the departed members of our profession and their North Dakota address follows:

Edward Conrad Boostrom, Lakota
E. C. Carney, Williston
A. M. Christianson, Towner
Charles Coventry, Linton
Edward B. Cox, Bismarck

Frederick J. Graham, Ellendale
A. F. Greffenius, Valley City
Alexander Leslie, Forman
Fred E. McCurdy, Bismarck
D. Bruce McDonald, Devils Lake
Clarence E. Merrell, Fargo
Ralph C. Morton, Bismarck
Scott Rex, Grand Forks
Henry B. Senn, Rugby
Marie K. E. Stiening, Fargo
Theodore Swenseid, Marmarth
T. A. Thompson, Bismarck
Aloys Wertner, Sr., Harvey
Leon Halvorson, Minot

Respectfully submitted,
Committee on Memorials:
A. W. Aylmer
A. W. Cupler
T. I. Dahl
J. A. Hyland
Thomas C. Johnson
Joseph G. Forbes
L. R. Nostdal
J. H. Newton, Chairman

MR. NEWTON: I move that the report be adopted.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

EDGAR P. MATTSON: I second the motion.

PRESIDENT JOHNSON: Motion carried.

We will stand for half a minute in a tribute to these men.

(The convention stands in silence for half a minute.)

PRESIDENT JOHNSON: You recall last night there was no objection to changing the time of the Debate on Comparative Negligence.

SENATOR DAY: We were going to clear up our Committee report first.

PRESIDENT JOHNSON: The only reason is we have three or four other reports, but we would be glad to take it.

SENATOR DAY: I move we clear it up right now. Mr. President, yesterday in making this report I made a motion in three or four parts, really a blanket motion. I made the motion that the committee report be adopted by the association recommending compulsory retirement of judges, recommending a permanent chief justice and recommending the changing of the law with respect to North Dakota Reports and added in the motion that the Committee be commended for doing a fine job. I want to withdraw that motion. In the conversations I have had there seemes to be no dissent with respect to the last part so I won't

renew that. I make a separate motion that the Committee Report on North Dakota Reports be adopted. The Committee report recommends that the Bar Association request the Legislature to amend the law giving the supreme court much wider discretion in the publication of the reports or in discontinuing such publication. I make that motion, Mr. President, and for the benefit of those who were not here yesterday, the current issue of Volume 78 is expected to cost the state between $7500 and $7800. Recently they have been ordering about 500 copies, making the cost about $50 a copy. The numbers of lawyers who have been buying the Reports have been decreased so that less than 10% buy these North Dakota Reports. As you know a good many of those volumes are used in exchange with other parts of the country but it is the committee's belief that it would be much cheaper to buy all other copies than pay $50 a copy with which to make an ex-exchange. Actually the 500 copies that are bought are never used. About 60 are bought by lawyers and a few are used for exchange. This report does not recommend that publication be discontinued. It simply suggests that the law be amended so that the supreme court will have discretion in the matter of publishing or discontinuation.

SENATOR DUFFY: May I suggest that according to arithmetic as it was taught in law school if 500 copies cost $7,500 it would be $15 a copy rather than $50.

SENATOR DAY: When you take into account the number that are used it amounts to about $50—I think $49.75.

PRESIDENT JOHNSON: Motion carried.

SENATOR DAY: At this time I move that the part of the Committee report bearing on the question of a permanent chief justice be approved.

Is there any part of the report that anyone would like to have read again?

MR. HIGGINS: I would like to have it read again. I didn't hear it and I don't know anything about it.

(Senator Day reads that part of the report.)

JUDGE HUTCHINSON: I second the motion.

PRESIDENT JOHNSON: Motion carried.

SENATOR DAY: I move that portion of the report on compulsory retirement of judges be adopted.

PRESIDENT JOHNSON: You have heard the motion. Is there a second?

PHILIP BANGS: I second the motion.

JUDGE HUTCHINSON: I would like to amend that to the effect that voluntary retirement could be had at age 70 and 75 placed as the involuntary age.

PRESIDENT JOHNSON: Is there a second to that motion?

SENATOR DAY: I second the motion.

SENATOR DAY: There is some misunderstanding on the

part of the members on whether this would affect judges already sitting.

SENATOR DAY: It wasn't contemplated. Probably it would not be considered by the legislature as applying to judges now in office. I might say while I am here that business in this country has recognized the need of compulsory retirement. Sears Roebuck has recognized this for a long time. Many have it at 65. Of Of course there are exceptions but in business it is recognized that 65 or 70 is a fair point for retirement.

JUDGE BURTNESS: If it is a good thing why wouldn't it apply to those sitting. I think by making that statement you are weakening your position. If retirement at 70 is a good thing certainly it should apply as soon as legislation is enacted. Surely if I were a member of the legislature I certainly would construe that as applying.

SENATOR DAY: I agree. As far as I am concerned I think it should apply immediately. However, from a practical standpoint it is difficult to keep personalities out and the thinking on an abstract basis. Many people are loyal to some good judge in their community and take a personal interest in some good friend who is probably very well qualified. I doubt if we can persuade the legislature to adopt the law without that exclusion.

JUDGE BURTNESS: It is then the intent of the recommendation that it be applied immediately.

SENATOR DAY: No, it is not. We have gone on record here. This report says nothing about it applying to judges now in office. Considered here are some amendments in the retirement law.

(He then reads from the report.)

PRESIDENT JOHNSON: Now, the question is upon the amendment offered by Judge Hutchinson that retirement be voluntary at 70 and mandatory at 75. Is there any question on that amendment?

The chair is in doubt. All in favor please rise. The amendment is lost. Now, the question is on the original report. Does anyone care to be heard?

MR. HIGGINS: I move that this does not apply to judges now sitting. I concede the logic of Judge Burtness.

JOHN HJELLUM: I second the motion.

JOHN LORD: Does that amendment mean that it does not apply to judges now sitting and they can run for another term?

MR. HIGGINS: I will change that—it shall not apply to terms of judges now sitting. Present terms.

MR. HJELLUM: I second that motion.

LYNN SHERMAN: Is that intended for both retirement provisions and benefits or just retirement?

SENATOR DAY: Retirement.

PRESIDENT JOHNSON: Motion carried.

SENATOR DUFFY: I just want to notify you at this time that since I shall be sitting at least for one session of the legislature I shall bitterly oppose the motion as it is now before this assembly. I just want to tell you I recognize the fact that industry does not have its limitations. I happen to be a director of one organization where retirement for their executive officers is 65 but permits the directors to continue until 70 on the assumption that brains do not deteriorate quite as fast as the arms and legs do. Due to the fact that judges only need their brain they do continue longer. Baseball players' legs give out at about 35. Early retirement is for someone engaged in physical exertion and any limitation on the future judges would imply judges who are going to succeed those now on the Bench are going to be of a less vigorous mental caliber than those now on the bench. Judges appointed during the next period will have the same mental vigor at 75 as those now have and I think they have discovered that in industry and are trying to make use of those people.

PESIDENT JOHNSON: Any further discussion.

JUDGE BURTNESS: Of course I would be tickled if I could retire on a very, very nice retirement pension. Arbitrarily I am inclined to think the association should try to be as practical as possible and I want to discuss my views on one other feature, the retirement feature. I don't believe there is a possibility in the world to get the legislature to pass a law that will give a judge 75% for only 10 years or 50% for only 5 years and in order to hold to security the request should be more modest. I think too that a formula should be established so that there is a substantial difference between retirement pay to a judge who gave 30 years of service as compared to one who gave 10 years. You can readily see these remarkes are not selfish—they are opposed to my own interests. I don't expect to have more than eight years service but if a retirement plan should be provided for me I think it would be ridiculous to expect 8/10ths of 75% of a salary. I think it is going to have to be practical and I want to say to the Legislative Committee that if they want to be practical, put something over on the legislature and public interests to try to adopt a more reasonable formula and one that would appeal to members of the legislature and the people of the state.

PESIDENT JOHNSON: Anyone else.

T. H. THORSON: A point of order. I was wondering if they had considered the permanent retirement of members of the bench who were permanently disabled.

SENATOR DAY: That is already in the law at least for the balance of the term they are elected for. Continue to draw full pay.

MR. THORSON: Would be in the new law.

SENATOR DAY: If after that term they qualify.

MR. LORD: I probably missed some of the discussion but I wonder if consideration had been given to the fact that under

the federal system retired judges are still reserve judges and when need arises they can be called for service and as I see it they have a good point for the program. In many parts of the state reserve judges would be of great benefit and while we might feel that steady service on the bench day after day was too rigorous, if those judges were callable they could in a great many cases assist in disposition of congested dockets and this might be an added selling point. It might be considered that when they were called some pay arrangements could be made. That is only a suggestion but I suggest it as a point in the program.

PRESIDENT JOHNSON: Any further discussion?

MR. HJELLUM: The reasoning of Judge Burtness appeals to me as being rather sound. Has the committee considered this and I would like to hear what the committee has to say about this.

SENATOR DAY: Mr. President, I am of the opinion that the committee's suggestion is not impractical. Those of you who have followed the course of legislation on the matter of retirement and salaries must be aware of the fact that the legislative attitude has changed a great deal. I can recall the first time I sat on the judiciary committee and retirement was mentioned. If you could have heard the reactions in the next five minutes you would have thought we would have no retirement in North Dakota. The attitude has changed. Now when you review the states who do have compulsory retirement as listed in the report you will find that 10 years is not uncommon and 3/4 pay is not unusual. In fact, New Jersey has in force exactly what we are proposing. Some have 65. South Carolina has 65; Vermont has 70; Connecticut has 70; Idaho has 70; Louisiana has 65; Maryland has 60; Missouri 65; 3/4 is not un-common. Some have 2/3 and 1/2 and 3/4 is in effect in several.

MR. NILLES: No one has seen this report. The entire assembly is not here. I don't think sufficient thought or reflection has been given to it. I move it be recommended to the committee for further study and report at the next annual meeting.

SENATOR DAY: I second the motion.

PRESIDENT JOHNSON: The motion is lost. All in favor of adopting the report say aye.

(Question put and motion carried.)

PRESIDENT JOHNSON: Motion carried.

PRESIDENT JOHNSON: I now present to you Mr. Ralph Beede, who will preside at the discussion on Comparative Negligence.

MR. BEEDE: We will take a little time and say that this part of the program in large measure is due to a motion that was made by Judge Burtness at our last convention. At that time, as you will remember, the question had come up on the recommendation to adopt the doctrine of comparative negligence in the state, and Judge Burtness moved that at the next convention a

full session should be devoted to a debate on comparatve negligence. And I think his motion, if it was not directly contained in the motion, suggested that some speakers from outside the state who are experts on comparative negligence be invited into the state to address the members of our convention. Now for various reasons of expense it was suggested that that would not be practical. Our full session has now dropped down to hardly an hour and a half.

We are going to do the best we can. Inasmuch as the proponents of the rule more or less have the burden we are going to allow the main speaker for the rule the privilege of opening and closing. Before going further I would like to introduce the members on our panel. They are:

Lewis H. Oehlert
P. W. Lanier, Jr.
J. F. X. Conmy
Philip B. Vogel

Mr. Lanier has consented to take the burden of being the main speaker for the rule or doctrine, and Mr. Oehlert will assume the burden of being the main speaker against it or in favor of the status quo. I am going to—I would like to give them more time—I am going to give them at least 30 minutes each because we want to hear from the other two members of the committee and we will like to have some discussion from the floor, and we will give Mr. Lanier as much of that 30 minutes for his opening talk as he wishes and then after Mr. Oehlert has spoken, allow Mr. Lanier the balance of his 30 minutes after his concluding remarks.

MR. LANIER: Mr. President, members of the Bar, I was originally contemplating taking more time and going into a more complete discussion of the pros and cons of Comparative Negligence than I will take. In fact, I will be very brief.

To be entirely frank and honest, I am not angry but must point out the undeniable fact that this meeting has died. It is late Saturday morning at the very tail end of all possible business of the State Bar Association. Members of the Bar have had a long week and have justifiably become tired and left for home. This meeting has reached the position that we don't even have a quorum of the Bar present.

I am sure that by now Judge Burtness does not even recognize as vaguely familiar the motion he made at the last annual Bar meeting which was passed unanimously. That motion was that Comparative Negligence be *the* major order of business and topic at the 1954 Bar Associaton Convention, and that outside speakers be imported to present both sides of the case. The entire question now being relegated to the position of something that must be gotten over with, I will only discuss the general theory of the Doctrine of Comparative Negligence.

If the rest of you are unfamiliar with the general theory as I when I started my research, then I do feel it is necessary to at least

state what it is that the proponents of Comparative Negligence are in favor of or against.

The Doctrine of Contributory Negligence is a hold-over from horse and buggy days before the automobile and before the cases that arose out of the use of automobiles. It is a hold-over which has been tried and proved wanting. Comparative Negligence is only the putting into actual form the practical application which you, as lawyers, have already discovered that juries really apply. Juries apply this doctrine almost every time you try a lawsuit to a jury. If you have a client who is 40% at fault in the accident, and the Defendant is 60% at fault, you and I know by practical experience, instructions to the contrary, the jury applies the Doctrine of Comparative Negligence and gives you about 60% of what your damages are actually worth.

Before trial, every lawyer knows that when dealing with insurance company lawyers in the attempted settlement of claims, opposing counsel sit down and settle the claims on the Doctrine of Comparatve Negligence. One side takes into consideration the fact that his client has a possibility of losing the lawsuit. The Defendant may be more negligent by a large degree, but in some way your client has been contributorily negligent. Defense counsel knows that he might get a dismissal of the case at the hands of the jury; on the other hand he might get a much larger verdict sustained than the figure at which he could settle. Every single time we, as lawyers, settle a lawsuit we are applying the Doctrine of Comparative Negligence.

Six states have adopted the Comparative Negligence Doctrine. It means only this—that a jury will get an instruction from the Court, which it can follow, that this plaintiff who now presents his case to this jury may or may not be negligent and that this defendant may or may not be negligent. The jury will be instructed that it may find as a matter of fact from all the evidence that both plaintiff and defendant are a certain per cent at fault, that they may evaluate the damages totally caused by the accident and apportion to the defendant by money judgment the percentages of those damages he must pay through his per cent of liability.

Various states such as Wisconsin, Missssippi, Louisiana, and Nebraska have adopted the Doctrine, and the Bar Associations of California and New York have recommended its adopton.

You and I may decide what our particular statutes should be. I am not now making any recommendations as to the particular type or form of statute to follow. The need for the statute to injured parties in this day of high speed, congested traffic, is what is important, not how it affects the compensation of you and me as lawyers. It is a question of whether or not society as a whole and injured litigants themselves are entitled to a doctrine of Comparative Negligence.

I think we need go no further than the law of our own state to see the crying need for the Doctrine of Comparative Negligence and the harshness of the Doctrine of Contributory Negligence.

I personally have seen an instruction on Contributory Negligence be affirmed three times in this state, which rather conclusively proves my contention.

The instruction is as follows: "You are instructed that the plaintiff cannot recover if you find that the plaintiff is guilty of any negligence, even the slightest contributing to the accident in the smallest degree."

As lawyers, you and I know that if juries applied this instruction to the facts before them, it would eliminate any possibility of recovery in 99% of all personal injury cases and a grossly and wantonly negligent defendant, operating an automobile in total disregard of the rights and safeties of others, would be free from the consequences of his act.

I might also add here that I do not believe that the average good defense attorney, representing liability insurance companies, are themselves opposed to the Doctrine of Comparative Negligence because they recognize, as a practical matter, that juries are applying the Doctrine anyway. You know and I know that the strongest voice raised in opposition to the Doctrine is that of the railroads. Let's face it—they have built up a doctrine of Contributory Negligence to the point where I will challenge a lawyer to bring a case today in North Dakota, where we practice, of a crossing accident, representing the driver of the automobile for his injuries or death, reach a verdict for the plaintiff, and have it stand up on appeal. It can't be done. Railroad crossing law has built up such a series of "Stop, Look and Listen" decisions that they would have to deliberately and premeditatedly camouflage a crossing to free a driving plaintiff from the application of the legal Doctrine of Contributory Negligence.

This is not a question of where we as individuals stand in our past thinking; it is only a question of bringing your law up to date with the times so that your client, your society, can have a common-sense, practical doctrine that will penalize the most guilty and, at the same time, not allow the partially guilty plaintiff to recover all of his damages at the expense of a partially guilty defendant.

I am going no further into detail. This Convention has been relegated to a point where the Convention is over and the majority of the lawyers have gone home. I note that all members of the railroad firms of this state and most members of the firms that represent large insurance companies are still present. Nevertheless, I now move that this Bar Convention of the North Dakota State Bar Association recommend to the North Dakota State Legislature the adoption of a sound Comparative Negligence Statute. Thank you.

MR. BEEDE: I believe, Mr. Lanier, that motion could be made after the debate is over.

MR. LANIER: As long as it stays on the record that is all I want.

MR. BEEDE: We will next hear from Mr. Oehlert, who has 30 minutes to present the con side of the argument.

MR. OEHLERT: Mr. President, members of the North Dakota Bar Association, ladies and gentlemen:

From some statements that I have heard, I have detected a feeling of licentiousness with some members of the Bar as it relates to Mr. Lanier's and my statements to be made this morning. Figuratively speaking, I think some of the fellows here assembled, particularly Mr. Bangs, would like to see some blood splattered around this platform this morning. I might say in favor of Mr. Lanier and myself that we are at least here giving our own blood, and I trust that many others will make themselves heard on the subject of *"Comparative Negligence."*

After having heard Mr. Lanier in his discussion of comparative negligence, I am reminded of a little story concerning the Devils Lake Indian Reservation. It seems that a young Indian lad had become enamored over an Indian maid, and on his various visits with her, he had noticed a very sweet aroma of perfume about her person. The Indian lad wasn't very familiar with the English language or American words or customs, but he did know that drug stores usually sold the sweet aroma that he had detected about the person of the Indian maid. He, therefore, betook himself to a drug store in Devils Lake and attempted to make his wants known in the procurement of some of the sweet aroma to be given to his Indian friend. After some efforts to make his wants known to the drugstore clerk, he was without success. Finally he blurted out: "Me want heap sweet wind." I submit that such statement could well apply to Mr. Lanier's sort of argument made here this morning. Is that enough blood?

To be serious and as professional people, I am sure that in our quiet thinking we want to do what is best for the people and our profession, and thus I am sure that both Mr. Lanier and I expect you to consider the matter pertaining to comparative negligence and this discussion on its merits.

You will observe that I have about a seventeen page paper here. The little time granted will not permit me to go into all of the problem resulting from the application of the doctrine of comparative negligence. I shall, therefore, try to restrict this statement to fit the time allotted.

1. INTRODUCTORY

It is submitted at the outset that if a statute is to be enacted in North Dakota introducing some phase of the doctrine of comparative negligence, it ought to come into being because it will be good for the people and because they want it after they are fully enlightened on the general subject.

We have heard much in recent years about the doctrine of comparative negligence which is regarded by those who sponsor it for the most part as a device to correct certain alleged evils, but in looking behind the scene, it is significant to note that the advocates for the doctrine, in almost every case, have a self-serving

interest. Virtually every negligence case is handled by plaintiff's attorney on a contingent fee basis. The most common contract gives to the lawyer at least a 33⅓ per cent share of the amount of the recovery. This contingency fee practice is, in a way, a benevolent one and often reflects a good deal of sporting blood and a charitable impulse on the part of lawyers. Thus, it is obvious that to the lawyer it would be a boon of no mean proportions if, although his client bore ninety per cent of the blame for an accident, yet recovery on a ten per cent basis at the sole discretion of the jury could still be had. Moreover, if by legislation much of the hazard could be taken out of the negligence case business for the lawyer, and if he could be reasonably sure of some recovery every time he went into court for a plaintiff in such case, the proposed doctrine would be significantly lucrative for lawyers. Thus, we find many of the proponents of the doctrine generally to be those to benefit by the recovery of damages in civil actions, and of course, the attorneys whose practice is substantially confined to the prosecution of such cases. It is at least interesting to note that those lawyers who are so associated with the National Association of Claimants' Compensation Attorneys, commonly called the NACCA, are most actively engaged in furthering the adoption of such a doctrine throughout the United States. Such Association is carrying on a vigorous, intelligent and effective propaganda campaign on a national scale, the purpose of which is to obtain higher awards to injured claimants by means of favorable legislation. The conclusion seems inescapable that those proposing this form of legislation expect to benefit by it, and thus, it is equally inescapable that the ultimate cost to society will be increased.

I am sure that most all lawyers will agree that the legal profession is in serious need for informative and good will publicity with the public. I am wondering whether the adoption of a comparative negligence law in the State of North Dakota would lend further suspicion of lawyers in view of the prevalent practice of contingent fees in the handling of negligence cases. Thus, it is in a way very unfortunate that the legal profession, to which laymen ought to be able to look for impartial guidance in the matter, has a big stake in the project and a self-serving pecuniary motive in advocating it. It is, therefore, submitted that this fact of private interest of lawyers ought frankly to be disclosed to the public and to the legislature.

II. History of Contributory Negligence

To have a reasonable understanding of the general doctrine of comparative negligence, it is necessary to have some understanding of the common law doctrine of contributory negligence and the manner in which it functions. Of course, it is trite to say to a group of learned and distinguished lawyers that at common law, contributory negligence on the part of the plaintiff was a complete bar to his cause of action based on the negligence of the defendant. My reading indicates that contributory negligence,

as it is known to the common law of England and the United States, dates back to the Thirteenth Century. It proceeds upon the theory that a man cannot profit from his own negligence. Thus, where a plaintiff, who sustains injury as a result of the accident, contributed in any way proximately to his own injury—whether by malfeasance, misfeasance, or nonfeasance—he is barred under this doctrine from recovering from a defendant whose negligence also contributed to the plaintiff's injury. The doctrine of contributory negligence was specifically laid down in England in the case of *Butterfield v. Forester,* 11 East 60, 103 Eng. Rep. 926.

The proponents of comparative negligence in effect argue that the high-sounding moral principle furnished by the rule of contributory negligence, while it can be readily accepted on the face, gives rise to certain inequities in its practical application in certain circumstances. Thus, the advocates of comparative negligence argue that a plaintiff who sustains injury because of the negligence of a defendant, who may have contributed as much as 99 percent of the cause of the injury to the plaintiff, is precluded from recovering for his injuries because of his slight contribution of one percent to his own injury. It is submitted that such contention is more honored in the technical approach than in the practical operation of the doctrines, for from a practical standpoint one seldom sees a plaintiff defeated in Court where the circumstances are as aggravated as those indicated above. It is my observation that from a practical standpoint, juries do not deal in trifles. As a matter of fact, if the negligence of the defendant is substantially greater than that of the plaintiff, there is seldom a finding of any negligence on the part of the plaintiff, and thus the plaintiff is permitted to recover and usually without any reduction in the amount of his damages.

III. Types of Statutes Involving Comparative Negligence

Along the legislative line, in addition to campaigns for increased benefits of all kinds and favorable procedural changes and increased fees for claimants' attorneys before various boards and commissions, one of the principal organized efforts of the NACCA is to eliminate the defense of contributory negligence and substitute something in the nature of the so-called comparative negligence law in its place. Five states, namely WISCONSIN, NEBRASKA, SOUTH DAKOTA, GEORGIA and MISSISSIPPI, now have varying forms of comparative negligence laws. My reading also indicates that in 1951 eighteen states had comparative negligence laws introduced in the State Legislature. I understand none have been adopted as yet, and I make particular reference to the State of California where a very great amount of work was done by the advocates of comparative negligence, and to date they have been unsuccessful in persuading the California Legislature to adopt such a law. I am indirectly advised that two very thoughtful articles written by The Honorable William J. Palmer, Judge of the Supreme Court of Los Angeles, California, largely thwarted the attempt to stampede the State of California in adopt-

ing a comparative negligence law. In other words, it apparently was his well reasoned literary effort that put the "STOP - LOOK - AND LISTEN" sign on the advocates of comparative negligence in California which comprised principally the lawyers associated in the NACCA.

It would be impossible, within the scope of my allotted time to discuss in detail the decisions of the five states named which have adopted some phase of a comparative negligence law. However, it might be well to take a brief look at the statutes themselves and briefly consider the results which they have produced in the respective states.

Thus, the comparative negligence law of GEORGIA provides:

> "If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained."

It will be noted that the statute itself prescribes a rule for determination of the issue of liability but says nothing about the apportionment of damages based on a comparison of the negligence of the plaintiff with that of the defendant. However, the Supreme Court of Georgia has taken care of this omission by construction. The early Georgia cases held that recovery is defeated only when the contributory negligence of the plaintiff amounts to a failure to exercise ordinary care and that "in other cases" there must be a comparison of the negligence of the respective parties and a diminution of recovery as the facts may warrant. *Rollerstone v. T. Cassirer and Company,* 3 Ga. App. 161, 59 S.E. 442 (1907).) At first blush these general statements seemed incomprehensible to me because, at least under our law, unless some act or omission on the part of the plaintiff amounted to a failure to exercise ordinary care he would not be considered negligent at all. Other cases, however, clear this point up. The plaintiff's duty to exercise care did not arise until he knew, or in the exercise of ordinary care ought to have known, of the negligence of the defendant, or until such negligence was apparent or by the exercise of ordinary care should have been apparent. *Wilson v. Pollard,* 4 NEGLIGENCE CASES 225, 63 Ga. App. 23, 10 S.E. (2d) 407 (1940).)

In NEBRASKA, we find the following statute relating to comparative negligence:

> "In all actions brought to recover damages for injuries to a person or to his property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence of defendant was gross in comparison, but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages in proportion to the amount of contributory negligence attributable to the plaintiff; and all

questions of negligence and contributory negligence shall be for the jury."

One of the leading, and more recent cases construing the Nebraska statute is *Pierson v. Jensen et al.*, 29 AUTOMOBILE CASES 1055, 150 Neb. 86, 33 N.W. (2d) 462 (1948).

The SOUTH DAKOTA law of comparative negligence is modeled on the Nebraska statute, and the construction of the various aspects of the statute by the Supreme Court of South Dakota is substantially in line with the Nebraska decisions. But compare *Friese v. Gulbrandson*, 17 AUTOMOBILE CASES 1156, 69 S.D. 179, 8 N.W. (2d) 438 (1943).

In WISCONSIN, the law relative to comparative negligence provides:

"Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

There is nothing remarkable, by way of novel, strained or unusual construction of the statute by the Supreme Court of Wisconsin, in the decisions we have reviewed. The court simply takes this unambiguous statute as it finds it and enforces it according to its terms. Although it adheres to the rule that the comparison of the negligence of plaintiff with that of the defendant is peculiarly written within the province of the jury, it has not hesitated to direct verdicts where the proof is such that the minds of reasonable men could not differ as to the correct conclusions. *Dinger v. McCoy Transportation Company, et al.*, 251 Wis. 265, 29 N.W. (2d) 60, 37 N.W. (2d) 26 (1947); *Crawley v. Hill et al.*, 30 AUTOMOBILE CASES 368, 253 Wis. 294, 34 N.W. (2d) 123 (1948); *Klosse v. American Indemnity Company et al.*, 30 AUTOMOBILE CASES 716, 253 Wis. 476, 34 N.W. (2d) 816 (1948).

The State of MISSISSIPPI has had a comparative negligence statute for 44 years. In 1910 the legislature adopted such a statute limited to personal injury and death cases. In 1920 it was amended to include property damage cases. The statute, Section 1454, Mississippi Code of 1942, presently in effect, provides:

"In all actions hereafter brought for personal injuries, or where such injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured, or the owner of the property, or the person having control over the property."

Section 1455, Mississippi Code of 1942, originally Section 2 of the above statute, provides:

"All questions of negligence and contributory negligence shall be for the jury to determine."

Section 1454 is constitutional. Section 1455 does not confer judicial power on the jury; the court may, and should, direct verdicts in proper cases. *Natchez & Southern Railroad Company v. Crawford,* 99 Miss. 697, 55 So. 596 (1911).

The difference between the Mississippi statute and those of the other four states mentioned become immediately apparent. Thus, in Mississippi, if the defendant was guilty of any negligence at all, however slight, causing or contributing to the plaintiff's injury, then the plaintiff is entitled to recover no matter how gross his own negligence might have been. The sole purpose of comparing the negligence of the plaintiff with that of the defendant in Mississippi is not to resolve the issue of liability, which is one of the purposes of the other four states, but to determine the percentage of his total damages that the plaintiff is entitled to recover. Mathematical demonstration of how the Mississippi statute operates is well illustrated by *Illinois Central Railroad Company v. Humphreys* (1935) 174 Miss. 459, 164 So. 22, 102 A.L.R. 549.

A comparison of the statutes from the five states mentioned make it obvious that the statute of Wisconsin is the least obnoxious to those who are found in the camp of the cons relative to the doctrine of comparative negligence.

IV. Conclusions on and Reasons Against the Adoption of a Comparative Negligence Law in North Dakota

I have assumed all along that lawyers legitimately and ethically may advocate a law of comparative negligence, and I would be among the first and last to champion their right to do so, but let us have no maudlin pretention that sympathy for their clients abides only in the breasts of those lawyers who, in admirable sporting spirit and sometimes from sheer benevolence, undertake to prosecute the claims of stricken persons on a contingency basis. Society may have sharp differences of opinion as to how the sympathy we feel for persons in distress and need, whether victims of accidents or not, can be expressed and made effective most promptly, wisely and justly. Thus, for example, there are those among us who believe and practice expressing their sympathy with *their own money,* and there are others who uniformly advocate expressing their sympathy with *other people's money.* Oddly enough, the former are nearly always labeled conservatives. whereas the latter, whose approach is really quite ancient, always regard themselves as liberals—indeed, they sincerely mean to be liberal—*but with other people's money.*

From my very limited experience in the reading of cases and articles written by other eminent authorities, one of whom is The Honorable William J. Palmer, Judge of the Superior Court of Los Angeles County, California, I have arrived at the following con-

clusions and reasons, which, I submit, should persuade one to be against the adoption of a comparative negligence law in North Dakota:

(1) Whereas, some self-serving interests have advanced the high-sounding principle that inherent inequities exist in the contributory negligence doctrine and some action should be taken to alleviate this situation, it appears almost conclusive from a survey of the laws of those states which have attempted to correct the situation that they have created collateral problems and inequities which are perhaps greater than those sought to be cured. The very complex nature of the subject itself suggests that the mechanisms of its operation must of consequence be complex.

(2) The adoption of comparative negligence lessens the control of the courts over verdicts, throwing them still wider open to effects of possible jury prejudices, sympathy and the like. It gets further away from any established rules of law applied by the Court. It takes us one step further from the concept of the constitutional guaranties and protection which we have heretofore enjoyed. It takes us another step further on the road to a so-called "people's court" making it that much easier for one to be mulcted in damages on the grounds that a jury may not like the ancestry, race or religion, the politics, the occupation or status of the defendant.

(3) Comparative negligence, as a general rule of law, has been tried before in states which do not now apply it. In Kansas, for a considerable period of time in the 19th Century, a plaintiff was permitted to recover if his negligence was slight and the defendant's was gross, or if his negligence was remote and the defendant's direct. In other words, Kansas used a form of what is now the Nebraska rule. The doctrine was found to be undesirable in application, and in 1883 it was abandoned in that state and repeated efforts to revive it there have failed. The State of Illinois adopted comparative negligence as a rule of court immediately after the Civil War. In that state, if the plaintiff's negligence was slight and defendant's gross, the plaintiff was permitted to recover all his loss. Again, the rule was found to be unworkable and unjust in application and in 1894 was abandoned. Strong efforts, continuing up to the present, to revive the rule in Illinois have failed. Louisiana has had for many years a statute on its books (Article 2323 of the La. Code) which seems to permit the general application of the comparative negligence rule. *Despite the statute's existence, the Louisiana courts have consistently refused to adopt the rule in practice.*

(4) The adoption of a comparative negligence act requires a rather thorough review of the substantive and procedural codes so as to determine whether such an act is in conflict with other laws. Thus, some consideration must of necessity be given to the law of joint and several liability, the right of contribution between joint tortfeasors, the right of the defendant to counterclaim or crosscomplain in the same action so as to prevent a circuity of

actions. Moreover, the laws relating to the use of the general or special verdict, as the case may be, along with the Guest Statute, and any other laws which may appear to be in conflict or which, in any event, may require revision in order to obtain the desired results, must be reviewed.

(5) Under comparative negligence statutes, litigation is immediately invited and is increased, as the plaintiff has a definite advantage in being in the position of the plaintiff, for he can recover in such cases if it can be shown that the defendant was negligent at all.

(6) It is also possible under certain statutes for the defendant, after termination of the litigation against him, to file a completely new suit against the plaintiff and to recover for his damages, diminished by that percentage of negligence which the defendant contributed to the whole. This gives rise to double litigation, double counsel fees, costs and double recovery, all of which must be met by the parties litigant.

(7) Application of the doctrine of comparative negligence tends to place a nuisance value on practically every claim because it destroys the otherwise effective argument, when true, that the plaintiff was guilty of contributory negligence, which is an absolute bar to his recovery. Thus, the operators of vehicles or their insurers, must entertain more and more nuisance value settlements, the price of which tends to increase because of the better opportunity the plaintiff has to prevail in a lawsuit. Society ultimately pays these claims in one way or another. Where the defendants are insured, a study of the rates of a typical insurance company shows the following comparisons based on automobile insurance and a private passenger car with basic limits of $5,000.00 and $10,000.00 personal injury coverage and $5,000.00 public liability. Thus, the rate in Milwaukee, Wisconsin, with a population of approximately 587,000 is $41.50. This is 17 per cent above the rate at Cleveland, Ohio, with a population of 878,000, and 22 per cent above the rate at Washington, D. C. with a population of 663,000.

(8) The adoption of a comparative negligence law is believed to be one of the first steps toward the adoption of a general compensation law in negligence cases to be administered along the lines of a Workmen's Compensation Act. An article entitled "LET'S COMPENSATE — NOT LITIGATE" is already to be found in 30 N. Dak. L. Rev. 20.

(9) There is another aspect of a comparative negligence law which should be considered by members of the Bar. Your clients are continually asking you for your opinion as to liability in negligence cases. Under such a statute, the group of cases in which the members of the Bar must confess that they can make no prediction or give no assurance is greatly enlarged because you have eliminated those cases where contributory negligence, as a matter of law, is a defense. You must, therefore, more often tell your client that, in your opinion, it would be a question of fact

for a jury, and, of course, no one can tell what a jury will do. Such opinions do not usually satisfy clients, and they feel that they are not getting the advice and information to which they are entitled. Let us not enlarge the field of speculation and conjecture referred to.

(10) In considering comparative negligence, one cannot proceed upon the theory that we will change our basic law by "passing a law" without giving exhaustive study to the problem. Unfortunately, proponents of comparative negligence in many states, including the State of California, have merely proceeded upon the theory that the alleged inequities of the contributory negligence doctrine can be quickly overcome by the passing of a law. It is also unfortunate that many proponents of the doctrine of comparative negligence have little understanding of it and have given little or no time to the study of it. It is another example of a little knowledge being worse than no knowledge at all, as the acceptance of such a principle in our law must be preceded by a great deal of caution, study and ultimate understanding. It appears that such has not been the situation in some of the jurisdictions which have already adopted a phase of comparative negligence, and where it seems that the proponents of such a law have, in effect, stampeded the legislature, with the ultimate objective in mind of destroying the doctrine of contributory negligence for pecuniary reasons of the advocates of comparative negligence.

(11) The law of contributory negligence is one of several rules that stem from a basic disciplinary policy, attitude and dignity of our jurisprudence. It is a policy that both reflects and contributes to the moral fibre of a people, that provides disciplinary measures, without the necessity of criminal actions, for certain wrong doing; that keeps in the foreground for the attention of all concerned, standards of conduct known to be necessary to the preservation of a decent civilization. For example, this juristic policy says:

> "If you, yourself, have broken a contract, one of your penalties is that you may not recover damages for a breach by another. Even if we were able to compare the seriousness and effect of your breach against that of the other party, we would feel that our courts ought not to be burdened with the claims of one contract breaker against another."

In other words, even the members of the NACCA are not advocating a comparative breach of contract law.

The same policy says that he who comes into equity must come with clean hands. The same disciplinary principle announces generally that a person may be estopped by his own conduct from complaining of the conduct of another. And from this same underlying conception of social discipline came the law of contributory negligence which says to a guilty plaintiff:

> "You, too, violated the rules, and unnecessarily endangered your own safety, and possibly that of others. We leave you where we found you."

(12) If we are going to base the passage of a comparative negligence law on humanitarian principles as distinct from moral principles, then we must make ready for the ultimate intrusion of another board or bureau to administer a general compensation law in general negligence cases probably patterned after the workmen's Compensation Law.

Aside from the fact that such a law would undoubtedly be of dubious constitutionality, I submit that the humitarian argument of the proponents of comparative negligence rightly falls outside of the field or realm of jurisprudence. In other words, comparative negligence requires us to confront a question that lies within the realm of personal sympathy and does not raise a question of justice. Under what circumstances is it just that we should compel one person to pay money to another, to whom the former has no contractual obligation? When, in the field of jurisprudence, we undertake to tell another person what he ought to do, we are dealing, so far as he is concerned, with a question of justice, not of sympathy, regardless of the amount of sympathy we may have for the victim of his conduct and regardless of whether or not we may be moved to temper justice with mercy. It is only when we contemplate what we ourselves ought or wish to do that we may give play to our personal sympathy and permit it to be a factor of decision. In a nutshell, it is submitted that comparative negligence gets into the field of sympathy or so-called humitarianism, which, as a matter of long historical precedent, is not a proper subject for jurisprudence.

(13) As a general summary, I quote from the article entitled "LET US BE FRANK ABOUT COMPARATIVE NEGLIGENCE" by The Honorable William J. Palmer, Judge of the Superior Court of Los Angeles County, California, and found in the November, 1952, issue of the Los Angeles Bar Bulletin as follows:

> "The argument for a mathematical apportionment of liability falsely assumes the possiblity of mathematical pro-rating of blame. Sometimes the trier of fact, in good judgment and conscience, after hearing the evidence in a negligence case, can say: "Although both parties were at fault and both contributed in some degree to causing the accident, I am satisfied that the chief, major cause of the accident was the negligence of . . . ."
>
> "And sometimes the trier, in equally good judgment and conscience, can say: 'I am satisfied that both parties were equally at fault, or virtually so, and that both must bear substantially the same blame for the accident.'
>
> "But to go beyond such broad observations and to endeavor to apportion in precise percentages the blame for an accident, is to attempt *to apply mathematics to a situation that does not admit of mathematical division or appraisal; it is to venture into a field of pure guesswork or into what is worse, a field of caprice and arbitrariness.*

"Finally, the argument for a moral-mathematical proration of liability overlooks the significant fact pointed out previously, that in nearly all, if not all, true cases of contributory negligence, plaintiff would have avoided the accident if he had exercised ordinary care.

"No one yet has expressed or even *conceived a reason why John Jones, who was chiefly to blame for an accident that would not have happened if he had exercised only ordinary care, should have a cause of action against anyone else involved in the accident.*"

V. CONCLUSION

It is submitted, that while lawyers should always be open-minded in assisting in the changing of laws that will be for the betterment of the people, yet, as it relates to comparative negligence, it would seem better if both lawyers and courts would strive to increase their skill in using the tools provided in our present basic law of negligence, rather than be everlastingly tinkering with our substantive law that has proved workable over several centuries.

In this connection it is noteworthy to call attention to the fact that one of the prime proponents for a comparative negligence law in California in writing admitted that over 95 per cent of all negligence claims are being settled before a decision by a court or a jury even under the contributory negligence doctrine and without the aid of a comparative negligence law. (See the article entitled "LET US ALL BE FRANK ABOUT COMPARATIVE NEGLIGENCE" written by Richard L. Oliver, a member of the NACCA appearing in the January, 1953, issue of the Los Angeles Bar Bulletin).

Let us note with fitting appreciation that the settlement of 95 per cent of all claims on an admittedly fair basis is, in itself, a mighty achievement to the credit of the regime of the law of general negligence and contributory negligence as it presently exists in the great majority of states. And what about the remaining five per cent? Mr. Oliver answers that a comparative negligence law would bring no benefits to lawyers. If it would be of no benefit to part-owners of the claims (being the lawyers under a contingent fee arrangement), it, of course, would present no benefit to the sharing owners. In a considerable portion of that remaining five per cent, certainly the defendant would not have been negligent or his negligence would not have been a proximate cause of plaintiff's injury. In view of such admissions made on the part of the prime movers toward the adoption of a comparative negligence law in California, I respectfully inquire why should North Dakota upset the well established and workable rules that have heretofore been in existence? Could it possibly be attributed to the human interest that the members of the NACCA apparently have in increasing their fees in personal injury cases?

If the counter contention is made by the members of the NACCA that the writer himself has an ax to grind in that he

represents large corporations and insurance companies, let it be recalled that the doctrine of contributory negligence was long prior thought good for the people before there were any large corporations or insurance companies operating in this area.

MR. BEEDE: You are on borrowed time.

MR. OEHLERT: Can I have two minutes of your time, Phil, Mr. Vogel?

MR. VOGEL: No.

MR. BEEDE: I am satisfied now that we have right here in our state at least, I think, as good men as if we had invited somebody from outside the state.

MR. LANIER: Gentlemen of the bar, I am not going to take even the rest of my time. Primarily I do want to turn the speaker's stand over to Mr. Comny. I will comment on what Mr. Oehlert says. It is a funny thing. I have tried a lot of lawsuits against him and I never thought he would treat a body of lawyers in the same way he treats a jury. I notice this because he is very effective as you gentlemen know, but I thought he was addressing a jury.

He says, Number One, that we who are avowed champions for the platform do it for self-serving interests. Members of the bar, stop and analyze. Plaintiffs' attorneys who specialize, and I will plead guilty to plaintiff work, will make more money under the law of contributory negligence than we will after we have the doctrine of comparative negligence, which we will eventually. As long as we maintain the out-moded and out-dated doctrine of contributory negligence it becomes a strong question in any lawyer's mind whether he will or will not win a lawsuit. The average practitioner throughout the state knowing that and not being constantly in court knows that he must join someone who is experienced and used to that particular type of trial work. A plaintiff's attorney is called in constantly in cases of contributory negligence. When you eliminate it, in the average practitioner's two or three cases a year under comparative negligence he will be his own counsel, his own settler, his own trial man, because he knows he has a percentage to work on. We will constantly make more money under contributory negligence than under comparative negligence.

Lewis has used his little stiletto on the fine gentlemen of the NACCA. He practically called them everything but subversive — the terrible Association of Claim and Compensation Attorneys! I am going to the convention in Boston next week. I claim that these are all organized plaintiff's attorneys who have gotten schools to educate themselves. You should see the lawyers for the St. Paul and N. P. Railroad and see the beautiful black notebook they have in which they have every last railroad case tried in the United States. At long last the plaintiff's attorneys can be equal and compete legally. It will be the platform of the NACCA to investigate this kind of thing. That is, we should have this

kind of thing — not insurance company laws, not railroad laws. So help me Hannah, you and I as lawyers on our legal side want what is best for our clients and best for society. It is outmoded and it is being replaced by this law going into effect. Of the states that put it into effect and repealed it there are only two— only two. He states I myself said seven states had it. One thing I didn't bring up, except indirectly only, is that whenever the states have passed the legislation—Louisiana, Wisconsin, Georgia Nebraska—the public itself has indicated that it was in favor of it.

The fact remains relative to insurance premiums in Louisiana that not a single insurance premium has increased since the statute has been on the books. The Wisconsin premiums for $5,000 to $10,0000 liability averaged $41.00, and on $5,000 to $10,000, in her neighboring state of Iowa, averaged $40.00. It hasn't worked out that way.

Only one thing to decide before I turn this over to Mr. Conmy. Only one thing — where is the best interest of the people served? A doctrine which juries are applying anyway. You say they will use 99% and 1%. No one wants that 99% and 1%. They aren't going to vote for a statute like that. He has no business in court. On the other hand, you can't drop one drop of ink and recover it and you can't recover one drop of bluing in a gallon pail, and if the defendant's negligence represents only one per cent of negligence he can't recover. That, members of the bar, is fair. Adopt the doctrine of comparative negligence and write a fair, sane and proper statute. If a plaintiff is more than 50% negligent I am sure he should not recover. I am opposed to any statute where he could. Then he worries abut 49% and 51%. They will decide the difference between 90% and 10%. It isn't going to be that fine a proposition. No, Mr. Conmy—

MR. BEEDE: I am afraid we will have to hold that the time that was given to Mr. Lanier was his time only. We are going to call on the other members of the committee. However, we are going to allow ten minutes first to Mr. Vogel who will be speaking against the adoption of the doctrine and last to Mr. Conmy, who will be given ten minutes for the doctrine.

MR. VOGEL: Mr. Chairman and members of the Bar. I submit that the doctrine of contributory negligence is not out-worn or out-moded. For myself I can't see anything wrong with a rule of law that says that if a man contributes to the happening of an accident that causes injuries and damages he shall be denied recovery. I can't trace the contributory negligence rule, as Mr. Oehlert has, back to the 14th century. To the best of my knowledge Lord Ellenborough laid down this rule in 1809, and shortly thereafter the courts modified it by promulgating the last clear chance doctrine.

The judges recognized that it was wrong to deny recovery to a negligent plaintiff, if the defendant had the last clear chance to avoid the accident. There are many instances where our courts have changed common law rulings from time to time, where it

was humane to do so. The law with respect to imputed negligence involving passengers in automobiles is only an example. My own impression is that our common law of negligence, properly administered, is fair and just.

I was interested in listening to Mr. Lanier say that the states which have the comparative negligence law show no increase as far as insurance premiums are concerned. How can that be? If you are going to increase the number of causes of action, you are going to increase the costs as far as the insurance companies are concerned. I saw some statistics a short time back showing that in towns of comparative size in Wisconsin, Minnesota and Iowa, the policy holder in Wisconsin had to pay 64% more for a liability policy that the man who lived in Minnesota or Iowa. If the cost of settling claims goes up, the premiums must go up. The insurance companies won't lose under those circumstances. Society itself will pay the increased premiums, but if those premiums become high enough, there will be a demand for some kind of state monopoly in the writing of liability insurance. I don't think that very many of the members of this bar want to see that. If the state of North Dakota gets into the business of writing liability insurance policies, it won't be long before we have no law of negligence at all. Contributory negligence and comparative negligence will be completely thrown aside, and compensation will be paid regardless of fault. I don't believe our society is in a position to underwrite that kind of insurance program.

There are doubtless hard cases as far as the law of contributory negligence is concerned. But there is hardly a lawyer in this room who has not known of hard cases with respect to other phases of our law. Here and there great hardship may be created by the best evidence rule, the parol evidence rule, the STATUTE OF FRAUDS and a host of others. But when we find cases like that we don't go running to the legislature asking for changes in our basic laws. We know that if we did that, we would be opening a Pandora's box that would bring us a hundred evils for every one we try to cure. For myself, I believe that we are far better off to leave the problems of negligence and contributory negligence to the jury, guided as it must be by the instructions of the trial court.

Last spring there was an article in the North Dakota Law Review that reported that in 1951 comparative negligence statutes were introduced in 16 different legislative assemblies. The important thing to me is, not that the statute was introduced in these 16 state assemblies, but that it failed of passage in any of them. I doubt if there has been a comparative negligence law adopted anywhere in the last 10 years. Two of the southern states have the rule and they have had it for many years. As a matter of fact they had the rule long before they adopted workmen's compensation statutes, and I suspect that that was the only reason they ever passed the comparative negligence law. For all of these reasons I oppose the resolution and I shall vote against it.

MR. CONMY: Let us see if we can clarify the change that is being spoken of here. What is the doctrine of comparative negligence? Let us state it this way, "The doctrine of apportionment of loss in case of mutual fault is the doctrine of comparative negligence."

So the doctrine which is taken into account is the relative negligence of the plaintiff on the one hand and the defendant on the other. It is a simple and reasonable rule for which we speak. On the other hand, what is the doctrine of contributory negligence as enunciated and applied in North Dakota. That is the doctrine that if the plaintiff has negligence on his part contributing in any degree, even the slightest, to cause his loss and injury, then he may not recover. I think you will agree that rule is a harsh one. That rule is not consistent with our ideals in regard to our system of justice today. You know that when you are on the defense side, and when I have been on the defense we always request the instruction and usually quote the old Clark v. Feldman case, that if the plaintiff's neglect has contributed to the loss in any degree, even the slightest, then he may not recover.

That is a harsh rule and being a harsh rule it isn't entirely good law and therefore we must admit logically we should entertain some ideas of change.

Regarding the history of comparative negligence and the history of contributory negligence we find that comparative negligence is nothing novel. Back as far as 1811 it was set forth in the Austrian civil code. It is now in force and effect, according to an article in the 1953 California Law Review, virtually all over Europe. England has abandoned the law, which Mr. Vogel mentioned was adopted by decision in the Butterfield case, as too harsh. Most of the Canadian provinces, Quebec by its civil law, others by statute, have adopted the comparative negligence law. In this country, for instance, its harshness was recognized and we have the Federal Employers Liability Act comparable with that law. The Workmen's Compensation Act is not in question.

In Nebraska, South Dakota, Wisconsin, Mississippi and Virginia there are various types of comparative negligence acts in operation. They are not all the same acts. Some seek to define the degree of negligence. Some, as in Massachusetts and New Mexico, are applied only in case of death. In Virginia it is applied to railroad crossing actions only.

Regarding the history of the last clear chance doctrine developed, as you know, from the Davies v. Mann case, an English decision; the trouble with the doctrine of last clear chance, when analyzed, is that it swings the pendulum too far to the other side. In other words, we say on the one hand if a plaintiff's negligence contributes in the slightest he cannot recover. The thinking of this is that a man may recover if the other party has the last clear chance to avoid injury. It swings the pendulum too far the other way entirely. Under the doctrine of last clear chance, you will recall, a man had left his ass upon the highway and even

though he was originally negligent the party who ran into it had the opportunity to avoid it. The last clear chance within some states is different in its application.

I might say here that if Mr. Oehlert had left his fettered ass upon the highway, I would recommend a last clear chance to collide with it.

(Applause.)

In conclusion I want to say it has been urged here that those who seek the comparative negligence law, (Mr. Oehlert sought to prove that) have a self-serving motive. Really, we must have enough self-respect to assume that we are acting today to accomplish justice. Yes, we must get paid if we are to live, but you recognize and probably see that this is not our motive. We are not pecuniary but logical. It is right — based on reason. I ask you, could it be that self-interest on the part of the group interested in the railroads and casualty companies makes them desire the advantage they have with the contributory negligence law? Does that appeal to you? It is more possible that a good motive ought to be attributed to those who invoke the comparative negligence doctrine.

MR. BEEDE: That concludes our debate proper. We had intended using the gentlemen perhaps as a panel and having questions from the floor and permitting members from the floor to engage in the debate. Time will not permit this. It is getting near 12:00 o'clock and other matters have to come up and we have to turn the meeting back to President Johnson. If you care to take further action along this line, that will come up in the general business meeting of the open assembly. I thank you and I thank every member of the committee for the intelligent and informative remarks they have given us regarding the doctrine of comparative negligence. I know I, as a member of the legislature, have taken a great interest in the remarks and probably will be able to vote, if the matter comes up in the legislature, with a little more information than before.

PRESIDENT JOHNSON: What is your pleasure? Should we continue the discussion with Mr. Beede for at least half an hour, is there anybody who wants to be heard on it?

MR. HIGGINS: I would like to hear the discussion go on for a little longer. Let's turn the meeting back to Mr. Beede. I realize most of you want to get away. I hope we can continue before we adjourn, turn the meeting back to Mr. Beede to continue further dicsussion on this matter.

MR. BEEDE: In throwing the meeting open to discussion from the floor we've got to try to be fair and confine your remarks to a few minutes, and after having heard from one member speaking for the matter or against the matter, we should next recognize someone for the opposing side.

Mr. Higgins, we will recognize you first, and you are speaking for the doctrine.

MR. HIGGINS: I think I can make myself heard by any of you who are inclined to listen. I must say I have enjoyed this very much. Here I am talking like Bill Lanier and that was all the preparation I had. This has been very informative. I will contribute only this. In the first place, as you say it is difficult if not impossible for a jury to determine between 49% and 51%. Juries are not apt to do that. Any place you draw a line you present that difficulty and you can avoid that by not drawing lines and then they must be decided by someone. I don't think that is a sound argument. It is very important that the bar stand well with the people of the country. I certainly agree. I think that the enactment of a sound comparative negligence law would improve that relationship more than anything else. We say the juries take these items into consideration all the time but there is no mention of the fact that notwithstanding that the courts must set aside the verdict of the jury because of a slight degree of negligence, the court must say the plaintiff for personal injury cannot recover. It seems the situation to me is this. It is true that no law can be enacted that does not have its hard cases and we can't avoid this by legislation because the statutes cannot become that involved. In cases where the jury considers negligence it seems to me when we permit a situation like this to continue we not only do great damage to the law and damage to the bench, but much greater damage to the law itself which is the fundamental of our sound democracy, much more important than the question of the amount of damages. It is a most difficult sort of thing to have the jurors in a position where in order to carry out what he feels is just to violate what he has been taught is the law of the land. The basic conception is wrong. As long as that kind of conflict exists it is not a surprise to me that the people are suspicious of the law. Things in too many instances are set up to protect and do protect the wealthy and privileged against the under-privileged. I doubt that in the long run attorneys for the plaintiff are going to get any advantage. I am inclined to think the frequency with the counsel may offset to some degree that item so that it may be fairly in balance. Most people have an interest in connection with corporate matters, etc. True, everyone is in a position to say the kettle is black, but we should disregard that as far as we can.

But to me it does mean this, it is basically unsound to say as many of the opponents do say, overlook the fact that the law is there and the jury does take it into consideration. I recognize the inequality of it and I must set it aside. The opponents have said no one should profit by his own fault and that of course is basically sound, logical and correct. The situation is where under comparative negligence he doesn't profit by his own fault. The way the law is now he can't recover for his own fault and he can't recover for his opponent's fault. That is the basic fault of the present system.

MR. BEEDE: Now, we will have someone speaking against the doctrine.

ED COMNY: The argument before this would receive a lot of credit if a workman's compensation law were involved or a condition to that effect.

Immediately after the last session of this Bar Association I started a correspondence with various people in an effort to find out something about this law. I got into correspondence with Judge Palmer, also a North Dakota lawyer who lived in California. To me from what I learned out of this contact the opposite effect will come as far as California is concerned. In California as you have been told, I think Mr. Lanier was in error, I know he was in error when he said California has adopted a comparative negligence law. A law was introduced after the Bar Association had gone on record as favoring that doctrine.

Judge Palmer advises me that it was soundly defeated in the legislature and lost in the legislation because it was told the principle condition was that it was a lawyer's bill. I say here it is a plaintiff's lawyers deal, as this increases litigation and the record is that it does increase it. Those who primarily defend the law say that others will have just as much benefit from the law. We don't share in the recovery but we do get paid for our time. We don't get 50% of $50,000 but we do get paid.

Now, these men from California who talked to us — Jerry Giesler and Eddy O'Connor — talked about lawyer's bills and didn't confine it to plaintiff's laws. We do know it's a lawyer's bill. The more lawsuits the more defense. They said the bill went down because it was sponsored by the Bar Association in California. I value the good judgment of these men. I say in my opinion we talked about public relations trying to keep our standing with the people. Any action on the part of this Bar Association favoring such legislation I think is a mistake right or wrong because if sponsored by the Bar Association, the lawyers are going to be judged as acting upon a selfish lawyers' bill. They are supporting it for their own benefit. It would increase litigation anad increase those fees that go to plaintiffs' lawyers and defendants' lawyers. Think about that.

I could go into a lot of features if I had time and I would like to mention there are a lot of papers on this subject. You should all read about it. I certainly am in no position to pass on the question, or the desirability of the thing. My point is we would be very, very foolish if we took any action on this question. It will be and would be branded as a lawyers' bill. I personally say we should have the benefit of going to the legislative committee and that is the place we ought to go. It should not, I submit, come out of this Bar Association. We will rue the day we recommend a proposition of this kind as a Bar Association.

JOHN LORD: I might say about a portion of the last argument that if we are afraid to take the risk of backing what we think is right because it might be called lawyers' litigation, either

we are going to favor what is right and stand out for what is right or we don't deserve to have a Bar Association. Now, as to comparative negligence I have had experience under it in Wisconsin. At that time I did not have this infamous association with the NACCA. I represented the Federal Land Bank of St. Paul and Farm Credit Administration. I wasn't one of the most popular people. I used to search the courtroom for weapons and I know if some of them had had a gun they would have shot me. In personal injury suits where you have comparative negligence law is to have a jury come in after you have defended as it has happened to me. They found the plaintiff's damages would be $6,000 and I almost fell back in my chair. The defendant's damages were nothing. They had set the plaintiff's negligence at 10% and the defendant's at 90%. I had tried a good lawsuit.

The jury competent to do that is a jury which under proper instructions can bring in a proper answer. They deserve some sympathy from other considerations that enter into those matters of personal injury but you know and these gentlemen know they are legal and not properly done in a lot of cases. It could be done in a conception of comparative negligence rather than from instructions to the jury the result of which are unjust decisions based on those things they do not know. It takes a lot of things out of conjecture in a jury room.

All this talk about increase in litigation cannot be justified. It may increase in the beginning but will result in many more settlement cases. I believe it is a human doctrine, one in tune with our times and it certainly contains much more justice and our conception of equal justice under law than the doctrines of contributory negligence or of the last clear chance. However, we can go in a lot of cases and see great injustice done that would not have occurred if we had the doctrine of comparative negligence, and I believe you should examine this as to whether or not you believe that is a just and proper doctrine and then determine whether or not to support it rather than any feeling that it would be branded a lawyer's law. If it is right, it should be right. I personally believe it is right. If it is wrong, make your decision accordingly.

MR. BEEDE: Anyone now who wishes to talk for a few minutes against the doctrine.

If not, we will turn the meeting back to President Johnson and before we do I will ask you to permit Mr. Lanier half a minute. He wants to make an explanation, I think.

MR. LANIER: I won't take your time. I have been misquoted. I never said California passed such a statute. I did state I thought they would pass it. You say it was a lawyer's bill in California and nobody but the Bar Association wanted it. By the reports of the Senate Judiciary Committee of California it was defeated by three votes. Do you call this overwhelming? It will be back before the legislature with the unanimous approval of the Senate Judicial Committee.

PRESIDENT JOHNSON: I want to thank Mr. Beede for presiding and I thank each member of the panel.

MR. LANIER: I now move that this North Dakota State Bar Association go on record in recommending to the North Dakota state legislature the passage of the comparative negligence act.

J. O. THORSON: I second the motion.

PRESIDENT JOHNSON: You resolution is seconded. Your resolution was already before the house.

MR. LANIER: If the resolution is still open, I will withdraw the one I just made.

PRESIDENT JOHNSON: The motion we have for consideration is the one made by Mr. Lanier, and can take it from there. Any further questions?

PRESIDENT JOHNSON: The motion is lost.

SENATOR DAY: I would like to make just an observation. I didn't vote on either side and Senator Duffy didn't. Our views haven't always coincided.

I do want to correct an impression some of you may have made by one remark. I don't know what the situation as to the Bar Association in California may be. I do know that if you will examine the record in recent years in North Dakota and if you will notice what a high percentage of the recommendations made by the Bar Association have become law, you will realize that the legislature of North Dakota has a very high regard for the views of the Bar Association of the State of North Dakota.

(Applause.)

REPORT OF INDIAN AFFAIRS COMMITTEE

MR. PRESIDENT AND MEMBERS OF THE NORTH DAKOTA BAR ASSOCIATION:

Your Committee of Indian Affairs submits the following report:

Several informal meetings of various members of the Committee have been held. A meeting was held by a majority of the Committee on July 24, 1954, at Devils Lake, and one was held in Grand Forks on August 5, 1954. The Committee has coordinated its activities with those of a similar sub-committee composed of Hon. Albert Lundberg, Chairman, Hon. George Thom, Jr., and Frank Jestrab, set up within the Judicial Council. The sub-committee submitted reports to the Judicial Council on December 5, 1952 and May 18, 1954, which reports are by reference incorporated as a part of this Committee's report.

There being so many ramifications of the problems of the Indians in the state of North Dakota, it was the consensus of opinion of the Committee that for the present at least, we should restrict our attention largely to the question of jurisdiction over the Indians. The question is one not easily answered and one on which the Committee cannot even approach unanimous agreement.

There are four reservations in North Dakota, to-wit: Stand-

ing Rock, Devils Lake Sioux (Fort Totten), Turtle Mountain, and Fort Berthold. The Indian population totals about 15,000, with the majority of them living upon some one million acres of largely unproductive land. On three of the reservations in the state, viz., Standing Rock, Turtle Mountain, and Fort Berthold, jurisdiction is assumed in varying degrees by the Federal Courts and Indian Tribal Courts. On the Devils Lake Sioux Indian Reservation, jurisdiction is exercised by the Federal Courts over the major crimes, and the State Courts over all other crimes. The Committee is agreed that on the three reservations first mentioned above, the State Courts do not have jurisdiction over crimes committee thereon where the parties involved Indians.

In 1946 by act of Congress, concurrent criminal jurisdiction over the Devils Lake Sioux Indian Reservation was conferred upon our State Courts. The state of North Dakota has never affirmatively consented to accept jurisdiction, although Benson County has been exercising jurisdiction over this reservation. By virtue of the provision of our state's Enabling Act and its Constitution recognizing the exclusive jurisdiction of Federal Courts over Indian Reservations, there is considerable doubt as to whether or not our State Courts have jurisdiction on this reservation. It was the opinion of the Committee that this question should be judicially determined, not merely to clarify the situation on this reservation, but also to set a pattern as to the requisites necessary in case state jurisdiction should be assumed over the other reservations in the state. A case involving a crime committed by an Indian on the Devils Lake Sioux Indian Reservation has accordingly been commenced and the Committee hopes to have the case presented to our Supreme Court in the near future. The question of State Jurisdiction over the Turtle Mountain Reservation has been presented to the District Court of Rollette County in a case involving the crime of non-support allegedly committed by an Indian residing on the reservation. The Committee has also been informed that a case arising in McLean County involving the question of jurisdiction over Indians is already before the Supreme Court.

It is the recommendation of the Committee, however, that the next legislature take steps toward amending the state Constitution to provide that jurisdiction over the reservations may be assumed by the consent of the legislature at such time and under such conditions as it may deem fit.

Confusion in the overlapping of authority on Federal and local levels is present not only in the matter of criminal jurisdiction, but also in the administration of agricultural, welfare, medical, public health, and educational services to Indians. Historically, the providing of these services has been the responsibility of the Federal Government, and it is the thought of the Committee that until such time as the Indians are freed from Federal regulation and control and the reservations abolished, that it is primarily the responsibility of the Federal Government to finance these services. We would recommend that the administration of these services be

transferred from the Federal Government to the state and local levels, with Federal financial assistance until such time as the Indians themselves have gained economic independence.

Generally speaking, economic conditions on the reservations are very poor, with little opportunity for employment or means of getting a livelihood, thereby resulting in a general lowering of the social and moral conditions. Although our profession cannot accept responsibility for these conditions, the public undoubtedly feels that it is an obligation of our profession to have settled the questions concerning the confused status of jurisdiction and do everything in our power to better existing conditions on the reservations. We feel that the subject merits the interest and consideration of each and every one of our members.

We recommend that an Indian Affairs Committe of the Bar Association be continued for another year.

Respectfully submitted,
Frank Jestrab
Judge Burt Salisbury
Carlyle Onsrud
John Hart
J. Howard Stormon
Judge Albert Lundberg
Harry Lashowitz
Clyde Duffy
Hilton Higgins
Melvin Christianson, Chairman

JURISDICTION OF STATE COURTS ON INDIAN RESERVATIONS:

This problem was made the subject of some discussion at the meeting of the Judicial Council on November 25th, 1952, and a Committee consisting of Judge Thom and Broderick, together with the undersigned, was appointed to look into the matter further.

At the Council meeting I mentioned having received considerable material from Mr. John B. Hart of Rolla, North Dakota, and particularly the 1951 Montana case of State vs. Pipion, et al, 230 Pac, 2nd, 961. This case is referred to in pocket part of 42 C.J.S. "Indians" for P. 796, n. 60. Beginning on p. 794 (Sec. 79), and continuing for several pages, it is a discussion of the matter of jurisdiction that seems to indicate that in the absence of Federal legislation conferring jurisdiction, State Courts are without such jurisdiction. If we turn to 27 Am. Jur. "Indians", Section 50-53 we find substantially the same authorities. There are indications that, *in earlier times,* State Courts claimed and exercised jurisdiction particularly in criminal matters - - - 21 L. R. A. 169 et seq.

Reference was made at the council meeting to a letter written May 24, 1945, by Asst. U.S. Atty. Harry Lashkowitz to the late Jansonius expressing the view that our Juvenile Courts had jurisdiction over children on the Reservations. The opinion seems to be based on the fact that Sec. 27-7608 says the Court shall have

jurisdiction over "any child . . . within the county" . . . etc., and that Sec. 27-1610 speaks of "all children" etc. Also, it is intimated that juvenile delinquency cases of Indian children must, of course, be referred to State authority because Congress had not passed any juvenile delinquency laws! I must say the reasons advanced do not impress me greatly.

Quite different conclusions are reach by Atty. Gen. Vernon W. Thompson of Wisconsin in an opinion to the Dept. of Public Welfare of the State under date of June 14, 1951 - - - a copy of which has been furnished me by Mr. Hart. The opinion refers to U. S. vs. Rogers (1845) 4 Howard 567; Cohen, Handbook of Federal Indian Law, 2-5. The case of Ex Parte Fero, 99 Fed. 2nd 28, 31-32, is quoted from, and the Wisconsin case of State vs. Rufus, 237 N.W. 67 is referred to. The conclusion is reached that the Juvenile Court of the State is without jurisdiction for acts of delinquency committed *on the Reservation,* but does have jurisdiction for acts committed *off* the Reservation. Such conclusions seem to be in keeping with the reasoning expressed in authorities cited in the second paragraph above.

It appears to me that Legislative, Judicial and Administrative action is going to be required to clarify the situation. As things stand at present, it seems that *Federal Bureaus* are bent on "pushing off" on the States as much responsibility as possible. Administrative agencies in the States naturally push the other way. At least, that is the impression I receive after an admittedly brief and superficial survey of the problem. The weight of authority certainly seems to be against State Courts having jurisdiction over crimes committed by Indians on Reservation. Indeed, until Congress was roused by the "Crow Dog" case (109 U.S. 556) and established Federal jurisdiction over "Ten Major Crimes" (murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, robbery, incest and assault with a dangerous weapon), the *tribal* jurisdiction seems to have been exclusive! Whether *concurrent* power has been granted to certain States and Reservations (Ft. Totten among them) I have not been able to determine. As for crimes other than "major" . . . and our Code must have at least a couple of dozen . . . jurisdiction over them would seem to be in the "Tribe". And see 24 Minn. L. Rev. 145-200. Source of Federal power seems to be Const. Art. 1, Sec. 8, "regulates commerce . . . with Indian Tribes" . . . and War and Treaty-making power, etc.

This is not a subject to be exhausted by the limited attention I have been able to give it, and the indicated conclusions are *very tentative.* But, while our discussion was reasonably fresh I wanted to give to members of the Committee and others interested a summary of "what it looks like to me". I am certainly receptive to further enlightenment.

Grafton, North Dakota, December 5th, 1952.

Albert Lundberg

COMMITTEE REPORT ON INDIAN JURISDICTION

Mr. Chief Justice James Morris
Chairman, North Dakota Judicial Council
Bismarck, North Dakota

On the occasion of the Judicial Council Meeting on May 10, 1954, your Committee for Study of Jurisdiction of State Courts over Indians on Indian Reservations in North Dakota, made an oral report which was adopted with the understanding that the same would be reduced to writing and filed. This written report is accordingly made in conformity with such arrangements.

Reference is made to the contents of the previous report made herein, dated October 6, 1953, which sets forth the conclusions of the Committee at that time. Since that report, the writer had the benefit of a conference with Mr. Clyde Duffy of Devils Lake who raised certain questions which the writer undertook to answer in communication with Mr. Duffy under date of October 20, 1953. As the points involved are in the nature of a continuing study of the subject under consideration, we submit herewith quotations from the letter to Mr. Duffy as bearing on the situation.

> "Now I do not doubt or question but that *there was a time* in North Dakota when state courts exercised criminal jurisdiction over Indians or Indian Reservations (at least over the Indians who had received "Allotments") and that such jurisdiction was given recognition by the United States Court in North Dakota. You referred me to holdings by Judge Amidon in the case of United States vs. Kiya (1903), 126 Fed. 879 and in a later case (1920) involving the Indian named Wicibdega. The doctrines advanced in the 1897 case of State vs. Denoyer, 6 N.D. 586, 72 N.W. 1014, were given recognition by the U.S. Supreme Court in the 1906 case of Matter v. Heff, 197 U.S. 488, which held that allottee Indians were subject to the Kansas laws. Also I am aware that the Denoyer case was followed as to many of its theories by State v. Montrail County (1914) 28 N.D. 389, 149 N.W. 121 and in Swift v. Leach (1920) 45 N.D. 437, 178 N.W. 437; and Duke v. Melni, 45 N.D. 349, 177 N.W. 676. I am also aware that some of the views expressed in the Enoyer case are agreed to in the 1940 S.D. case of Anderson v. Brule County, 292 N.W. 429.
>
> "I also think that there has been a re-assumption of reassertion of Federal authority over Indians on Reservations, both those who have received allotments and others, which has completely changed this picture and that the present state of the law is reflected in such holdings as in the 1951 Montana case of State v. Pepion, 230 Pac. 2nd 961 and a later Montana case of State v. District Court, 239 Pac. 2d 272. There is also the 1945 Minnesota case of State ex rel Default v. Utech, 19 N.W. 2d. 706; 161 A.L.R. 1316, which refers to an earlier Minnesota case—State v. Jackson (1944) 16 N.W. 2d 957, which goes into the question quite fully and also refers

to the Oregon case of Loy vs. Hopkins 212 U.S. 542. I think that the language found on Page 797 of 42 C.J.S. in section 72-73 & 74 indicates recognition of this changing viewpoint and in 42 C.J.S. p. 777, note 90, the plenary power of Congress to treat Indians as wards even after the grant of citizenship to them is recognized and discussed in Creek County v. Saber 1943) 318 U.S. 705. Something of the same reasoning is found in 314 U. S. 951 which reversed the same case of Federal Land Bank v. Bismarck Lbr. Co. 70 N.D. 607, 297 N.W. 42. Not much attention is paid to these earlier doctrines on Indian jurisdiction in such places, 27 Am. Jur. "Indians" Secs. 50-53 and 42 C.J.S. p. 794, and I suppose that is natural as these works are concerned with stating what the prevailing law is at the time of publication rather than noting changes. If you find time to look at some of those references I would appreciate knowing whether your viewpoint is changed as a result of such examination. If you are interested, more of the history of the change appears to have grown out of the Dakota Territory case of ex parte Crow Dog (1883) 109 U.S. 556, which held that not even the U.S. laws operated on an Indian Reservation. As a result of this holding Congress started in 1885 with what was called the "7 Crimes" Act which in 1909 seems to have changed to "10 Major Crimes" Act, and which again expanded in 1932 (USCA Sec. 548). Some of the history of this movement is in U.S. v. Kagama, 118 U.S. 375, which held the Crimes Act constitutional and noted that it was a further step in the growing disposition of the Federal Government to exercise jurisdiction over Indians *within the state.*

We are indebted to Mr. John Hart of Rolla, North Dakota, the Executive Director of the North Dakota Indian Affairs Commission for a mimeographed compilation of some of the important State and Federal decisions bearing upon this question of Indian jurisdiction. The trend appears to be strongly towards a recognition that State Courts are without jurisdiction. We would particularly call attention to the 1946 U. S. Supreme Court decision in the case of Williams vs. U. S., 327 U. S. 711, 69 Sup. Ct. 778, which contains an excellent summary of the develoment of law in this field and the excellent footnotes providing the necessary historical and legal background. We would also call attention to the case of U. S. v. Jacobs, decided on June 25, 1953, by the U. S. District Court of the Eastern District of Wisconsin, found in 113 Federal Supplement 203. Beginning on page 205 the decision of the Court has a long review of the historical and legislative backgrounds of this field of law.

We would also call attention to certain provisions of the Federal Statutes which seem to indicate *complete* Federal control in this field, to-wit:

18 U.S.C.A. Sec. 1151—"Indian Country" defined:

"(a) All land within the limits of any Indian Reservation

under the jurisdiction of the U. S. Government notwithstanding the issuance of any patent - - -
(b) All dependent Indian communities - - - in or out of the State - - -
(c) All Indian allotments, the Indian title to which have not been extinguished — including right of way — June 25, 1948. Ch. 645, 62 Stats. 757, amended May 24, 1949, Ch. 139, Sec. 25, 63 Stats. 94.

18 U.S.C.A. Sec. 1152 — "Except as otherwise expressly provided by law, the general laws of the U. S. as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the U. S., except the Dist. of Columbia, shall extend to the Indian Country (Does not extend to Indians punished by Tribal Court.).
June 25, 1948 Ch. 645, 62 Stats 757.

18 U.S.C.A., Sec. 468, is the so-called "Assimilated Crimes Act" which adopts the penal laws of the states and the punishment provided by state laws which were in force on February 1, 1940. It would accordingly appear that there are few, if any, criminal offenses that now are not cognizable by the Federal Courts. In this connection we think it proper to call attention to the provisions of Sec. 1 of Section 12-0602, 1943 Code, which sets forth the persons punishable under the laws of North Dakota as being the following:

"All persons who commit, in the whole or in part, any crime within this State *except when such crime is cognizable by law exclusively in the Court of the United States.*" (underscoring ours)

All of this appears to confirm the view heretofore expressed that the state courts are without jurisdiction over crimes committed on Indian Reservations. The extent of civil jurisdiction or the jurisdicition in quasi-civil proceedings as to the establishment of paternity and the support of families is a matter still under study and no opinion is expressed, although the jurisdiction would seem to be doubtful at the best. The same is, of course, true to an even greater extent in juvenile offenses.

At the conclusion of our previous report, dated October 6, 1953, your committee made certain recommendations. The first of these - - filling the vacancy on the committees occasioned by the death of Judge Broderick, has been taken care of by the appointment of Mr. Frank F. Jestrab of Williston. The Indian recommendation regarding the clearing of the way for ultimate exemption of jurisdiction by the State we still think is desirable and we anticipate that much assistance is to be derived from a parallel committee appointed by the North Dakota Bar Association to study this same question. Mr. Melvin Christianson of Minnewaukan, North Dakota, is Chairman of this Bar Association Committee and we propose to work with this new committee in seeking further clarification of the problems here involved.

In that connection it may be well to consider the provisions of

Public Law No. 28—83rd Congress, Chapter 505—1st Session, H. R. 1063, approved August 15, 1953. Section 6 and 7 of which reads as follows:

Sec. 6. "Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this act: PROVIDED, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitutions or statutes as the case may be.

Section 7. "The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall by affirmative legislative action, obligate and bind the State to assumption thereof."

It is, of course, of extreme importance that the amendment of Sub-division "Second" of Section 203 should be in such form that the impediments to the assumption of jurisdiction by the State would be removed, that such assumption would not be made except with express legislative approval after suitable agreements governing a period of transition. In that connection we believe that the language of the above quoted Section 7 of Public Law 280 is re-assuring but the whole matter should be given further careful study.

On this matter of a transition period, we think that certain quotations approved by the North Dakota Indian Affairs commission in their report, may be of value: —

"It is the thought of the Commission that jurisdiction over crimes committed by Indians on Indian Reservations should be transferred by the Federal Government to the State of North Dakota with adequate reimbursement provisions being made until such time as these Indian lands are taxed. The Federal Government should reimburse the counties one hundred percent for any expenses resulting from law enforcement in these areas. This procedure would result in the Indian people's becoming more closely associated with the non-Indian people of the community in which they live. It would go a long way toward the ultimate goal of assimilating the Indian people into the citizenry of the State on an equal basis with other citizens."

Quoting further from the report of the Committee on Indian Affairs to the Commission on Organization of the Executive Branch of the Government, October, 1948, page 139, we continue: —

"Law and Order

The system of law and order on Indian Reservations is un-

satisfactory today. The following steps are needed and should be taken as part of the area-program covering each reservation.

"1. By act of Congress the states should be given concurrent criminal jurisdiction on Indian Reservations.

"2. As part of each area-program administrative responsibility for maintaining law and order should be transferred to state and county authorities under an agreed plan as rapidly as satisfactory plans can be made. In many areas it will be appropriate to employ Indian personnel as law officers and magistrates in extending state responsibility to the reservations.

"3. Federal aid should be given to the authorities assuming responsibility until the trust status of Indian land is ended. The amount of aid should be adjusted to the needs and costs in each case." "Section 4. The Secretary of the Interior is authorized to enter into agreement with the several States, the counties thereof, in which Indian reservations are located, to pay to such states or counties such amounts as he may deem to be proper to defray the expenses of the enforcement of the criminal laws of such states and such reservations.

It may also be of interest to note that there is apparently a case on the way to the Supreme Court of North Dakota involving this question of jurisdiction over crimes committed on Indian Reservations, an appeal being taken from the District Court of McLean County, and we attach to this report a mimeographed copy of an opinion of Attorney General Arnold H. Olsen of Montana given in 1953 on the subject of Indian Jurisdiction in connection with a murder committed in Valley County, Montana, on April 17, 1953.

Your Committee will conclude this report by making the following recommendations:

1. That the committee continue its studies, particularly in conjunction with the parallel committee appointed by the Bar Association;

2. That the possibility of conferences of two committees with the U. S. District Attorney for North Dakota and if possible, the U. S. District Judge, be explored with the view of clarifying the jurisdictional situation and also with the view of increasing the activity of Federal Agencies in the field of law enforcement on Indian reservations;

3. That we urge that there be an increase of money made available to the Federal agencies so that they can better perform the duties which we are satisfied have been imposed upon them by Federal law in this field;

4. That we repeat the recommendations concluding our previous report of October 6, 1953 insofar as they are applicable, and we desire to express our appreciation to Mr. John B. Hart who has been of such great help to us in this matter and to whom we are indebted for figures showing that North Dakota expended a total of $222,239.00 in 1952 for the relief in one form or another to Indians . . . not including law enforcement costs. It is therefore evident that the State of North

Dakota has a definite financial interest in seeing that conditions are improved and that an orderly and effective handling of these matters take the place of the present confusion and uncertainty.

Dated May 18, 1954.

George Thom Jr.,
Frank F. Jestrab,
Albert Lundberg, Chairman.

PRESIDENT JOHNSON: We have the report of the Committee on Judicial District Bar Associations of which Theodore F. Kessel is the Chairman. This committee has been most active and is getting more active each year. The principal reason is that we have a president for two years.

This report will be accepted and filed.

The report in full reads as follows:

As Chairman of the committee on *Judicial District Bar Associations,* I now make a report on behalf of the committee and on the District Bar Association activities during the past year.

On January 9, 1954, at the Gardner Hotel in Fargo, North Dakota, this committee, consisting of all Judicial District Presidents, met and there were present the following members:

Mr. Franklin J. Van Osdel, First Judicial District,
Mr. Melvin M. Christianson, Second Judicial District,
Mr. Theodore F. Kessel, Third Judicial District,
Mr. J. Oliver Thorson, Fourth Judicial District,
Mr. Ralph W. Bekken, Fifth Judicial District,
Mr. Norbert J. Muggli, Sixth Judicial District;

also present at said meeting was the President of the North Dakota State Bar Association, Mr. Vernon Johnson.

After considerable discussion, it was the concensus of opinion that a four-point program be put into effect in each Judicial District, which program is as follows: (1) That each District have at least two meetings a year, (2) That local talent be used for the program if at all possible, (3) That the ladies be invited and entertained, (4) That there must be active District meetings in order to stimulate interest in the North Dakota State Bar Association. That this program stimulated the District Bar Association into action is evidenced by the following reports from District Presidents.

Mr. Van Osdel, from the First Judicial District, reports and I quote from his letter to me dated July 12, 1954: "Please be advised that, as President of the First Judicial District Bar, we have had one meeting and we intend to have another one at the time of the State Bar Meeting in Grand Forks. The meeting of the Cass County Bar for the month of May here in Fargo, was held in conjunction with the meeting of the First Judicial Bar and it went along fine."

Mr. Melvin M. Christianson, from the Second Judicial District, reports and I quote from his letter dated July 12, 1954: "We are having a meeting on the 24th in Devils Lake. We have made

arrangements for Mr. Ruemmele to lead a discussion on Title Standards, and have also made arrangements to secure the attendance of as many of the wives as is possible. We will have a business meeting in the afternoon and a banquet at the Country Club in the evening. The President of the Bar Association, I understand, has agreed to be the banquet speaker."

Mr. Kessel of the Third Judicial District reports as follows: An income tax institute was held at LaMoure on the 19th day of December, 1953, which institute was in charge of two representatives from the office of the Internal Revenue of Fargo. It was attended by approximately fifteen attorneys and a like number of others who do income tax work. This has been an annual affair and is well received by many of the lawyers of this District.

The annual meeting of the Third Judicial District Bar Association was held at LaMoure on the 12th day of June, 1954 and was attended by twenty-two lawyers from the District. A short business meeting was held at 11:00 o'clock which was followed by a banquet at 12:30 p. m., attended by the twenty-two lawyers and twenty-three ladies, which attendance shows a great interest in the Bar meetings by the ladies. At the banquet the President of the State Bar Association, Mr. Vernon Johnson, was the main speaker, and memorial services were held for two deceased members of our District Bar Association, Mr. F. J. Graham of Ellendale and Mr. Charles Coventry of Linton, who had died during the past year. The ladies spent the afternoon at a social gathering while the members of the Bar reconvened at 2:00 o'clock for another two hour discussion of the following questions: (1) Frank Knox of Fargo led a discussion on the comparative negligence doctrine and which discussion became lengthy but, nevertheless, interesting. (2) Another subject receiving considerable thought was our Guest Statute and the Association went on record advocating its repeal. (3) The next topic was evidence in negligence cases and the Association passed a resolution favoring legislation making it proper to bring out all facts, including insurance, in the evidence in such cases without prejudice to either party. (4) Another motion was passed that it be recommended to the State Bar Association that a committee be created or assigned to a study of the Norh Dakota Administrative Boards and their proceedings for the purpose of improving upon the same.

It was urged that these recommendations be presented to the Executive Committee and that definite action be taken upon the same.

Mr. Thorson of the Fourth Judicial District reports and I quote from his letter dated July 10, 1954: "As to the activities of the 4th Judicial Bar Ass'n. during the past year, meetings were held in August, October and May, 1954. The August meeting was in connection with the State Bar Ass'n. It was a breakfast meeting attended by about 15 men. Resolutions were prepared for presentation to the Resolutions Committee of the State Bar Ass'n. The October meeting was held in McClusky and included entertainment

for the ladies attending, who were asked to come to the meeting. The meeting was held, after a get-together and luncheon, at the Court House and a speaker from Minnesota addressed us on the adoption of the Federal Rules of Procedure in that state, it's effect on the local practice, and the reaction of the local bar to it. Lunch was served after the meeting. Some went hunting on the way. The May meeting was in Bismarck and was well attended. We opened with a noon luncheon and then remained in our places for the meeting in the Petroleum Room of the Prince Hotel. We had Mr. J. F. X. Conmy lead us in discussing "Comparative Negligence" and it was voted to go on record to favor it. Other things were brought up and discussed including the change of a court date in one of the counties and fees for defending lawyers in contested divorce actions. No ladies were invited to this meeting. We were thru by 3:00 p. m. Some committee activity took place too."

Mr. Muggli of the Sixth Judicial District reports and I quote from his letter to me dated July 14, 1954: "On the activities of the District Bar during the last year, I can report that we had our regular District Meeting in May. It was quite well attended and we arranged to have Mr. Paul McCann of Bismarck lead a discussion on some of the practical aspects of the Federal Tax Laws. Mr. McCann is a C. P. A. and is admitted to practice law in this State. He spent several years with the Bureau of Internal Revenue and was well qualified. We asked that he keep his discussion on a practical basis rather than some technical point, and it was well received by all of the attorneys. We arranged for the annual banquet in the evening with the visiting attorneys and their wives attending. During the afternoon, while we had our meeting and discussion, we arranged for the visiting ladies to attend a tea at one of the homes here in Dickinson."

No report has been received from Mr. Bekken, and therefore, I cannot report on the activities of the Fifth Judicial Bar Association.

In closing, the Chairman of this committee feels that Mr. Vernon Johnson, the President of the North Dakota State Bar Association, should be commended for his foresight in setting up this particular committee, as this report shows it is evident that many important issues were brought up and discussed at the various District Bar Meetings and as these District Bar Associations become more and more active, the results will be a more interesting State Bar Association.

Respectfully submitted,
Theodore F. Kessel, Chairman.

PRESIDENT JOHNSON: We also have the report of the Committe on Unauthorized Practice of Law.

JOHN ZUGER: I move that the report be accepted and filed.

K. S. PETERSON: I second the motion.

PRESIDENT JOHNSON: Motion is carried.

(The report in full reads as follows:)

ANNUAL REPORT — UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Mr. President, members of the North Dakota Bar Association; During the past year your committee on unauthorized practice of law has held three committee meetings and has conducted six investigations on the unauthorized practice of law by laymen in North Dakota.

We wish to report that there are no cases at present before the committee for investigation. I do not wish to insinuate, however, that there is no work left for this committee to do. The committee feels that there is much work that can be done along this line.

As to the investigations completed this past year, they include cases at Washburn, Mohall, Jamestown, Williston, New England, Medina and Fargo. In all instances when the member of the committee contacted the person who was engaging in the unauthorized practice of law, he or she immediately upon explanation of the law and position of the State Bar Association in the matter, stated that it would be completely discontinued in the future if no prosecution or other relief was taken by our group.

The main complaints have all been of the same character in which warranty deeds, contracts for deeds, mortgages, notes and such small instruments were prepared for laymen by the offending individuals. In several cases this work was being charged for. After the law and the position of the State Bar Association was brought to their attention, as was stated before, they agreed to desist and to cooperate with the members of the local bar group in seeing that proper advice in legal affairs was given only by attorneys.

Investigation also showed that these individuals were counseling laymen in matters of probate and sometimes in matters concerning joint tenancy and tenancy in common, which might have been correct, but which most probably was not correct.

Some of the reasons for this activity learned of by the committee was due to no attorney being in the town or if in a County seat, which was the case in several instances, where the attorneys did not seem to get along well with the individuals who were giving the legal advice, or making up the deeds and other instruments. Such would indicate that there might be a need in certain communities for a better working relationship between County officers, especially Register of Deeds Officers and personnel and the local bar group.

Work that the committee did in regards to unauthorized practice of law, was the preparation of a pamphlet which is proposed by the committee to be sent to reported offenders by the Executive Director of the State Bar Association. This pamphlet will be sent with a letter, stating generally that it has been learned that the person it is sent to, has been in the past, engaged in counseling on legal matters, or preparation of legal instruments which are contrary to law. The offender would then be asked to desist from further activities along this line and if no further activity is reported,

the matter would then be dropped. However, if the individual is subsequently reported to be engaged in the unauthorized practice of law an investigation will be made by the committee and further steps taken as the committee deems necessary, to cope with the situation.

The committee in all of its investigations this year, could have brought criminal action or asked for injunctive relief against the individuals investigated in each instance. It was the thinking of the committee that if the end could be accomplished thru explanation and negotiation with the offending individual, it would be a much nicer way of handling the matter and the committee has proceeded on that theory in performing its tasks. The amount of investigation is not within the duties of the committee, however, if it becomes burdensome to the committee. The committee members cannot take the time away from their practice to perform these investigations as each investigation will take nearly a full days time if much travel is involved. The committee suggests that an individual in the state, who has the time to make the investigations be employed by the State Bar Association to carry out any investigations deemed advisable by the committee and that he be given per diem as well as travel expense for such work.

Respectfully submitted,
R. G. Manly,
C. W. Burnham, Jr.,
Samuel H. Dolve,
J. O. Thorson, Chairman.

PRESIDENT JOHNSON: The Audit Committee. The Committee certified the records to be in good condition and in proper balance. We checked all receipts, cancelled checks and vouchers. The cash in the bank as of 6-30-53 was:

$16,417.51

as of 6-30-54:

$13,744.26.

MR. LORD: I move the adoption of the report.

MR. ZUGER: I second the motion.

PRESIDENT JOHNSON: Motion carried.

The Report of the Committee on Jurisprudence and Law Reform.

ROY A. PLOYHAR: I move the report be accepted and filed.

JUDGE LUNDBERG: I second the motion.

PRESIDENT JOHNSON: Motion carried.

(The report of said committee reads in full, as follows:)

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM

To the Honorable Vernon M. Johnson, President of the North Dakota Bar Association, and Fellow Members of the Bar:

In our last annual report we made definite recommendations for further study by the Association and possible recommendations of legislation providing for submitting the charge to the jury before final argument, allowing the trial court to grant a partial new trial where in the judgment the issues are separable, and the possible repeal or modification of our so-called "dead man's statute."

Through the courtesy and cooperation of Dean Thormodsgard there were published in the April 1954 issue of the North Dakota Law Review three articles on subjects recommended by our committee for study and review. These articles are very comprehensive in their scope and in our opinion have already produced some valuable and constructive thought on those subjects.

Among other things, your committee has recommended for several years the further study of the Doctrine of Comparative Negligence, which is to be discussed and debated at this meeting of the Association. We are heartily in accord with the matter of discussion and debate, providing that the members have some advance information on the subject to be debated. We therefore wholeheartedly recommend further efforts on the part of the North Dakota Law Review to continue its fine work in presenting these questions to the Bar as a whole.

It has always been the policy of this committee not to make too many recommendations at one time, so that its recommendations receive full and fair consideration. We are gratified with the results that have been produced so far. We still feel that our prior recommendations should receive further consideration; and we particularly recommend that these be made a matter of debate before a general session of the Association, such as is being done in connection with the Doctrine of Comparative Negligence.

We would suggest that the incoming president provide for a similar debate next year on the so-called "dead man's" statute, and the matter of submitting the charge to the jury before the final argument. We would also recommend to the incoming president that these recommendations be assigned to a special committee for the purpose of arranging debate and discussion, as above suggested.

May we again express our appreciation to Dean Thormodsgard and the staff of the North Dakota Law Review for their wonderful cooperation in preparing articles on these important questions, and may we humbly request that we receive like cooperation in the future.

Respectfully submitted,
Albert Lundberg,
Judge of the District Court,
A. G. Porter,
Judge of the District Court,
Burton L. Green,
Theodore Kessel,
L. A. W. Stephan,
Roy A. Ployhar, Chairman.

PRESIDENT JOHNSON: The Resolutions Committee Report:
JOHN STORMON: One resolution will be read:

RESOLUTION

WHEREAS the North Dakota State Bar Association Convention at Grand Forks, North Dakota, has been favored by addresses of outstanding merit by Jerry Giesler, Esquire and by Brigadier General A. M. Kuhfeld, Assistant Advocate General of the United States Air Force,

NOW THEREFORE BE IT RESOLVED that we express to our distinguished speakers our sincere appreciation for honoring us with their presence and enlightening us with their masterful presentations.

BE IT FURTHER RESOLVED THAT Jerry Giesler and General A. M. Kuhfeld be elected Honorary Members of this Association.

The next one is one that we are adopting to be presented to Major General Harmon, Judge Advocate General of the United States Air Force.

RESOLUTION

WHEREAS by authority of Major General R. C. Harmon, Judge Advocate General of the United States Air Force, the North Dakota State Bar Association has been privileged to learn of the operations of military justice in the air force through a most informative address by Brigadier General A. M. Kuhfeld, Assistant Judge Advocate General of the Air Force.

NOW THEREFORE BE IT RESOLVED by the North Dakota State Bar Association in its annual convention assembled that we express our appreciation for the splendid cooperation of the Judge Advocate General's office in bringing to the members of this association a fuller understanding and appreciation of the problems involved in military justice and of the highly commendable efforts of the Air Force to make the administration of military justice responsible to the need for discipline and rehabilitation of the members of the Air Force.

We also have a resolution expressing appreciation to the Governor of North Dakota in making judicial appointments according to the plebiscites of this convention and a copy of this will be sent to the Governor.

RESOLUTION

WHEREAS during the past year the North Dakota State Bar Association has inaugurated a system of plebiscites for the purpose of recommending candidates for appointment to judicial vacancies, and

WHEREAS the Honorable Norman Brunsdale, Governor of North Dakota, has cooperated to the fullest extent in this effort to assure the appointment of qualified judges,

NOW THEREFORE, BE IT RESOLVED by the North Dakota State Bar Association in annual convention assembled at Grand Forks, North Dakota, that we express our appreciation for the cooperation of the Governor, his understanding of the problems involved and the quality of the judicial appointments made by him.

The next one is one to the law publishers for the door prizes that are being awarded and expressing our appreciation for their cooperation.

RESOLUTION

WHEREAS a number of law publishers have shown a decided interest in the affairs of the North Dakota State Bar Association and have contributed greatly to the success of the Association's Annual Meeting by presenting books and publications to be presented to the members of the Bar,

NOW THEREFORE, BE IT RESOLVED by the North Dakota Bar Association that it express its thanks and appreciation to each of the donors for the interest shown in the welfare of the North Dakota Bar Association.

The next one I believe I will read.

RESOLUTION

BE IT RESOLVED by the North Dakota State Bar Association in its annual convention assembled that the members of this association congratulate their ladies for organizing a Women's Auxiliary to the State Bar Association. It is our feeling that this new organization will not only prove to be of great value in itself, but that it will also give the members of the Bar more life, inspiration and a greater desire to attend our annual conventions.

BE IT FURTHER RESOLVED by the North Dakota State Bar Association that it express its thanks and appreciation to the ladies' entertainment committee of the Grand Forks County Bar Association for a splendid job in entertaining the ladies, thus making our convention a greater success.

BE IT FURTHER RESOLVED that we express our special appreciation to Mrs. Fred Saefke, Mrs. J. F. X. Conmy, Mrs. John Gunness, Mrs. A. C. Bakken, Mrs. Roy Winchester and Mrs. R. W. Wheeler, and to John Gunness for the entertainment provided at the Annual Banquet.

The next resolution is one expressing appreciation to our President, Executive Director, to all officers of the Executive Committee and all members and officers of the various committees.

RESOLUTION

BE IT RESOLVED by the North Dakota State Bar Association in convention assembled that we express to Vernon M. Johnson, President, and Ronald N. Davies, Executive Director, Robert A. Alphson, Secretary, and all of the members and officers of the

executive committee, and the various committees who have served during the past year, our sincere appreciation for a highly successful and profitable year.

BE IT FURTHER RESOLVED, we express our appreciation to the Committee on Sectional Meetings and to the leaders of the various sections for arranging for and conducting outstanding legal clinics.

RESOLUTION

BE IT RESOLVED by the North Dakota State Bar Association in its annual convention assembled that the members of this association express to our hosts, the Grand Forks County Bar Association, and the members thereof, our appreciation and sincere thanks for the splendid arrangements made for the enjoyment and edification of the members of the association at this annual convention.

I move that these resolutions that have been filed, be adopted by the Association.

L. R. NOSTDAL: I second the motion.

PRESIDENT JOHNSON: Motion carried.

MR. STORMON: The following resolution has been filed and submitted to you without acceptance or recommendation of the Committee:

BE IT RESOLVED,

That the Congress of the United States be memorialized to enact a law governing Federal procedure in the selection of jurors containing the following provisions:

That at least ten days prior to the convening of a jury term of court the Clerk of Federal Court mail a list of the jurors, containing their names and postoffice addresses, to all attorneys having cases pending for trial at such term, and if special talesmen are called as jurors, to serve during the pendency of a term of court, that the Clerk of said court mail or deliver to such attorneys a list of such jurors at least five days before the case is called for trial, in which case such special talesmen are liable to be called to serve as jurors.

That a copy of this resolution be sent to the American Bar Association and to all the members of the House of Representatives and to the two Senators from North Dakota.

MR. OEHLERT: I move the resolution be laid on the table. Any resolution involving a matter of Federal procedure as on anything of this kind would require considerable study. Federal authorities don't want that kind of jury selection method to be adopted.

PRESIDENT JOHNSON: Do you have any objection to make that motion that the incoming President refer this to the proper standing committee.

MR. OEHLERT: I withdraw my motion and move to that effect.

JOE STEVENS: I second the motion.

PRESIDENT JOHNSON: Motion carried.

Mr. Sperry, Chairman of the Committee on Continued Legal Education, has consented his report to be filed and printed and so moves.

JOHN HJELLUM: I second the motion.

PRESIDENT JOHNSON: Motion carried.

REPORT OF THE COMMITTEE ON CONTINUED LEGAL EDUCATION

Mr. President, and all members of the North Dakota State Bar Association:

This committee met a number of times since the last convention and arranged for the holding of two institutes. The first of these institutes was held at Bismark and extended over the last three days of the month of October. Seven out-of-state speakers appeared upon this program, six of whom spoke on gas and oil questions, and the seventh covered general income tax problems. These speakers included Professor Charles J. Meyers, visiting Professor of Law at the University of Minnesota, Professor Howard R. Williams, of Columbia University, Earl Brown, Jr., Division Counsel of the Socony Vacuum Oil Company, of Billings, Montana, Willis L. Lea, Jr., General Counsel of the Southern Union Gas Company in Dallas, Texas, John Paul Jackson of Dallas, Texas, Roger S. Randolph, from Tulsa, Oklahoma, and Jack R. Miller from Sioux City, Iowa. The lectures given at this Institute by Professors Meyers and Williams appeared in the January, 1954, issue of the Minnesota Law Review. Also appearing on this program was Attorney Clifford Jansonius, of the firm of Strutz, Jansionius & Fleet, who presented a fine paper on Mineral Reservations in Deeds and Patents, and there was also discussion by the Attorney General on the Application of the State Securities and Exchange Commission Act to the Sale of Minerals.

Without question this first Institute was the most extensive ever undertaken by this committee. The subject matter was thoroughly covered, excellent papers were prepared for it, and the material was very well presented. The attendance was somewhat disappointing, though a number of out-of-state lawyers attended, in addition to people other than lawyers interested in oil and gas law and in tax maters, there being only approximately 35 North Dakota attorneys in attendance. Altogether the Institute was sufficiently well attended to cover the expenses of conducting it.

In December of 1953, after this first Institute had been held, the members of this committee met at Bismarck at which time we discussed in detail the matter of having additional Institutes. It was finally agreed that a trial demonstration, involving a jury trial of a personal injury action should be put on in Fargo and later at Bismarck. This program was carried out as far as the Fargo demonstration was concerned, and through the work of member John Hjellum a very fine panel was arranged for that Institute.

We were fortunate in obtaining the services of Francis Murphy, who acted as the presiding trial judge, Attorney E. T. Conmy, Sr., who acted as defending counsel, and Attorney Phil B. Vogel acting as Attorney for the Plaintiff. Other members of the Cass County Bar Association completed the cast for this demonstration. The jury was principally made up of students from the University Law School who had been especially invited to attend. This was a full dressed trial and it was worked out to include a number of the more controversial questions which generally arise in the trial of a personal injury action. The participants did an excellent job and this work was most favorably received.

Following this demonstration a round-table discussion was had and it was decided that a similar demonstration should be put on in Bismarck in September or October of 1954, and that it should provide, in the course of the trial, for the following:

1. An opportunity should be made available for all attending to discuss the various questions of law raised during the progress of the trial, as they arise.

2. The matter of laying a foundation for appealing should also be discussed at certain intervals in the trial.

3. There should be a discussion at the close of the trial, of the various points involved, as was done following the Fargo demonstration.

4. It was recommended that a letter should be sent out to the members of the Bar, in advance, setting forth the points to be stressed in the pleadings and in the trial of the action.

The Fargo meeting was attended by approximately 75 lawyers and 10 law students from the University of North Dakota. This demonstration was put on at the expense of the Association, no charge having been made for it, the principal purpose being to encourage attendance at meetings of this kind and to experiment with this particular type of a program, undertaken for the first time in this State.

In addition to the above trial institutes, we have also arranged for the regular Fall Tax Institute, which will be held at one or more places in the State at a time to be announced later. This will likely be in October or November and will bring us up to date upon the numerous changes in the basic law and in the practice under the new Internal Revenue Act of 1954.

The tax program will cover general tax problems common to all taxpayers, partnership questions, with considerable emphasis on farm tax problems and those of small businesses. This program will also include a discussion of procedure in tax cases especially considering any new changes that have taken place.

At either the trial demonstration to be held at Bismarck or at the time of holding the Tax Institute, there will be a special lecture on Securities and Exchange Regulations on Minerals and Leases and the handling of the same. This later arrangement has been made because of a special interest and demand.

Generally, we would like to say that the trial demonstration

type of an Institute has been carried on in other states and has been found to be very popular and has contributed to increasing attendance at these meetings. It has the advantage, of course, of making it possible to hold such an Institute, through the use of local members of the Bar. The National Committee of the American Bar Association, however, has a number of qualified lawyers who have participated in conducting such Institutes in a number of other states, to assist, should that be desired. We have attempted in North Dakota to increase the number of Institutes and to make them more worthwhile, in keeping step with the progress of this work in other states.

We would like to observe that the National Committee, which has cooperated with us in this work has participated in similar programs in forty-five states. Up to now these projects have been of a basic level "how to do it" nature. The interest and demand for continuing legal education for lawyers has now led to the offering of training on a more advanced level. This work is to be commenced at Ohio State University this fall and it is hoped that it will soon be extended to some six or eight geographically distributed law schools. These seminars will be conducted principally for practicing lawyers who desire to specialize in particular fields of law.

During the last year the individual members of this committee have been very active, Vice President, John Zuger having contributed many suggestions, from his observations of similar work conducted in other states, and which he had attended. Like contributions were made by President Vernon Johnson, and Attorney John Hjellum has been especially active in promoting the work of the Institute held in the eastern part of the state. Our Executive Director, R. N. Davies, has done excellent work in preparing the material for these Institutes, without which the duties of this committee would be most difficult.

As progress is made, it is hoped that it will be possible to carry out more of the suggestions of the individual members of the Bar, with reference to this work, and that such programs can be conducted in more localities.

In concluding this report we wish to add that especially by taking active part in the work and in sending us your suggestions, the cooperation given to the members of this committe has been highly appreciated.

Respectfully submitted,

COMMITTEE ON CONTINUED LEGAL EDUCATION.

John Hjellum,
John Zuger,
Floyd B. Sperry, Chairman.

PRESIDENT JOHNSON: There is one other matter, the last official matter, and that is the action of the Executive Committee which recommended in conjunction with the Bar Board that the license fee for attorneys be increased from $10.00 to $15.00 and the division to be the same as at present if such action be taken.

MR. HIGGINS: I so move.

W. L. ECKES: I second the motion.

PRESIDENT JOHNSON: Motion carried.

NORBERT L. MUGGLI: We have the report on the Retirement Fund Committee.

R. N. DAVIES: It was called up on the 5th and in the absence of the members of the committe, it was read and filed.

PRESIDENT JOHNSON: I will ask Mr. Paletz to address us. He is the President of the Grand Forks County Bar Association. I will say for each and every one of us that we are deeply grateful to him and to the members of the Grand Forks Bar and to the folks out at the University for the marvelous time we have had at Grand Forks.

(Whereupon Mr. Samuel E. Paletz addressed the convention briefly.)

PRESIDENT JOHNSON: We have just received a telegram from L. M. Carlson and A. J. Thomas of Williston inviting the North Dakota State Bar Association to hold their next convention at Williston.

Now, Mr. James Lamb of Grand Forks will come up here. He is going to give the books away.

MR. LAMB: There are seven sets of books to be given out. Mr. Johnson will consent to draw seven names:

(Whereupon the books were given away as follows:)

Dick Gallagher, Mandan, N. Dak.
Jones on Evidence — Bencroft

Sam Silverman, Grand Forks, N. Dak.
Set of United States Code
Given by Milton R. Young

Harold J. Fischer, Williston, N. Dak.
Balentine Law Dictionary

Milton Moskau, Grand Forks, N. Dak.
Clark's Summary of American Law
Lawyer's Coop. Publishing Co.

R. J. Bleodau, Glen Ulin, N. Dak.
Sherpard's Citations One Year's
Subscription to North Dakota Citations

A. W. Shupienis, Fargo, N. Dak.
Merit on Merit — West Publishing Company

Patrick Milloy, Wahpeton, N. Dak.
The Lawyer from Antiquity to Modern Times

PRESIDENT JOHNSON: I will now turn the meeting over to John Zuger.

MR. ZUGER: I have a certificate to be given to our Past President certifying he has served with honor and distinction during the past year. He has done an excellent job. Let's give Vernon a hand for a darn good year.

MR. ZUGER: The Executive Committee will meet immediately after adjournment at the Ryan Hotel. I invite any or all of you to write to me if you can within the next week or ten days indicating what committee assignment you would be interested in. I think any of us can do a much better job if we are put on something we are interested in. Pass the word along as I want to know where you want to start in.

RONALD N. DAVIES: I move that we adjourn.

SENATOR DUFFY: I second.

(Question put and motion carried.)

Whereupon, the 1954 Annual Convention of the State Bar Association of North Dakota was adjourned.