



1951

## President's Page

Philip R. Bangs

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BENCH AND BAR  
PRESIDENT'S PAGE

On December 2, 1950, at Fargo, North Dakota, under the supervision of the Committee on Continuing Legal Education of the American Law Institute, we had a one day lecture course on Legal Problems in Tax Returns, given by Jack R. Miller, of Sioux City, Iowa and Laurens Williams, of Omaha, Nebraska. It was self-evident that these gentlemen are experts in the field of Tax Law, and they are to be congratulated upon the excellent presentation that they made to the lawyers, numbering about one hundred, who were present at the meeting. We were also extremely pleased at the interest displayed by the members of the Senior Class of the Law School, many of whom attended the meeting.

In connection with the above meeting, I also want to extend the thanks of our Association to the Cass County Bar, for their excellent co-operation and fine assistance, all of which helped to make the meeting a success.

The time is rapidly approaching when active work will be started, preparatory to the Sectional Meetings held at the Annual Convention. The papers that are prepared for and discussed at these Sectional Meetings are, in my opinion, well worth-while, and contribute greatly to the success of our Annual Meetings. In the past, a number of the lawyers have given generously of their time, to make these meetings a success, and I earnestly urge all of you to do likewise, if the opportunity arises and you are requested to contribute your time and service.

I anticipate that there will be a meeting of the Executive Committee held in Bismarck during January or February. If you have any matters that you think should be brought to the attention of the Committee, please notify the Executive Director.

Sincerely yours,

PHILLIP R. BANGS,  
*President.*

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1950—1951

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**ANNUAL  
CONVENTION**  
**of the**  
**STATE BAR ASSOCIATION**  
**of**  
**NORTH DAKOTA**

**Minot, North Dakota**  
**August 24, 25, 26, 1950**

## PROCEEDINGS OF THE ANNUAL MEETING OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA

The annual convention of the State Bar Association of North Dakota was called to order at ten o'clock a. m. of Thursday, August 24, 1950, at Minot, North Dakota, Honorable Fred J. Graham, President, presiding.

**PRESIDENT GRAHAM:** In accordance with time-honored custom among the presidents, I have a report as to what has taken place during the past year.

In 1947, Chapter 228 of the 1947 Session Laws was passed by the Legislature providing for an increase in the filing fees and the increase to be paid to the State Bar Association. An action was commenced in Burleigh County and appealed to the Supreme Court challenging the constitutionality of the law. The Supreme Court upheld the law and the Executive Committee for the past twelve months has been in a position to attempt to fulfill the objects and intent of the law. It provides that **ALL FUNDS RECEIVED BY THE STATE BAR ASSOCIATION SHALL BE USED FOR LEGAL RESEARCH AND EDUCATION AND SUPERVISION AND IMPROVEMENT OF THE JUDICIAL SYSTEM OF THE STATE OF NORTH DAKOTA.**

The balance on hand June 30, 1949 was \$19,676.29, the receipts up to June 30, 1950, amounted to \$19,077.85, making a total of \$38,754.14. The disbursements amounted to \$16,291.23, leaving a balance on hand as of June 30, 1950, of \$22,462.91. The items of the disbursements will appear in the Treasurer's report. Your Executive Committee with these funds has attempted to do several things which they trust and believe will be for the benefit of the people of the State of North Dakota.

### SCHOLARSHIPS

The Executive Committee, in February, 1950, set aside \$600.00 for scholarships in the North Dakota University Law School. The awards were made upon the recommendation of the Dean and faculty of the Law School. The recipients of the 1950 awards are listed in the July issue of Bar Briefs. These awards did much to stimulate research and the advantages have been reflected in the association's journal, with consequent advantages to all members of the bar. We do suggest that the amount of these awards be increased for the year 1950 and 1951.

### JUDICIAL COUNCIL

Prior to this year, the Judicial Council of the State of North Dakota had not met for some time. Upon request they held a meeting in Bismarck on April 14th and 15th. All of the Supreme Court Judges

and twelve of the fifteen District Court Judges in the State were present and took part in the meeting, together with the other members from the State Bar Association. A report was submitted by Professor Keith W. Blinn on his study of the Judicial System in North Dakota, especially including the Justice Court System, which was made at the request of the State Bar Association. The State Bar Association has offered such financial assistance as the Judicial Council may need to further its studies and committee work. It has also paid Professor Keith W. Blinn for his splendid work. His report is now complete and copies are being sent to the members of the Judicial Council. A meeting of the members of the Judicial Council will be held to consider this report and make recommendations concerning the same to the State Bar Association so that they may have an opportunity to act upon these recommendations.

#### AMERICAN CITIZENSHIP

Our American Citizenship Committee, under the direction of its Chairman, Harold W. Bangert, again continued active during the year. During the year 1949, the Committee made one hundred fifty-five awards to schools that entered the contest. In the year 1950, awards were made in one hundred seventy-nine schools. It is expected that more than two hundred twenty-five schools will take part in the next state-wide contest which is designed to encourage a better understanding of the Constitution and our form of government. A written award and bronze key were sent out to the principal of each school which took part in the contest and these were publicly presented to the winning students by one hundred eleven of our attorneys from the different localities as part of the graduation exercises. More interest was taken this year by the students in all of the schools and we believe this Committee should be continued.

#### LEGISLATIVE RESEARCH COMMITTEE

We believe it would be a good thing if the North Dakota State Bar Association would engage two competent attorneys to assist the Legislative Research Committee to draft new legislation during the coming session. In 1951, many of the members of the Legislature will desire to introduce new bills and there is always a shortage of those competent to do this work. Much of this work is now done by the Attorney General's department. I believe the money would be well spent to hire two competent attorneys who have been members of the Legislature to assist the Legislative Research Committee in drafting new legislation during the session. This would give to the members of the Legislature the assistance which it is possible for the Bar Association to furnish to them. It would also give to the Bar Association an opportunity to learn first-hand the point of view and ideas of the Legislative members.

The National Legislative Service Conference will be held in Washington, D. C., with the Library of Congress as host on September 28th,



29th and 30th. This conference is devoted to the mechanics of legislative service and will include a good deal on statutory revision and other related subjects. The question has been raised that it might be well worthwhile sending representation from the Bar Association to this conference. Personally, I believe it would be a good thing to send a representative of the Bar Association to this conference, and I so recommend.

#### PUBLIC RELATIONS

Again pamphlets on wills and title examinations have been distributed by banks, trust companies, service clubs, housemaker units and similar organizations, to the number of more than 50,000 copies. Since the first of January, 1950, there has been printed a weekly series of informative newspaper columns entitled "Know Your Law." Many newspapers have published this column as a public service which has been made available to all papers in the state, weekly as well as daily. The series has been made possible by the excellent cooperation of our attorneys. Most of the articles were prepared by members of the Association. The balance were prepared by our Executive Director, Ronald N. Davies, who also prepared all of the articles for newspaper release from his office. The Association appears to be in favor of their continuation, judging by the letters which are received, and we feel that it is a step in the right direction.

#### BAR COMMITTEES

The six District Bar Committees have functioned very well again this year. Most of them have had separate meetings, as will be indicated by their reports and the recommendations which they have made.

#### UNAUTHORIZED PRACTICE AND ETHICS

In the cases of unauthorized practice which have been sent to the office of the Executive Director by the Unauthorized Practice Committee or other sources, investigations were made and it is believed that the investigations instituted by the Bar have gone far to stamp out unauthorized practice. The report of that committee will, I believe, reflect that situation.

#### ETHICS AND PRACTICE

In the matter of ethics and practice, very few complaints have been registered against any of our membership this past year and all were of a minor nature. The majority were disposed of by the office of the Executive Director taking the matter up directly with the attorney involved and the complainant. No real major complaint has been submitted against any member. I believe this speaks well of the way we try to discipline ourselves and to retain the confidence of the public.

### APPOINTMENTS TO THE DISTRICT AND SUPREME COURT

In Minnesota and several of the other states, whenever a judicial appointment is to be made to fill a vacancy, the Governor of the state calls upon the officers of the State Bar to conduct a secret poll and submit to the Governor for his consideration the names of the three receiving the highest number of votes. The Governor then makes the appointment from one of the three names submitted. Last year, when Judge Burr resigned, we suggested to the present Governor that we would be pleased to conduct such a poll of the attorneys and submit the names of the three receiving the highest number of votes for his consideration. The Governor was unwilling to have such a poll conducted. Perhaps this arrangement could be made with the Governor who will be elected in the month of November, 1950. This plan has worked out very successfully wherever it has been tried. It seems as though the attorneys are in the best position to recommend those who will make the best judges and if the matter is handled in this way it also helps the Governor to keep the appointments from becoming political in any way.

### LEGAL SERVICES FOR THOSE SERVING IN THE ARMED FORCES

Although there has been no formal declaration of war by the United States yet, we have been in what President Truman calls a cold war in Korea since the last of July, 1950. Already there have been a considerable number of killed and wounded on our side. The relatives and the survivors will need legal service as well as those who will enlist and those who will be drafted. With that thought in view, a committee to furnish legal services to those who are doing the fighting has been selected. No doubt some of you in every county of the state will be called on to furnish assistance, the same as we have done in the past two years. I am sure that all of us will be as willing to do our part now as we always have been.

### COMMITTEES

We have twenty committees and several of these committees are working in conjunction with like committees of the Bar Association so that they have the benefit and assistance of some of the committees with which they are working. I wish to congratulate the chairmen and members of all of the committees. Wherever necessary, the chairmen have called meetings of the committees and much more work than usual has been accomplished on account of these meetings. I am sure that in the ensuing year greater progress will be made than has been possible during the past year.

Then there is another thing which I am bringing up which I did not originally have in the report but I think it should be included, and that is in regard to the salaries of the state officials and the members

of the judiciary. It is a well-known fact that in the State of North Dakota the salaries of the state officials and the judicial members are the lowest, I believe, of any state in the union. If not, they are down to the 47th. I do not think there is any state lower. The state officials outside of the Governor and the Attorney General, receive from \$3300.00 to \$3600.00. The District Court Judges receive \$5,000.00 and the Supreme Court Judges \$6,500.00. In my opinion, there should be an effort made at the coming session of the Legislature to change these salaries and make them in accordance with the conditions at this time.

### CONCLUSION

I am confident that the officers of the Executive Committee, the regularly appointed committees, and the officers of the Association have enjoyed the work as much as I have. I am indeed grateful for the friendly assistance which has been given to me and never refused. I believe that the committee reports which will be presented during our general sessions will convince you that it has been a very active year. I feel confident that the Legislature will be so well pleased with our recommendations and work that there will be no effort again made to repeal Chapter 228 of the 1947 Session Laws. As time goes on, if the Bar Association and the North Dakota Legislature continue to cooperate and work together we will be able to make recommendations for the Legislature to put into effect that will make the laws of the State of North Dakota far in advance of the laws of the other states. We have always been in the forefront and we can and will continue to be so.

I am confident that this Association of ours, under the leadership of the new officers we elect tomorrow, will continue to discharge its responsibilities to the people of the great State of North Dakota the same as we have in the past.

(Motion was made and carried that the report be adopted.)

**PRESIDENT GRAHAM:** There are one or two committees that I desire to announce. The Auditing Committee consists of Asmunder Benson, E. J. McIlraith and Richard V. Boulger. I might say, in connection with that, that the Executive Committee went over the audit last night and approved it, so we want to leave it up to the Bar Association themselves to make such investigation of it as they may desire. The Committee on Resolutions has the following members: Mr. Strutz of Bismarck, Chairman, Mr. Woledge of Minot and Mr. Stormon of Rolla.

The President of the American Bar Association, Mr. Gallagher, will arrive at two this afternoon on the plane, and as a committee to meet him I desire to appoint Supreme Court Judge William Nuessle and Herb Nilles. As a third member I appoint Mr. Palda, the local chair-

man of the State Bar Association of Minot, together with myself as EX OFFICIO member.

The first report this morning is on Probate Procedure by Mr. McLellan of Fargo. Mr. McLellan.

MR. ADRIAN McLELLAN: Mr. Chairman, in this report of the Committee on Probate Procedure, I am substituting for the Chairman, Judge Paulsen, of Fargo, who couldn't be here. This report was drawn up several months ago and there are nine recommended changes here.

The Section on Probate Procedure of the 1949 Bar Association Convention at Fargo voted unanimously to recommend changes in the procedure, patterned to some extent, at least, on the Minnesota Probate Code. A few weeks later, a committee was appointed by Judge Graham, as President of the State Association, to consider this matter. The committee met in Fargo several weeks ago and went over the matter quite fully. There has also been considered correspondence between members of the committee on the subject. From these considerations, we submit herewith the following Report to the 1950 Convention of the State Bar Association.

By way of explanation, it should be stated that the committee had before it copies of the Model Probate Code prepared by the Model Probate Code Committee of the American Bar Association in cooperation with the research staff of the University of Michigan Law School, and also copies of the Minnesota Probate Code annotated, as well as the North Dakota Code. The committee's study of the subject was confined largely to the provisions of these three Codes.

Incidentally, the Model Probate Code and the Minnesota Probate Code are quite similar. There had been some thought of following the Minnesota Code all the way through, but the committee reached the conclusion that some of the provisions in the present North Dakota Procedure are preferable to the Minnesota law, particularly with reference to the Sections on Estate Tax procedure, as well as some other provisions, and it was not deemed advisable to try to follow the Model Probate Code in its entirety. The main reason was, it was a little too long. We thought it would be too much to try and digest all of it in one year. The final conclusions of the committee were that no attempt should be made to revise the entire North Dakota Probate Code, but rather to make amendments to certain parts of it, based partly on the provisions of the Minnesota Code, and to some extent on the Model Probate Code. From these conclusions the committee makes the following recommendations:

1. The requirements relative to Service of Citizens should be changed so that the initial Notice will constitute a combination Notice to Heirs, Interested Parties, and Creditors. Such notice shall be given once a week for three consecutive weeks in any legal newspaper in the County. All subsequent Notices, unless waived, would be by Registered Mail to the heirs at their last addresses appearing on file

in the proceeding. No Publication would be required for any purpose after publication of the initial Notice. The word "citation" would not be used, but would be replaced by the designation "Notice," which is more understandable by the general public. In the body of the instrument, the word "Notice" would be used to notify parties of the hearing, rather than citing and requesting them to appear.

I think on the word "Notice", you have all had the experience of sending out a citation in a probate matter and having someone from the State of Washington or the State of New York write and wonder if they couldn't miss it because they couldn't see how they could make the trip, because a citation to most people means that they have to appear. So they thought they would change the word to "Notice," and if you look over the Code you will find that the word "citation" appears dozens of times, so whoever drafts that statute will have to consider that fact.

2. Provision should be made (similar to the Minnesota Procedure) for permitting distribution to minors and incompetents of not exceeding \$300.00, without appointment of a General Guardian, by permitting the Administrator or Executor to deliver such amounts to parents or others having legal custody of such persons and taking their receipts for filing in court.

That is to eliminate setting up a guardianship where there is a small amount to be distributed.

3. Provision should be made for re-opening an Estate in which property was inadvertently omitted from the Final Decree of Distribution, or errors made in the description of same, and the original Executor or Administrator reinstated for the purpose of filing Supplemental Inventory, Estate Tax Return, and Final Decree of Distribution whenever necessary.

4. Summary Administration procedure should be changed to provide for a single publication of Notice to any and all claimants so that a third party purchasing property from a surviving husband or wife, will have assurance that no claims for funeral expenses and expenses of last illness or any other claim might thereafter be filed against such property.

5. Section 30-2137 should be amended to permit the share of a lost heir to be delivered to the Public Administrator or deposited in the County Court. This would obviate the necessity of keeping Probate proceedings open until such time as the lost heir may be presumed dead.

6. An appropriate curative law should be passed giving finality to past proceedings and barring any interested party who has had Notice from attacking the procedure after time for appeal from the Final Report has expired.

7. We also recommend a provision to the effect that where the petition for probate shows that the decedent left no property except such as may be allowed to the surviving spouse and minor children, or such as is exempt from the claims of creditors or such as may be recovered in an action for death by wrongful act, or if more than five years have elapsed since the decedent's death, no order in respect to the filing of claims need be made.

8. We also recommend that the law be changed concerning the matter of fees to provide that every representative shall be allowed his necessary expenses incurred in the execution of his trust, and shall have such compensation for his services as the Court shall deem just and reasonable. An attorney performing services for an estate at the instance of the representative shall have such compensation therefor out of the estate as the Court shall deem just and reasonable.

That provision is the same as in the Minnesota Code, and the Model Probate Code. Minnesota has adopted that provision from the Model Probate Code.

9. Another recommendation is that North Dakota enact a marital deduction law which will permit a spouse to leave up to half of his estate to the surviving husband or wife tax-free. This is in line with the United States Revenue Act of 1948. A similar law was recently enacted in the states of New York and California, and many other states will have the matter up for consideration when the State Legislatures convene next year.

This is to bring North Dakota law in line with the marital deduction provision of the Federal statutes, and the reason is now that to plan a man's estate so that he takes benefit of the marital deduction law, you might find that he pays far more state taxes than he does Federal taxes, which is contrary to what it used to be, and this would simply bring it in line and it will be in line with statutes enacted by other states this year.

If this report should be adopted by the State Bar Association, then the question will arise as to how we should proceed to present the matter to the 1951 Legislature.

The committee discussed that to some extent at the meeting and it was the consensus of opinion that when the time comes, it should be presented to the Legislature in the form of Bills actually drawn up in proper form. The committee feels that there would be a much better chance to put this through if the Bills are actually drawn up, rather than to expect some of the members of the Legislature to make up the Bills. The committee also felt that none of them have had the experience needed in drawing Legislative Bills that would be required in this situation, nor do they have the necessary time to give to it. It is therefore the suggestion of the committee that the Association employ some attorney or attorneys who are experienced in probate matters and drafting of Legislative Bills to work this out in proper form for presentation to the State Legislature.

Respectfully submitted, P. M. Paulsen, Chairman, Fred G. Kneeland, R. J. Bloedau, A. O. McLellan and George S. Register.

(The report was adopted.)

**PRESIDENT GRAHAM:** The next report we have is Title Standards. It will be presented by Fulton Burnett of Fargo.

**MR. BURNETT:** It has been suggested that I begin this report by reading the letter which is on the first page of the report addressed to Mr. Graham. It reads as follows:

"Your committee on title standards submit the enclosed standards for consideration and adoption by the State Bar Association.

Our committee also was instructed to investigate the question of the enactment of a law defining marketable or merchantable record title to real estate. We have made an investigation of this subject and find that laws of this character have been adopted by eight states, viz: Illinois, Michigan, South Dakota, Indiana, Minnesota, Wisconsin, Iowa, Nebraska.

We recommend that the State Bar Association submit to the next legislature a bill for the enactment of a law similar to the Nebraska law, copy of which is attached to the title standards herewith submitted.

It is also our recommendation that a law be enacted changing the liability of abstracters on their certificates, as stated in standard number 4 under 'Miscellaneous', because of the universal reliance upon, and use of certificates of abstracters beyond the six year period.

We further recommend that your committee be authorized to collaborate with the North Dakota Title Association of Abstracters which has a state meeting in September, 1950 to the end that the State Bar Association and Abstracters' Association may work together on the question of title standards and the enactment of a merchantable record title law."

The report covers two distinct subjects: First, the adoption of title standards which it was hoped would be adopted by the Bar Association and that would be as far as we would go on that; second, the recommendation of a law defining marketable or merchantable title which would be enacted by the Legislature with, we hope, the recommendation of the Bar Association. I don't think it is necessary for me to go into the advisability or the necessity for the adoption of title standards but perhaps it would be interesting to give a little statement of it as it exists in this state.

Up to 1946, we had no standard of title examination. Every lawyer examined abstracts according to his own idea, and it was found that the lawyers were beset with two fears or two questions on every abstract: One was to decide what would be the decision of a court in a given case; and having disposed of that, he still had the question

of what some other lawyer might say about his examination of that abstract if he overlooked something or if he omitted something. That tended to bring about what is known popularly as "fly-speckers."

In 1946, the Cass County Bar Association appointed a committee to prepare some standards of title examination and that committee consisted of John Nilles, W. H. Shure, Norman G. Tenneson, Mart Vogel and myself.

We met and promptly presented a set of title standards which were adopted by the Cass County Bar Association on December 18, 1946. Then, in 1947, there appeared in Bar Briefs a paper which I had prepared and last year at the Bar Association we had a sectional meeting on title standards. Last year also the Bar Association of Stutsman County adopted standards of title examination. Your committee had all of these standards submitted to it. We also obtained the standards from a great many other states—Minnesota, Oklahoma, Indiana, Colorado, a large number of states. Most all of the standards that were recommended are standards that have been taken from those adopted in other states. There are in every state that I have found, with one exception, standards which have been adopted by the State Bar Associations and then promulgated by them and used by the lawyers in passing title.

Perhaps a good illustration of that would be what they have in Minnesota. Minnesota has put out a book, which I have here, "Standards of Examination of Titles." This book is sold only to lawyers and is numbered and when you buy this book you sign an agreement that you will not place the book in the hands of anyone other than a licensed lawyer, attorney at law, the idea being that the book should not fall in the hands of persons who might try to use it by saying, "Well, here is the standard and your title is all right because this standard says so," when there might be something else the matter with it. In the front of the book there is an agreement. The attorney in accepting this book, agrees that he or she will use it only in his or her practice of the law and any improper use thereof shall entitle the publisher, Section of Real Property of the Minnesota State Bar Association, to repossess the book and all parts referred to in the table of contents.

We use this book in our office in examining titles of Minnesota property and find it very helpful. It has some 40 or 50 standards and as new standards are adopted you can get them. There are some now that have been adopted which are not yet printed and you can add them to the book.

Our committee corresponded with each other and with outsiders and got as many of these standards from other states as we could. There is one state, the state of Nebraska, which handles the subject in a little different way. They enacted a law; they enacted the standards into a law, passed by the Legislature last spring. I had the op-



portunity to be in Lincoln, Nebraska, and I talked with the Clerk of the Supreme Court and also with one of the officers of their Bar Association. I don't think they have had enough experience with that law to see how it is working out, but they also have adopted a law defining marketable or merchantable title, which we will discuss a little bit later.

What I propose to do, gentlemen, is to just run through these standards. These are not intended to be final. They don't cover all the subjects that can be covered but they cover a representative number. There are 38 of them and they are of such subjects as the committee agreed on unanimously.

The first paragraph, which I will read, states the general purpose. The Standards are primarily intended to eliminate technical objections which do not constitute actual defects in the title and some common objections which are based upon misapprehension of the law and also to recognize as material certain defects which experience has shown to be often overlooked or misunderstood by examiners.

The purpose of the examination and of objections, if any, made to the title, shall be to secure the examiner's client a title which is merchantable of record and subject to no other encumbrances than are expressly provided for by the client's contract. A record title shall be one provable prima facie by the records in the office of the Register of Deeds of the county in which the land is located. The opinion, certificate or report shall call attention of the client to non-record items which might affect the title such as right of parties in possession other than the record owner, improvements in the course of construction or completed within the preceding ninety days as to which no lien statement has been filed. Objections and requirements should be made only when the irregularities or defects actually impair the title or reasonably can be expected to expose the purchaser or lender to the hazard of adverse claims or litigation.

Then we start with No. 1, which just has to do with names which have the same sound. You find that in all standards. Then the variation of the middle name or first or middle initial, that that is objectionable unless it is explained. We have cited authorities where we could find authorities for each of the standards.

Then the abbreviations, the omission of abbreviations or derivatives which are not material, like "junior" and "senior" and so on. Then the alternate use of "Co." for "company", not material. Then husband and wife, non-joinder, we have a standard there on that, what evidence shall be accepted to show whether a person is married or single or whether the property is a homestead or not. I think it has been held that where a person makes a deed and recites in there that this property is not his homestead, that that is merely a self-serving declaration and isn't much good to the purchaser; that is, he is not very

safe in depending on it. On the other hand, if he has an affidavit of some disinterested person who knows the facts, that might have a good deal more probative value.

Then the acknowledgements, omission of recital of marital status is next. Then we come to conveyances and affidavits, the recording of the patent and certified copy thereof should be in all cases required except where patent is not required. We ran into an abstract in our office not long ago, Mr. Bergesen had it for examination, for some of the ground that had belonged to the A. C., and there was a section there; I think it was Section 13. There was no patent and we didn't know why there was no patent on record until we found out that that land had been a grant from the Government and the patent or the record was in Washington and there was no record in the Register of Deeds office or anywhere in North Dakota about it but the title was good.

Then the grantee in the alternative; we have had several cases of that in our office lately where people seem to prepare the deeds themselves and there is a sort of an offshoot from the joint tenancy idea that to make a bank account to James Smith or his wife is the same as to make a deed to James Smith or his wife, and according to the authorities such a deed is void.

Then on those other matters, I don't think I need to read those. Those affidavits that are provided for are authorized by our statute and are satisfactory evidence of the facts therein stated. In all cases, instruments filed for record subsequent to known date of maker's death, the examiner is justified in assuming effective delivery prior to death of maker. Then the passage of title of a forfeiture, where title depends on probate, we have a number of standards there, particularly in regard to the necessity of recording the final decree and also the fact that it is not necessary to file or record the order admitting the will to probate or the will itself. You often run across certified copies of a will in abstracts.

Limitation to assert title: When an examiner finds a mortgage of the class mentioned, that is a mortgage that is more than 15 years old or 20 years old which has been satisfied by order of the court, he may disregard the same as not being constructive notice to the purchaser; but if it has not been discharged of record, such mortgage may have been kept alive by renewals of or payments upon the note secured thereby, and it may be a lien. We have a cited case on that. Then in the opinion, you may pass a title where there is a recorded lease, the term of which has expired.

Then we had another question that provoked a good deal of discussion and that was the case where you get a deed from a person who has both title and a mortgage on the property, where there is a merger of title. We wrote it up this way: A warranty deed or limited warranty deed from the record holder of a mortgage who is also the record

title holder which does not except the mortgage from the covenants and is not made subject to the mortgage is sufficient as a discharge of the mortgage and no further discharge need be required. We cite the case of *Woodward v. McCollum and Bank*, 16 N. D. 42, 111 N. W. 623, see Patton on Titles S. 303.

By the way, I have a copy of Patton on Titles so if any of you want to look up any of these things, the book is here and you may have access to it.

Then under miscellaneous we have three or four standards. One refers to claims under Federal law; payment of taxes does not evidence any interest in the property and the identity of taxpayer may be disregarded. The last three I think I would like to discuss a minute.

Lawyers should refuse to examine old sheet abstracts. In our office, we absolutely live up to that rule, because they are no protection to the borrower or the lender or to the person who may be buying the property and we tell them that they should have the abstract brought down to date and have it certified to by a competent abstracter who is now in business. Our Supreme Court has held that the liability on a certificate of an abstracter just exists for six years after the cause of action accrues and it was our recommendation that a law should be enacted changing that because everywhere people accept those certificates and rely on them, even though they are more than six years old, and we think there should be some extension of that.

The last paragraph there, that was taken from the standards of the State of Oklahoma. I thought it was very good and we added it to our standards to be recommended to you. When an examiner finds a situation which he believes creates a question as to marketable title and has knowledge that another attorney handled the questionable proceeding or has passed the title as marketable, the examining attorney, before writing an opinion, should communicate, if feasible, with the other attorney and afford an opportunity for discussion.

I have had that courtesy extended to me by several lawyers in Jamestown where I had a good many abstract examinations, and not long ago I had an abstract examined for a client in which the opinion had been written by another attorney in Fargo who is a very good lawyer and very good examiner, and he had overlooked the fact that the property was held in joint tenancy. I called him on the telephone or I went over to his office and saw him and told him about it and he thanked me very much for doing that because I saved him the embarrassment of having a case where he might have overlooked something and that particular attorney had saved me embarrassment, too, from a similar situation. So much for the standards. There they are. They are not, as I say, intended to be final. They are a start and I think our committee thinks that they are in good enough form to be adopted.

We could try them out and see whether some of them may need amendment or change, but this is the result of our study as best we could do in the time that was available. It has been suggested here that we think them over and look them over today and vote on them tomorrow morning, unless you want to do it now.

Now we come to the question of the law defining merchantable or marketable title. That is a different proposition. There are not many states that have enacted the law. One of the first states to branch out on that—the first state was Iowa, which passed the law in 1919, and that law has been amended so that now it clears titles of all claims that arose prior to January 1, 1930. The State of Michigan, in 1944, passed a law which was to fix a 40-year period. Professor Ralph Aigler of Michigan wrote a very fine article in the Michigan Law Review in 1945 containing an analysis of this law and discussing it and he made very plain the fact that that law was not intended to be a statute of limitations but was merely a law defining what was to be a marketable or merchantable property and it was a law any person who had a title which existed for 40 years and had complied with certain conditions in that law prescribed, would have a title that would be unquestionable.

There are two types of laws in these eight states. Three of them are laws which define marketable title. Those three laws are Michigan, Nebraska and South Dakota. The law of Michigan and the law of Nebraska and the law of South Dakota is a joint proposition; that is to say, it is a law defining marketable title and also is a statute of limitations. The other states are just state statutes of limitations and they don't attempt to define the marketable title. After studying all eight of those laws, the committee was unanimously agreed that the Nebraska or the South Dakota law were the ones that we thought were the best suited to North Dakota and we thought that the Nebraska law was better than the South Dakota law because the Nebraska law fixed the date within which title could be considered perfect at 23 years, while the South Dakota law mentioned the time as a certain date. The South Dakota law gives "any claim arising after the year 1920," so that as you went on through the years, the longer you went the longer a man would have to have title to comply with the South Dakota law. Iowa has it 1930. Nebraska has 23 years, as the law now is, and we thought that the Nebraska law was the best law of any of those eight, and so we got a copy of the act and it is type-written and following the standards in the report which you have.

That law is just exactly as it is in Nebraska. If that law was enacted in North Dakota, it would necessitate considerable work because the other sections of the statute would have to be amended and some of them, perhaps, repealed. We put a note in here following one of the pages that the appropriate sections of North Dakota law should be amended or repealed, but we thought that we would not do that work now because we didn't know whether the Bar Association would want to adopt such a law or laws.

Now, it seems to me and it seemed to our committee that we should adopt a law defining marketable title to real estate similar to the Nebraska law. We recommend that. That would be recommended, I hope, by this Bar Association to the Legislature and I presume it would go to our Legislative Committee. The standards, we will just adopt them and see how they work. I think it would be a nice thing if we could meet, our committee, or a committee from the Bar Association, with the Title Association of the abstracters next month so that the abstracters and the lawyers could work together on this. I think that is all of my report, Mr. President.

MR. H. G. NILLES: I move we defer the matter until tomorrow morning. May I ask a question? Mr. Burnett, on page 3 you make a statement that a conveyance by strangers to the title may be disregarded, citing the statute. Does your statute say that a conveyance of a stranger to the title is not constructive notice or suppose you know about the thing? In other words, is there a distinction between constructive notice and actual notice? Maybe you can answer that now.

MR. BURNETT: No, I can't, but I think I have that citation here. That case, as I recall it, held that it was constructive notice and so the statute of 1947—I haven't got the Code here—was enacted after the decision in that case, after *Dorn v. Dazy*, and so we thought that that was sufficient authority to disregard it unless you had actual notice.

MR. NILLES: Suppose you have actual notice of the conveyance? Here is what I am talking about: Suppose you have actual notice from an examination of the abstract of title, does that make any difference?

MR. BURNETT: Yes, I think it would. We thought that it was not constructive notice.

(The matter was deferred.)

(Meeting adjourned.)

The general convention was called to order at 12:30 p. m. of Thursday, August 24, 1950, by President Graham, and thereupon adjourned to the sectional meetings. The meeting on Oil and Gas leases was addressed by Mr. James Haughey.

AND, THEREAFTER, at 9:30 o'clock a. m. of Friday, August 25, 1950, the following proceedings were had and entered of record, to-wit:

(That portion of the report covering the title examination standards was adopted; that portion dealing with the adoption of a statute of the Nebraska type was referred to the legislative committee.)

(Motion carried.)

MR. BURNETT: I would like to say that there is another recommendation in our letter that I would like to make, and that is that

some representative of our committee be authorized to meet with the abstracters' association when they meet next month for the purpose of going over this matter with them. One of our committee, Mr. Ruemmele, is in the abstracting business and he would be a very good man. He probably will be attending that convention and in our letter we ask that your committee be authorized to collaborate with the North Dakota Title Association of Abstracters which has a state meeting in September, 1950, to the end that the State Bar Association and the Abstracters' Association may work together on the question of title standards and also on the other.

I would like to make a motion that our committee be authorized to meet with the Title Association in September and report what we have done and try to work out a plan with them, get their cooperation with our plan.

(Motion carried.)

MR. BURNETT: Our committee desires to thank you for approval of this report. I think it will be a step in the right direction. Other standards will be added as they occur and we will get a lot of help over the state as different members of the bar get interested and make suggestions. That has been the experience in other states. Thank you very much.

PRESIDENT GRAHAM: The next committee report that we desire to have heard at this time is in regard to Legal Education by Dean Thormodsgard of the University Law School. Dean Thormodsgard.

DEAN O. H. THORMODSGARD: Mr. President, Members of the North Dakota Bar Association. The Committee on Legal Education and Admission to the Bar begs leave to submit the following report:

The Section of Legal Education and Admission to the Bar of The American Bar Association recommended to the House of Delegates that a survey of the legal profession should be made. This recommendation was approved by the House of Delegates in February, 1944. To expedite the work, six divisions of the survey were set up; namely, Professional Service for the Lawyers, Public Service for Lawyers, Judicial Service, Professional Competence and Integrity, Economics of the Legal Profession, and the Organized Bar. The survey dealing with Legal Education and Admission to the Bar comes under the division of Professional Competency and Integrity. Under this division, a study of legal education in the law schools is being made. All of the law schools in the United States will be inspected or have been inspected.

A lengthy questionnaire was sent to all law schools. In answering the questions, it became necessary to write the history of the law school, giving the names of past and present faculty members, number of students who had enrolled, number of law graduates, the num-

ber of law books bought each year, the annual budget for the past ten years and other statistics. The University of North Dakota School of Law was inspected on May 1 and 2, 1950, by a representative of the survey, Dean Hollis of Oregon. Accurate checks were made as to pre-law requirements, the law curriculum, methods of teaching, the law library, and the law school building.

Many of the law schools in the United States are revising the law curriculum due to the shift in the practice of law. Greater emphasis is placed on Administrative Law, Taxation, Labor Law and Accounting. In several law schools accounting is being taught. We are of the opinion that accounting should be one of the pre-law subjects. The Survey on Legal Education is under the direction of John G. Harvey of Oklahoma City, who is Adviser to the Section of Legal Education and Admission to the Bar.

Chief Justice Arthur T. Vanderbilt of New Jersey is making a study of Pre-Legal Education for the Survey. Professor James E. Brenner of Stanford University School of Law is making a comparative study of Admission to the Bar.

The Council of the Section of Legal Education and Admission to the Bar is aware of the fact that legal education does not terminate when persons are graduated from the law schools or when they are admitted to the Bar. The Committee on Continuing Legal Education of the American Law Institute is collaborating with The American Bar Association in publishing a series of pamphlets for lawyers. Series One of the Publication of the Committee on Legal Education includes the following subject matter:

1. Legal Problems in Tax Returns
2. Lifetime and Testamentary Estate Planning
3. Drafting of Partnership Agreements
4. Labor Negotiations
5. Basic Accounting for Lawyers
6. Price and Service Discrimination under the Robinson-Patman Act.

Persons may subscribe for the six publications for \$10.00 or \$2.00 for single copies. Local bar associations will find it advisable to subscribe to these publications and thereby promote the program of The Committee on Continuing Legal Education in their respective communities. The quality of the programs in the local bar associations will likewise be improved when these pamphlets are used as source materials for reports, talks and group discussions.

Under the guidance of Heber Smith of Boston, Chairman of Division I, Professional Service by Lawyers, a pamphlet on the "Lawyers Reference Plans" has been prepared by Charles O. Porter. An article on the Lawyers Reference Plans is now being written at our Law School, which will be published at a future date in the North Dakota

Bar Briefs. "The Lawyers Reference Plan is a method by which members of the public needing legal advice and assistance are directly and properly brought into contact with lawyers who are able and willing to perform the needed professional services."

The Committee on Legal Education and Admission to the Bar has at this time no specific resolution or recommendation for submission to this Association. Members of the committee were of the opinion that the "Survey of the Legal Profession" is so extensive and so vital to the future welfare of law students and lawyers that as members we should be aware of the studies and reports of the Survey Committee. That is the sole purpose of this report.

Respectfully submitted, Arley R. Bjella, Douglas B. Heen and O. H. Thormodsgard, Chairman.

Mr. President, I move that the report be accepted.

(Motion carried.)

PRESIDENT GRAHAM: The next report we will hear at this time is that of the Memorials Committee, by Mr. McIlraith.

MR. MCILRAITH: Your bar committee regrets to report that the following prominent lawyers of North Dakota have died during the past year and that memorials covering their lives and the main incidents thereof have been prepared and given to the "Bar Briefs" for publication. Copies of these memorials are hereto attached and made a part of this report.

The lives covered are those of: Helen M. Hamilton, Grand Forks, North Dakota; J. F. T. O'Connor, Los Angeles, California; Martin O. Thompson, Lisbon, North Dakota; William F. Lemke, Fargo, North Dakota; Morton L. McBride, Dickinson, North Dakota; Clair F. Brickner, Fargo, North Dakota; LaRoy Baird, Dickinson, North Dakota; Edwin E. Bothne, Jamestown, North Dakota; Orville W. Duell, Devils Lake, North Dakota; Henry E. Lemke, Devils Lake, North Dakota; John C. Lowe, Minot, North Dakota; John F. Sullivan, Mandan, North Dakota; B. L. Anderson, Burnstad, North Dakota.

Some of these memorials are in the form of resolutions prepared by local bar associations and they are submitted herewith for the consideration of this body.

The resolutions cover the life and death of William F. Lemke and Clair F. Brickner.

These memorials have all been published in Bar Briefs and it will serve no useful purpose at this time to read them to this group. They are quite lengthy.

At this time, Mr. President, we move the adoption of this report and the passage of the two resolutions covering the lives of William F. Lemke and Clair F. Brickner.



(Motion Carried.)

**PRESIDENT GRAHAM:** The next report is that of the American Citizenship Committee.

**MR. HAROLD W. BANGERT:** Mr. President and Members of the Bar: Your American Citizenship Committee takes pleasure in tendering a report of its activity for the past annual period. As was the case in 1949, the activity of the Committee has centered around the "Constitution Award" program. The terms of the Award are stated in an announcement circulated to the schools of the state, a copy of which is attached hereto.

Whereas in 1949 the Committee made 155 awards in 154 schools in 146 communities, in 1950, 179 awards were made in 179 schools in 171 communities. The awards in 1949 were presented by 111 members of the Bar Association, and in 1950, 124 members of the Bar Association participated. Funds expended by the committee are as follows:

Cost of 200 keys	\$245.33
Pierce Co. Fargo—letterheads	28.31
Richtman's, Fargo—programs and art work	49.37
Swensgaard's, Fargo—mimeograph, etc.	40.66
Western Union	13.15
Postage	35.04
Stenographic and clerical	100.00
Miscellaneous, collect telegrams and telephone	5.52
	<hr/>
	\$517.38

leaving a balance of \$182.62 from the original appropriation. The Committee has on hand 247 keys for use in 1951 if a continuation of this activity is approved.

The Committee in 1950 experienced the almost unanimous approval of members of the Bar in their comments on the program. Rough spots in distribution which developed in 1949 were substantially eliminated in 1950. Many constructive suggestions were made by attorneys and school officials which will be handed over to the successor of this Committee.

A particular note should be made of reports of school officials that already the force of this program has resulted in increased emphasis on the teaching of the importance of our Constitution in school curricula. Typical of this type of comment is a report from District 2 that,

"The Superintendent of the school advised that this is the second year in which they have participated in this award, that he definitely feels it is an inspiration to the students in Constitutional Government. He states that his class next year in this school will be much larger than the class this year, and he is looking forward to much competition among those students for the award."

The American Bar Association, through its Standing Committee on American Citizenship, devoted four pages of Citizenship Bulletin No. A-1 to the activity of this Committee, concluding, "The North Dakota program is original in concept and would appear to be getting excellent results." Mr. John C. Cooper of the Institute for Advanced Study, Princeton, New Jersey, Chairman of the A. B. A. Committee, has submitted for the consideration of your committee a bulletin, "Our Constitution and What It Means" by William Kottmeyer, Director of Education of the St. Louis Public Schools. Because your Committee intends to recommend to its successor that this publication, or a similar one, be distributed by the North Dakota Bar Association in the North Dakota school system, there have been made available a few copies of the publication for the consideration of members of the Bar who are particularly interested.

Since the preparation of this report on August 2nd, I should say to you that Mr. Cooper has now asked your Committee to be represented at the roundtable Citizenship Conference being held by the American Bar Association in Washington on September 20th and to present there the experience in North Dakota. He writes to me that he has had many inquiries throughout the United States as to the usefulness and the effect of this program, and the Executive Committee of the Bar Association has instructed me to attend that meeting, which I am very happy to do, and I will be very happy to report to you through Bar Briefs or some other way the acceptance or reaction to the program.

I have here a few copies of this document. The only thing I wish to caution you is don't use it for your questions of Constitutional law, even though it says "What the Constitution Means." It may not mean it to you. Currently, this pamphlet is in the hands of the Fargo School System, because it was convenient for me, and they are evaluating it as a teaching device. I have no opinion about it myself. The American Bar Association thinks it is good. Mr. Kirk, the Superintendent of Schools in Fargo, says that he is a personal friend of Mr. Kottmeyer so it must be good. However, the teaching staff of the Fargo public schools is now evaluating that and the results of that evaluation will be presented to the Executive Committee of the Bar Association. If they think it is a good device, then I would certainly urge upon the Executive Committee of the Bar Association that a sufficient number of copies, say 5,000, something like that, be purchased and be circulated through the school systems. Those of you who are particularly interested, I wish you would take it and particularly members of the Executive Committee.

I wish to say one more thing. Since this is a large group of lawyers, 124 of some 600 lawyers made these presentations. There are about 450 high schools in North Dakota. 179 high schools took advantage of this offer. The offer was made to all of them. Whenever a high school took advantage, it was, for the most part, not the result

of a local attorney going to the high school and urging them to do it. We presented it to them cold, that is, almost without exception, but certainly it must be apparent to the members of the bar that a very important opportunity to discharge an obligation of a lawyer is offered to every member of the bar in making this presentation, if he wishes to prepare a talk and appear in the high schools of his community and expound upon the importance of the Constitution. I hope that if this activity is continued next year, I sincerely hope and recommend to you that you don't pass up an opportunity to make such an award if the opportunity presents itself.

Mr. President, I move the adoption of this report.

(Motion carried.)

PRESIDENT GRAHAM: I believe we have another report, the Committee on Uniform Laws.

MR. MACKOFF: Mr. President, the work was really by Judge Pollock and Dean Thorndsgard, so I want to give credit to them for this report. The Committee on Uniform Laws of the North Dakota State Bar Association for the year 1950 begs leave to report as follows:

That the last yearbook of the Conference of Commissioners on Uniform State Laws discloses that the Conference has completed and the American Bar Association has accepted and approved fifty-eight Uniform Laws. That of this number, the State Legislature has adopted a total of twenty-nine.

It is the considered opinion of your committee that it is not necessary to adopt all of the Uniform Laws promulgated and approved inasmuch as some are proposed to meet conditions which either do not exist in our State or, if they do so exist, such existence is so limited as not to warrant general legislation affecting the whole State. Consequently, your committee is of the opinion that it is not necessary that they be presented to the Legislature until an actual need for the adoption of such acts is demonstrated.

The committee feels that it is justified in recommending the adoption of the following Acts:

1. The Uniform Divorce Recognition Act approved and accepted by the American Bar Association in 1947 and which has been adopted by six states;
2. The Uniform Contribution Among Tortfeasors Act approved and accepted by the American Bar Association in 1939 and adopted by eight states.

In addition to the foregoing recommendation, the Committee desires to call to the attention of our Bar Association that we have had the Uniform Desertion and Non-support Act since its adoption by our

Legislature in 1911. That the Conference of Commissioners on Uniform Laws now has before it for consideration at the meeting to be held in Washington, D. C. next month the Uniform Reciprocal Enforcement of Support Act. That when it is approved by the Conference and approved and accepted by the American Bar Association it should be studied and given earnest consideration by the Uniform Laws Committee of our Bar Association inasmuch as it will solve many of the difficult situations which arise in the enforcement of the Desertion and Non-support Act.

Respectfully submitted, O. H. Thormodsgard, H. A. Mackoff and John C. Pollock, Chairman.

I move the adoption of the report, Mr. President.

(Motion carried.)

PRESIDENT GRAHAM: Mr. Day.

MR. CARROLL E. DAY: Mr. President, the Judiciary Committee has not met at any one time in any one place during this last year, this being in the interests of the welfare of the state being supported on more than one focal point at all times. The members of the Committee didn't even undertake the risk of all of them attending this session. However, some of us have been able to get together and the Committee members that are attending these sessions join in this report, and those who are not here are conclusively presumed to have joined in it unless they file a dissenting report before this report is accepted by the group.

Judicial Compensation and Retirement: After a long struggle, we have a start in this state on the subject of judicial retirement but the provision made is entirely inadequate and as far as salaries are concerned, we still show little interest in our judges. It is almost axiomatic that North Dakota judges are the poorest paid. It is therefore almost impossible to find well-qualified men who are in their prime to withdraw from active practice and accept judicial appointment, and judges who should retire, in their own and the public's interest, hesitate to do so or delay doing so.

Yet there is a rather common feeling throughout the state that satisfactory salaries and retirement plans have been recently provided for judges in North Dakota, and the average legislator may well feel that that is one subject that need not bother him again soon. To get any worthwhile action, a rather strong approach will need to be made. The Legislative Research Committee has considerable statistical data available and it will undoubtedly be glad to cooperate. The Judicial Council has given the subject considerable study, but the initiative should properly come from the Bar Association.

Prior to the definite action that was taken by the Legislative Committee last night—which I believe has not yet made its report—it was the recommendation of the Judiciary Committee that the next

Judiciary Committee attempt to work out a satisfactory plan in cooperation with the Judicial Council and then discuss that plan with the Legislative Research Committee to get the benefit of its judgment on possible legislative action next January and in the hope that the Legislative Research Committee might have a specific bill printed and sent to all legislators in the state late in November this year so that your next Judiciary Committee, working through local members of the bar all over the state, might contact those legislators prior to the session and have a specific proposal to discuss.

Since the meeting last night and the report that is going to be made on that particular subject by the Legislative Committee, this recommendation should be modified somewhat because specific action was there taken.

**Judicial Load:** On superficial observation, it appears that there is a great variation in the judicial loads of the various districts and possibly in the respective loads of different judges in the same district. Probably the variation is not constant through any given season or year.

The Burleigh County Bar has had just cause to complain because their local District Judge has been called upon to spend months at a time holding terms elsewhere, leaving Bismarck without judicial service. The increased load near the Garrison Dam, together with increased litigation where the venue must be placed in Burleigh County, accounts for the critical situation. The Burleigh County Bar, we understand, is going to try to get legislative approval for another District Judge in their District.

Your Committee recommends: 1. That this Association go on record as supporting the Burleigh County Bar in this regard; and, 2, that a study of judicial loads in all sections of the state over the past several years be made at the expense of the Association, and the feasibility of a system of shifting judges temporarily from one District to another, depending upon the pressure of business, be considered.

**Court Reporters:** Good court reporters are hard to find and to keep. We are inclined to take good, honest, efficient and accurate reporting for granted, not giving much thought to how essential it is to the administration of justice. Reporting is hard work and, in the course of a few years, uses up a tremendous amount of nervous energy and frequently affects the health. The reporters of this state are associating themselves together for the purpose of presenting a retirement and salary plan suited to their needs. They are preparing to present their own case, but it is the recommendation of your Committee that this Association go on record as favoring (1) the enactment of a retirement plan for court reporters in North Dakota; and (2) that consideration be given to increasing their compensation.

**Supreme Court:** The subject of judicial administration has recently received a great deal of attention. In recent years, our Supreme Court

has received some criticism for not handing down decisions as promptly as is desired. We have a great Court and we want it to be well regarded by the people and we want to assist the Court in improving its service, if possible.

The Committee recommends that the next Judiciary Committee work closely with the Court on this subject in the hope that something constructive will result.

Respectfully submitted, Ralph Beede, Clyde Duffy, G. S. Wolledge, Wallace Warner and Carroll E. Day. I move the adoption of the report.

(Motion carried.)

PRESIDENT GRAHAM: We will now have the Audit Committee report.

MR. ASMUNDER BENSON: This audit has been gone over by your Committee, consisting of Mr. McIlraith, Mr. Boulger and myself, and they have authorized me to state to you that we have approved the audit in every respect. I move its adoption.

(Motion carried.)

PRESIDENT GRAHAM: There is still one short report that we can take up and that is the Report of the Committee on Revisor of Statutes. Since no members of the Committee are present, I will read the report into the record.

Your Committee on Revisor of Statutes feels that it has little to add to the report submitted last year, as published in the Bar Briefs, 26 N. D. Bar Briefs 136 (January 1950.) At the present time, the Legislative Research Committee is at work on revision of the printing laws, with the hope and difficulties experienced in the past in publishing the biennial statutes may thus be obviated.

Your Committee is still of the opinion that the office of Statutory Revisor should be created by appropriate statute, and that the Revisor work in close harmony with the Legislative Research Committee. His chief function would be the undertaking of a continuous study of the statutes and the preparation of revision legislation. Immediately prior to and during the legislative sessions he would effectively supplement the work of the Legislative Research Committee as a legislative counsel. He would be an invaluable adjunct to that Committee in the preparation of the laws for publication in permanent form.

Respectfully submitted, Ross C. Tisdale, Chairman, Joseph A. Donahue, Linn Sherman and Marion Jane Leslie Gletne.

MR. BERGESEN: I move its adoption.

(Motion carried.)

MR. NELS G. JOHNSON: I have a report to make.

PRESIDENT GRAHAM: Mr. Johnson.

MR. NELS G. JOHNSON: Members of the Bar Association: This report deals with Ethics and Internal Affairs of the Association. I might say, before I start reading the report, this Committee hasn't had much to do this year but there are some things in the report that I want to bring to the attention of the Association. It may not strictly deal with the Internal Affairs of the Association, yet, I think they ought to be said.

Dealing with Ethics, only three complaints have been received by the Committee during this year. None of these have been of serious nature. If this be the extent of any possible breach of ethics by the members of the North Dakota Bar, then the record for 1950 is splendid.

The only serious complaint before the Committee and which was referred to in last year's report, due to its nature has been referred to the State Bar Board for further investigation and consideration. The nature of the complaint was such that this Committee felt that it did not have the time nor the facilities to investigate the same thoroughly as it involved contacting witnesses out of state and so referred the matter to the State Bar Board for further investigation.

The question has been raised whether it is ethical for an attorney, or attorneys, to run a professional card in a town outside of their own county in which other attorneys are located. For instance, is it unethical for an attorney or attorneys living in one county seat to run a professional card in the county seat of a neighboring county where there are other attorneys practicing law? Particularly, is it a breach of ethics to do so when the professional card or advertisement asserts or implies that the firm or a member of the firm is an expert in handling of a certain type of business? After naming the firm, the ad asserted, "Mr. Blank will specialize in tax work." The Committee made some investigation of this matter but found no precedent. What does the Bar Association think about the practice? Is it in good taste? Should the association condemn any implication in any professional card or advertisement which might imply that a legal firm or a member of the firm specializes in a certain type of law work? The Committee is not certain that any breach of ethics was involved, but if the Bar desires to discuss the matter, the Committee would be happy to ascertain the general conclusion of the Association.

The question has also been raised whether or not the Attorney General's Office should give any opinion or opinions to any private persons, corporations, or associations which involve advice upon what amounts to no more than a private legal problem of the person, corporation or association asking the opinion. A great many persons write to the Attorney General's Office under the impression that they can obtain free legal advice.

It is the impression of the Committee that the Attorney General takes the position that the office should handle only matters of public concern and answer only inquiries of public officers of townships, school districts, counties or state, whether appointed or elected. Yet in spite of that position, every now and then it does appear that inquiries upon particular private matters are answered by the Attorney General's Office and addressed to individuals, corporations or associations that have no official position of any kind, in answer to inquiries presented by them, which, when answered, amount to advice only upon problems which concern them.

The Attorney General's Office may properly and does answer inquiries of general public concern, such as advice upon law enforcement matters where the parties involved are attempting to ascertain advice upon matters which will enable them to comply with some particular statute. For instance, the Food-Liquor Divorcement Law involved such advice to many persons, firms and corporations who were attempting to secure an interpretation of that difficult statute in order to comply with its terms.

It is the impression of this Committee that all matters that appear to be of no public concern or where the individual, corporation or association asking for advice is not an official of the state or any of its political subdivisions, either appointed or elected, the Attorney General's office should, insofar as possible, refrain from giving advice upon the inquiry involved.

The foregoing is not meant as any criticism of the Attorney General's Office for the writer of this report knows how difficult it is to determine when and to whom advice should be given. It is merely pointed out for the reason that the matter has been called to the Committee's attention, apparently because some private practitioners feel that the Attorney General's Office should, insofar as it is possible, avoid giving advice to any person, corporation or association upon private legal matters.

One minor complaint has been received from an outside firm of attorneys charging that a member of this Bar associated with them in connection with a case in this state has failed and neglected upon repeated inquiry by correspondence to give any report or answer letters. The Committee contacted the member of the Bar involved and the matter has been satisfactorily adjusted.

During the year the Committee received a copy of the "Rules of Conduct in Adjustment of Claims" promulgated by the National Conference Committee on Adjusters. This was forwarded by your Executive Director of this Committee, on the theory that it involved problems of conduct. The rules are too long and cover too much ground to be incorporated into this report. No doubt the Association should examine the rules and determine what, if anything, should be done concerning them. It might be well for the Association to appoint a



committee to consider these rules to determine whether the Association should adopt them as the basis for the conduct of members of our Bar in the adjustment of claims.

On Internal Affairs, while this may not strictly be Internal Affairs, I want to talk about it. Representative republican form of government is on trial. Whether it withstands the onslaught now being made upon it will be determined by the zeal and interest of our people in its form and processes.

To attempt to stimulate interest and to explain to our people the processes and form of our government, the Burleigh County Bar Association has instituted a program to attempt to accomplish that in which the entire County Bar will participate. It feels that too little time is being spent in the elementary and secondary schools to explain our government processes, and instill respect for and love of country. Many graduates of our schools, even high school graduates, have only an elementary understanding, and sometimes hardly that, of our form of government.

The purposes of government seem to be misunderstood. There is a lack of interest towards government by the general public. This is evidenced by the failure of the public to take interest in its elections and to go out and vote, or to participate in government processes. This is extremely dangerous to the continued healthy condition of a representative republican form of government. The Burleigh County Bar Association will endeavor insofar as it can to promulgate interest in the preservation of our form of government, create interest in it, and to inform the public and particularly the school children of Burleigh County concerning it. The program is already under way.

The question has been raised, should the State Bar Association institute a similar program—perhaps a more extensive program—of education along similar lines? There is no doubt that the Bar Association and its members are perhaps better equipped to do this than any other professional group for the reason that it has a more thorough and perhaps a more appreciative understanding of the representative republican form of government than any other group. Further, the onslaught upon representative republican form of government, commonly called a democracy, comes not only from within but from without. The world is now engaged in a conflict which will determine whether the American way of life or Communism will prevail.

Recommendations: While the promulgation of a program such as has been instituted by the Burleigh County Bar Association may not strictly deal with the Internal Affairs of the Association, yet this Committee feels that the State Bar Association, perhaps, could not engage in any more worthwhile endeavor than to revitalize, if that is possible, the interest of our general public in the form and processes of representative republican form of government and to assist, insofar as it is possible, to educate the youth of our state in its apprecia-

tion; to help instill love of and patriotism for our country. We, therefore, recommend that the State Bar Association seriously consider whether it should engage on a state-wide basis in similar activity as has been undertaken by the Burleigh County Bar Association.

This committee further recommends, and this involves its internal affairs, that a committee of the Association be appointed to study the rules of conduct in the adjustment of claims as presented by the National Conference Committee on Adjusters and to determine whether the Bar Association should adopt them as a guide for the conduct in the adjustment of claims by members of this Association.

Since the Association has now the funds available, this Committee recommends that the canons of ethics of the American Bar Association and of this Association be compiled in a pamphlet form and such pamphlet distributed to each and every member of this bar.

Respectfully submitted, Nels G. Johnson, Chairman, Clifford Jansonius, John A. Zuger, C. J. Schauss.

I move the adoption of this report.

(Motion Carried.)

**PRESIDENT GRAHAM:** This brings us up to the election of officers for the ensuing year, and nominations are in order for President.

(The nominations were closed and the Secretary instructed to cast the unanimous ballot of the Association for Philip R. Bangs as President.)

**MR. BANGS:** Mr. President, I don't deserve all these remarks and I was a little afraid that when Carroll was talking he was double-crossing me because I couldn't fit myself into the picture he was making, but I appreciate this honor and I know that there is a lot of work to be done. I know that with the officers that you are going to elect and the committees that you appoint and that we appoint this work will be done. I am hoping when we return next year we can say it was well done. I thank you.

**PRESIDENT GRAHAM:** The next is the election of a Vicepresident. Nominations are in order.

**MR. VERNON M. JOHNSON:** Mr. President, I would like to place in nomination the name of Eugene A. Burdick of Williston.

**MR. NELS G. JOHNSON:** It gives me the greatest of pleasure to nominate Asmunder Benson for the office of Vice-president.

**MR. C. L. FOSTER:** It gives me great pleasure to second the nomination of Eugene Burdick for Vice-President of this association.

**MR. PAUL BENSON:** I second Mr. Benson's nomination.

MR. ROBERT NORDHEIM: Mr. President, I second the nomination of Eugene A. Burdick.

MR. EINAR JOHNSON: Mr. President, I take great pleasure in seconding the nomination of Asmunder Benson of Bottineau.

(Motion made and carried to proceed with the balloting.)

PRESIDENT GRAHAM: While we are waiting, Mr. Bright, I believe has an announcement to make. Mr. Bright.

MR. BRIGHT: Members of the Association, in the meetings here you have no doubt heard much of the work of the American Bar Association and its relationship to our own group. The American Bar Association is also of interest to the younger members of the Association. I happen to be the State Chairman of the Junior Bar Section of the American Bar Association, which is made up of young lawyers—and we call them young lawyers until the age of 35 throughout this country. They are not only organized on a nationwide basis but also on a circuit basis and a state basis.

We are very fortunate in having as our guest this afternoon at four-thirty Mr. Wiley Mayne of Sioux City, Iowa. Mr. Mayne happens to be the Delegate at Large to the Council of the Junior Bar Conference of the American Bar Association and, incidentally, he is also the State President of the Junior Bar of the State of Iowa. He is flying in this afternoon and he is going to meet with we younger members of the American Bar this afternoon at four-thirty in this room.

We have about 40 or 50 members of the American Bar Association who are members of the Junior Bar Conference, and this announcement is of special interest to you young lawyers, even though you may not now belong to the American Bar Association. We should like to invite you to attend this meeting this afternoon at four-thirty in this room. I am sure that it will be of great and special interest to each of you, and I want you to understand that even though you attend there is absolutely no obligation on your part to join the American Bar Association; but I believe you will find several things of interest to you and it is our best opportunity to explain to you the work of the American Bar Association with the young lawyers, especially the young lawyers of this state. I want to invite each and every young lawyer, whether member of the American Bar Association or not, to this meeting. Incidentally, any of you older lawyers who are young in heart and would like to attend and hear what the Junior Bar is doing, we should appreciate your attendance also. Thank you very much, Mr. President.

PRESIDENT GRAHAM: Mr. Burdick has been elected Vice-President.

MR. ASMUNDER BENSON: Mr. President, I want to move that the election be unanimous and I want to congratulate Mr. Burdick and the Association for his election.

MR. NOSTDAL: I second the motion.

(Motion carried.)

PRESIDENT GRAHAM: Now we have a secretary to elect, and perhaps we can do it as rapidly as possible. Nominations are now in order.

MR. FOSTER: Mr. President.

PRESIDENT GRAHAM: Mr. Foster.

MR. FOSTER: It gives me great pleasure to present in nomination for Secretary of this Association the name of Robert Alphson of Bismarck.

MR. NELS G. JOHNSON: Mr. President.

PRESIDENT GRAHAM: Mr. Johnson.

MR. NELS G. JOHNSON: I second the nomination.

MR. DAY: Mr. President, I would like to make a motion that the secretary be instructed to cast a unanimous vote for Mr. Alphson as Secretary-Treasurer.

(Motion carried.)

PRESIDENT GRAHAM: At this time, I will introduce our speaker, the President of the American Bar Association, one of the leading attorneys of New York City. Mr. Gallagher. (Mr. Gallagher addressed the convention.)

(Mr. Gallagher was elected to honorary membership in the North Dakota State Bar Association.)

Pursuant to adjournment, the General Convention was called to order at one-thirty o'clock p. m., of said Friday, August 25, 1950.

PRESIDENT GRAHAM: The meeting will please come to order. Mr. Johnson.

MR. VERNON M. JOHNSON: This is the report of the Legislative Committee, and at the outset I might mention that we have fifteen members on our Committee and the members of the Committee are as follows: Roy Holand, Paul Agneberg, Ralph Beede, A. R. Bergesen, Clair Brickner (who has passed away), Carroll Day, C. L. Foster, Fred Graham, Clyde Duffy, H. A. Mackoff, E. J. McIlraith, William S. Murray, Manfred Ohnstad, W. H. Shure, John H. Stormon, Alvin C. Strutz and Robert L. Vogel. We found that this committee was entirely too large to have any meetings and they were scattered all over the state so that the only meeting other than correspondence that we have had is a meeting that we had last evening.

During the year, there have been announcements carried in the literature that is issued from the State Bar Association to the effect that anyone having any proposals or suggestions for legislative changes could communicate them to this Committee. I don't think

we received over four or five of those suggestions. At the outset, we contacted the various members of the Committee and it was agreed—and that was one of the reasons for asking that the Committee be created. We wrote to the various people that had presented papers here at the various sectional meetings and in most of those papers they recommended certain changes and we got replies from all of the people that we contacted with detailed suggestions for legislative reform.

After we got these replies back, we made copies of all of the letters and sent them to all fifteen members and asked them for their comments. This report that we have prepared was distributed to the members of our Legislative Committee and was the basis for our consideration last night. It contains the various suggestions that were made and a summary of the reaction of the fifteen members of the Committee. This was again distributed to all the members of the Committee, and what I considered to be the recommendation, based on their replies, was also incorporated in this report.

At our meeting last night, we went through these various suggestions and recommendations and adopted a final report as to the suggestions that we would recommend to the Bar Association for further action and for possible introduction at the next Legislative Session.

The first matter that was considered was pre-trial conference. This was a paper that had originally been given by Judge Grimson and his suggestion was merely that we continue the use of it and encourage pre-trial work. The Committee agreed that that should be done and there was no legislation needed for that purpose.

The next matter that was suggested was suggested by Phil Vogel, and you will recall he gave a paper here a year or two ago on corporation practice here in North Dakota. His suggestion was that our present corporation laws be changed and that a North Dakota Business Corporation Act be adopted patterned on the Minnesota Business Corporation Act. The letters that we got seemed to be in favor of it but at our meeting last night and it was the decision of the committee that a Special Committee of the incoming Legislative Committee be appointed to consider whether or not we couldn't get at some of the things that Mr. Vogel was complaining about and some of the other weaknesses in our corporation act and amend our present act and retain some of the things that some of the members felt were better than the Minnesota Act, so that that was the recommendation of the Committee on that point, that further study be made and that the amendments and suggestions be incorporated in our present act if at all possible, and otherwise to give consideration to the possibility of drafting a completely new corporation act.

I think that some of these matters probably later on will be controversial but I think I will go on with the suggestions and indicate our

reaction, and unless I hear some comment or question about the action taken, we will assume that it is agreeable to this group.

There were several matters with reference to, for instance, joint tenancy law and problems in summary administration, etc., and it was decided that all those matters should be assigned to the Special Committee on Probate Procedure, and there is an effort underway, as I understand it, to draft a great many changes in our probate laws, and these matters will be referred to that committee.

Then there were several suggestions made with reference to tax titles and these suggestions were made by John A. Zuger. Suggestion No. 1 was this, that where the certificate is held by a private purchaser, Section 57-2707 requires service of notice of expiration of redemption personally upon an occupant in possession, applying to an actual occupant not necessarily an occupant of record. Failure to so serve voids the deed. More sensible to have such service, if any, on occupants of record. The recommendation of the Committee was that he definitely hit on a weakness of our present tax title law and that the thing should probably be studied a little further before recommending it just as he had suggested it, and it was recommended for further study of the Legislative Committee, but with the idea that something be introduced at this coming session of the Legislature to correct that difficulty.

Suggestion No. 2: The former statutes, dropped in the 1943 code revision, made the tax deed prima facie evidence of the regularity of the proceedings leading to its execution. Its return to the statute would encourage purchase of tax titles. That suggestion was adopted so that legislation along that line will be introduced.

Suggestion No. 3: Section 57-4510 as amended by Chapter 314, 1945 Session Laws, provides the attacker of a tax title must deposit unpaid delinquent taxes, plus penalty and interest. The wording of the statute is that the deposit must be made before the action is tried by the Court. However, the better practice would seem to change the statute to allow the attack and provide after judgment setting aside the deed that it be entered if the attacker makes the deposit, rather than have him make the deposit before he has his day in Court. If the deposit were not made within the time fixed, after judgment of invalidity, have the action dismissed. That suggestion was adopted by the Committee.

**MR. ALBERT LUNDBERG:** Pardon me, but it strikes me that the purpose of the original provision requiring a deposit was to prevent a lot of litigation by those who had little or no chance of prevailing but who felt that they might have a lot to gain and nothing to lose. Now, if they should be permitted to bring that action until judgment and first be required to put up the deposit, if they have a judgment they cannot find a deposit, then the whole purpose will be omitted and the purpose of it will be defeated. After all, if they haven't suffi-

ciently tangible claim that would justify their depositing the accrued taxes, should they be permitted to involve a whole tax title pending the litigation of the matter?

MR. VERNON M. JOHNSON: I would just like to read here the summaries of the letters we received. The most prevalent is that there was very little comment in general. Three of the four lawyers specifically commenting on this felt that it would be advisable to change the statute and require no advance deposit, one making the suggestion that it be tendered in the pleadings and decided in the final issue; a third one felt that the deposit under our present law is satisfactory and is there for the purpose of discouraging attacks on tax deeds and to protect the tax deed purchases. John Zuger is here. Probably he would care to comment on it.

MR. JOHN A. ZUGER: Well, the only purpose of the suggestion was on the theory that you are entitled to a day in court without paying for it. Your position, Mr. Lundberg, assumes that the claim is groundless. I am saying that he should have a right to determine whether or not it is groundless. Maybe it is perfectly valid claim. If it is a valid claim, he is entitled to have it adjudicated, and if he doesn't pay within a certain time he may want to finance the repurchase of his land. You don't know whether the claim is good or bad until you have had it tried. I don't know of any other part in the law where you have to pay before you even get to the court and have your day in court.

MR. LUNDBERG: I think that is true in general, but here, you have had a formal proceeding, one meeting the requirements of due process, which has vested title in an individual and the question is, shall he be dragged in to defend that title by someone who may have little or no claim? I don't think it is on a parity with the ordinary case. I agree entirely that a man shouldn't be required to pay to have his day in court, but to question some title vested by public authority, I think he might be properly required to put out some money.

MR. ZUGER: My point was this, just as you say now, that he has an authority vested by title law; if there is a jurisdictional defect, the proceedings are a complete nullity, which may be the case, and you don't know until you have tried the matter out; then you are requiring him to make payment before he establishes the fact.

MR. McILRAITH: In many an instance in connection with tax titles the amount involved, with penalty and interest, amounts to a very considerable amount of money, and I have seen instances where litigation was not started even though there was a meritorious cause of action simply because they didn't want to raise that money and leave it on deposit and then wait until the end of a long litigation before the money was finally used. I think people with a good cause of action occasionally have been deterred from going into the courts because they had to put up the preliminary deposit.

MR. CLYDE DUFFY: Mr. Chairman, I fully agree with what Mr. McIlraith has just said. Here is the situation where you take the man's property away from him, deprive him of the resources from which he could raise the money to pay his taxes, and then tell him, "Now, we have got your property. You go out and find the money someplace to get this property back," and take a chance that the money plus the property will be tied up in litigation for the next two or three or four years, because in many cases it goes to the Supreme Court. I don't believe that we should be penalized just because we are poor. I think it is contrary to every concept of our philosophy of jurisprudence outside of this one instance.

MR. VERNON M. JOHNSON: Do you want to offer a substitute motion?

MR. LUNDBERG: No. That was the first thing that struck me and I wanted to bring it out.

MR. VERNON M. JOHNSON: You are satisfied with the action of the committee or at least you are not going to offer a contrary motion?

MR. NOSTDAL: The way it is now the Court will decide whether he is to pay any taxes before judgment is entered, is that right?

MR. VERNON M. JOHNSON: As I understand it, before the judgment is entered he must, but after the case has been decided he can put up his money. The next suggestion had to do with garnishment and it was made by John A. Zuger. The statute requires service of a notice and demand which with proof of its service has to be filed when the garnishment summons is issued. This all has to be done within five days. The statute says the garnishment is void if not done. In some situations, it can't be done within the time permitted. This suggestion was adopted. In that connection, George Soule had also made this suggestion to the Legislative Research Committee and we didn't adopt the method that should be used in reaching this objection, but I would like to read you the paragraph that is in George's letter here as to how he suggests that it be disposed of, and it seems to me to be a reasonable method.

"From the above and similar instances, it seems to be we should now amend 32-0903 to eliminate the necessity of serving the Defendant when the Sheriffs of the County where the employer is located and of the North Dakota County where the Defendant resides, make their Returns that the Defendant cannot be conveniently found in their respective Counties. There might also be some sort of requirement the creditor, or its agent or attorney, should at the same time file an Affidavit setting forth their best knowledge of the Defendant's resident, and the fact he has disappeared and cannot be found in North Dakota, etc."

He cites some illustrations as to where the present statute is absolutely unworkable and the suggestion there was adopted.



Another suggestion made by Mr. Zuger has to do with the subpoena of witnesses. Change of the present law allowing depositions to be taken out of a district to a statute allowing one to subpoena a witness from anywhere in the state. The written replies indicated that they were agreed with that, but last night it was decided that that law should be retained permitting the depositions but also providing that where you want a witness outside of the county of residence, that you could go in and get an ex parte order from the court if you wanted him to be subpoenaed as a witness, and it would require an order of the court but it could be an ex parte order. They felt that some such safeguard was necessary there, in going to the court to get that particular order, and, with that additional amendment, why, the suggestion was adopted.

Next on the question of depositions, this suggestion was also made by Mr. Zuger. Our deposition statute covers the situation where a witness is absent from the state, but makes no provision for the taking of testimony when a witness is now within the state but will be absent at the time of the trial. The suggestion there for changing the present law was adopted.

A suggestion was made by Adrian McLellan that North Dakota adopt a marital deduction provision. Every attorney who commented on this was in favor of it and that suggestion was unanimously adopted.

Mr. McLellan made a further suggestion with reference to investments for trusts, that North Dakota adopt the prudent man investment rule for trusts, replacing the legal lists provision we now have. That was adopted overwhelmingly by the written replies and was also adopted at the meeting last evening.

There were several miscellaneous matters suggested. Judge Pollock suggested that an increase be made in court Bailiff's compensation and submitted bills and indicated that they had considerable difficulty where they had longer terms of court in getting bailiffs to serve, and that recommendation was adopted. A suggestion was made by William S. Murray to the effect that the marriage law be made allowing the license to be issued to a resident of the state by the county judge of any county in the state instead of only in the county in which the person resides. That recommendation was also adopted.

Judge Graham made a suggestion for a law providing that notice must be given before property can be taken under the Conditional Sales Act. There was considerable discussion of this and it was decided that an act be prepared providing about as follows, that you could still go ahead and retake without notice or without legal proceedings under Conditional Sales Contracts, but that after the property had been repossessed the person that did the repossession would be required to give written notice to the purchaser of the property or the person from whom the property had been repossessed, and that this notice would have to be served giving them fifteen days'

time in which to redeem or take any other legal action, but it would prevent the person retaking the property from disposing of it or really acquiring full and complete title and ownership until after the fifteen days had expired, and it would give them the fifteen-day period. That was adopted with that change.

This suggestion was made by Judge Graham, that the surviving husband or wife should not be disinherited through a will, the survivor having the right to take under the will or through the law of succession. That is a bill that has been in every Legislature, I think, for the last twenty years, and it would be in anyway so it was unanimously adopted.

The last was a proposal made by O. B. Burtness, that there be compulsory retirement of judges at age 75, and that, too, was adopted.

As Mr. Day said this morning, there was some other action taken—excuse me, there was one other matter. A matter came to our attention after we came here to Minot. The suggestion was made by Mr. Aaker, a local attorney, that under Section 28-2018, which contains this language, "With reference to docketing of judgments in United States Court, nothing herein shall be construed to require the docketing of a judgment or decree of the United States Court in the office of the Clerk of District Court of this state in the same county in which a judgment or decree of the United States Court is rendered, in order that such judgment or decree shall be a lien upon any property within such county."

Apparently that creates a situation here in Minot and Fargo and Bismarck in which the abstracters are refusing to certify as to Federal judgments and it was his suggestion and it was acted on favorably by the Committee that the act be reenacted and amended by leaving off that last line, so that the act would apply with equal force to all counties in the state. That was also acted upon favorably.

MR. NILLES: A question, Vernon, on that. Do I understand that that would make it necessary to file a transcript in the state court?

MR. VERNON M. JOHNSON: That is right. As I understand it, in the past in some of these counties, they have had some clerk that has been paid a nominal sum for doing that, but now they have dispensed with it and there is nobody to do it, and the abstracters have suddenly wakened up to the fact that they were certifying to more than they should have, and so here, at least, in Minot they are striking out, as I say, the certificate with reference to Federal judgment, and he felt it was quite necessary that it should be changed.

MR. NILLES: The abstracters can't get at the records because the office is closed, it is locked up.

MR. VERNON M. JOHNSON: Mr. Day said there were some matters considered by the Legislative Committee with reference to salaries of judges and there was quite a bit of discussion on that. I pre-

pared some material here which is a digest of an article or a summary that was prepared by the Texas Judicial Council with reference to salaries, and I think that the information that is contained in here is very pertinent to this discussion. I will ask Mr. Mackoff if he will pass these out so that you can see it.

There wasn't any argument at all; they were all agreed that something substantial should be done in the matter of working to obtain an increase in the salaries paid to the judiciary. In that same connection, while not actively sponsoring it as a Bar Association, there was also a unanimous agreement that as individuals we should support any action that might be taken by the coming legislative session to raise the salaries of our state officers. We felt that that was something that was absolutely essential. Of course, we are interested in the salary of the Attorney General but we are also all interested in the other salaries, and there is a general feeling that something will be done at this coming session of the Legislature along that line. With that idea in mind, the Committee went on record unanimously to work for a program looking to the increase of salaries of judges on the following basis, or this was the minimum that we will work for:

For our District Judges, that their salaries be increased to \$7500.00 a year, and that the salaries of Supreme Court Judges be increased to \$9,000.00 a year, and that they would work for that program and actively support that program, and, while not stating anything with reference to specific salaries as far as these other officers are concerned, other officials, that they would also work for and support substantial increases for these other elected state officials.

I just wonder if anyone wants to make any comment or if there is any discussion on that point.

MR. NOSTDAL: In considering the salary of bailiffs, which should be a branch of the court, you overlook the fact that witnesses are getting only \$2.00 a day. I think that should be raised. I would suggest that it be included in our recommendation.

MR. VERNON M. JOHNSON: You would offer that as a motion? Is there a second to that motion?

MR. BUTTERWICK: I second the motion.

MR. VERNON M. JOHNSON: Would you care to make a specific suggestion as to the amount they be increased to or leave it up to the discretion of the Legislative Committee?

MR. NOSTDAL: We will leave that to the discretion of the Committee. It should be increased to the same as bailiffs.

MR. VERNON M. JOHNSON: The motion is that when we are giving consideration to raising the pay of bailiffs that we also introduce a bill to raise the pay of witnesses and that the amount in both cases be left to the discretion of the Legislative Committee. The motion has been made and seconded. Is there any discussion?

(Motion Carried.)

**MR. VERNON M. JOHNSON:** Is there any discussion on the figures that have been suggested for increases in the salaries of judges? They realized, in their discussion last night, that probably you can't attain that but they felt that was the minimum they should try for, and, of course, it will be a matter of doing the best job that we can.

The next matter that was considered was amendments to our judges retirement law, and there were some suggestions made there and acted upon favorably and these suggestions had also been acted on favorably by the Judicial Council. The first recommended change was that Section 27-1701 providing for the retirement of Judges of the Supreme Court and District Court, which now provides that they must have attained the age of 70 years and have served for 18 years, be amended that they must have reached the age of 70 years and served 12 years. That is the way the act as it was introduced at the last session read, but the act was amended to increase it from 12 to 18. There seems to be a general feeling that it should be changed back to 12 if possible and action was taken to introduce such an amendment, that for further consideration at this legislative session.

The next matter that seemed to have caused a great deal of commotion among the judges and also came in for a great deal of criticism was the provision in the act that in the event a judge is retired, that he is defeated, for some reason or other he isn't going to be qualified to participate or is no longer judge, that he can make application for refund but that he is only entitled to fifty percent refund. Also in the case of a judge dying before retirement, his estate could only make application for a fifty percent refund. It was the unanimous decision of the Judicial Council and also of the Legislative Committee that that be amended to provide for a hundred percent refund, and I believe that is the way the act was originally introduced and it was felt that there was some justification for that action being taken or that amendment being attempted. The general feeling was that the retirement was a step in the right direction and that these objections, while they were objections, weren't serious enough to cause anyone to be interested in doing away with the entire act or anything of that kind.

There was one other proposal that was made by the Judicial Council, but that was not passed on by the Legislative Committee so that I am not going to present it here at this time.

In connection with the matter of salaries, there was another matter discussed and that is that there seemed to be a general feeling that wherever the courts allowed fees, that they hadn't been allowed in sufficient amount, and it was the decision of the Committee that Mr. Mackoff be delegated to discuss the matter briefly here at the Association meeting. But before I turn the matter over to Mr. Mackoff, I also have another report, and I don't know whether you want to

hear from Mr. Mackoff and I make my other report later. Probably that would be the best. That concludes the report of the Legislative Committee, unless someone has something they would like to offer from the floor, some other suggestion that they would like to make.

I just want to make this comment before I sit down. It was my thought—I think I expressed it at the meeting last time—that if we did have such a committee, that from time to time the members might come across changes that they would like to see made in the law, that they should communicate them to the Legislative Committee. I received expressions from time to time from different members of the bar, but I want to say it has been our experience that there hasn't been any very great use of the Committee from that standpoint, and I don't know just what use will be made of the Committee in the future except to work for the passage of these changes that have been suggested.

I move the adoption of the report.

(Motion carried.)

PRESIDENT GRAHAM: Mr. Mackoff, do you have some remarks?

MR. MACKOFF: I do have a few remarks and I will try to make them briefly. In fact, a meeting of this sort wouldn't be quite complete without my saying something about attorney's fees. However, the economic conditions in the past few years have been very favorable and fortunately we don't have to devote much time to that. There was some discussion in the Legislative Committee last night with reference to statutory attorney's fees in certain instances, and it was the consensus of the group that no action be taken, that we wouldn't want any legislation with reference to the increasing of any attorneys' fees where such may be allowed. However, there seems to be the feeling in the group that insofar as fees are concerned, particularly with reference to workmen's compensation, it is true also in divorce actions but particularly in workmen's compensation cases, that our courts have not made adequate allowance for the fees for counsel in those cases. We felt that in workmen's compensation cases they are entirely and purely contingent matters and you handle that case upon a contingent basis only. The person who employs you has no means and certainly will not agree to pay you anything unless you recover, which makes it a purely contingent case that you are handling.

If the statute provided, for instance, that in the case of an action or suit against the Workmen's Compensation Bureau, where your claim was in good faith but you didn't prevail, that the Court may nevertheless fix a reasonable fee for the services that had been rendered by you, and thus avoid the groundless claims that might be brought by some attorneys, that in that sort of a case you would at least be sure of some compensation, if you were in good faith and you can establish that there was some reason to believe that you could

recover; but your statute doesn't so provide. Therefore, you must recover before you can receive your pay.

In addition to that, the statutes fixes the fee that is to be received. The statute states that the fee for the attorney is to be fixed by the court and that it is the only fee he is to receive. If you have a side agreement, you are violating the law, you are violating the rules of ethics because the law contemplates that a compensation that is fixed by the court shall be your sole and only compensation. Unfortunately, we found that in many instances where the action had been brought because the Bureau, for some reason or other, had refused to allow the claim, that you had tried it in District Court and the District Court, perhaps, allowed you the sum of \$50.00, \$100.00 or \$200.00 and then you went through the case to the Supreme Court and the Supreme Court allowed you \$100.00. In many instances—I wouldn't say in many but at least in some that I know, the fee that had been fixed by the Supreme Court in affirming the claim that had been sustained by the lower court was even less than the bar rates, and we feel that it isn't fair; it isn't reasonable for the court to expect an attorney to represent a client and fix his fee according to the measure or the schedule that the courts have been using up to the present time.

It was the feeling of the group that in workmen's compensation cases in the District Court, the District Court should award the amount of the attorney's fees that would be equal to one-fourth of the amount that is recovered. If it is payable in monthly sums, you would have to determine what would be the amount that would be paid. If it were payable in a lump sum, one-fourth of the amount that was allowed should be fixed as the reasonable amount for the attorney's fees for the trial of that case in court, because of the fact that it is a contingent matter. Further than that, if it went to the Supreme Court, the Supreme Court should in addition to that fix a reasonable fee for the trial of the case in the Supreme Court that will at least be as much as the bar rates provide for, and should also take into consideration the fact the amount is contingent and make allowance for that.

That was the concensus of the group, particularly with reference to workmen's compensation cases. It is true in divorce cases, too, that the courts are inclined to make the payments rather small and thus result in the attorney making a side arrangement with the client, maybe it is the wife or maybe it is the husband, whoever it may be. He has a side arrangement that he is being paid an additional amount. If the husband doesn't pay, it is taken out of the wife's share. I think the courts should be more liberal in the allowance of fees and take into account that the cost of living and all costs have gone up and they affect the attorney just as well as they do everyone.

I have been commissioned to deliver this message to you so we won't be left without something being said about attorneys' fees, and the other reason is that it is a need that needs to be brought to the

attention of the courts. I therefore will make a verbal motion for the adoption of this verbal report that had been delegated to me to be delivered here to this meeting.

MR. ALVIN C. STRUTZ: Mr. Chairman, I wish you would add that this be transcribed and some way brought to the attention of all the judges of the Supreme Court and the District Courts. I think they need it.

MR. MACKOFF: I think this will be transcribed in time and it would be well for every attorney to have a copy to read.

MR. WALDRON: Did I understand you to present the situation or the contention that one can charge a contingent fee in matters involving workmen's compensation claims? Did you say they could or could not?

MR. MACKOFF: No, they cannot charge. The law says that your compensation is to be fixed by the Court. It is my understanding, and it seems to be the understanding from all other lawyers, that I talked to at least, that the amount is the only amount you can properly charge your client. Therefore, the court should take into account what they would give you if you were handling the matter on a contingent basis, which you are, in fact, doing.

It has been moved, seconded by Mr. Herigstad, that this report be adopted. It has been suggested that we send this report to the judges, together with the proposal of increase in salary.

(Motion carried.)

MR. NOSTDAL: While we are on the subject of fees, it is still the law that when a man gets appointed to defend an indigent man who is up in court, who hasn't any money to pay the court to appoint a man to defend him, he will be limited to \$15.00 a day? Is that still the law?

PRESIDENT GRAHAM: It still is.

MR. NOSTDAL: I think the Legislative Committee should take that into consideration and amend that. I don't think they need a motion for that.

MR. MACKOFF: Do we have any indigent people left in North Dakota?

MR. NOSTDAL: They claim so.

PRESIDENT GRAHAM: The Committee will take that into consideration, I believe. I think we have another report of the Lundberg Committee, the report that you are to make, Mr. Lundberg.

MR. VERNON M. JOHNSON: No, that is my report. Before going into this report, there is another matter I would like to call your attention to. He raised the point about \$15.00 for defending. I think the

law fixing salaries for county officials comes to an end on January 1st and something has to be done in this next legislative session, and I think that every lawyer in this state is definitely interested, especially from the standpoint of the State's Attorney's office, and I think some very serious consideration should be given to that. I know that it has all been tied more or less together, but your County Superintendent of Schools has had one or two increases that the rest of them didn't have. I think this whole subject matter is something, that state officials or county officials and judges increases, is something that each individual should give some thought to and have some definite ideas on because it is going to come into consideration at the next session of the Legislature.

When we were reappointed to the Lundberg Committee, so-called, to consider the Lundberg Resolution—the members that were appointed to this Committee are members of the Judicial Council—we were instructed to present this matter to the Judicial Council and secure a statement of their position on the matter. Here is the action taken by the Judicial Council.

At the meeting of the Judicial Council held beginning April 14th, the matter of the "Lundberg Resolution" which was presented at the last meeting of the State Bar Association was brought to the attention of the Council. The Council discussed the matter and a committee was appointed to make its recommendations for the consideration of the Council and in that behalf presented the following statement:

"The Judicial Council has been presented with the 'Lundberg Resolution' by the special committee of the State Bar Association and after a consideration of the Resolution desires to make the following statement:

That it is the concensus of the Judicial Council that Section 101 of the Constitution of North Dakota which provides that 'every point fairly arising upon the record of the case shall be considered and decided' upon an appeal to the Supreme Court requires the Supreme Court to decide only such issues which are essential to a disposition of the cause before it or which may arise upon a retrial of the case in the event a new trial should be granted; that the power of giving advisory opinions was expressly denied to the Supreme Court in the Constitutional Convention and the giving by the Court of opinions upon matters unessential to the determination of an action or upon questions which for any reason have become moot and cannot possibly arise upon a retrial of the case would amount to the giving of opinions which are advisory in character."

The Council thereupon further discussed the matter and approved and adopted the statement made by unanimous vote.

Copy of this action was then sent to Mr. Lundberg, and under date of April 26th we received the following reply:



"Thank you very much for yours of April 22, 1950, enclosing copy of the Statement made by the Judicial Council, which appears to be an adoption of a statement formulated by the Council's Special Committee on the Resolution of mine which had been referred to your committee.

The Statement of the Council is substantially a condensation of views expressed by the Court in its opinion in the old case in 24 N. D. 120, 138 N. W. 1114. You will recall that I had referred to this case in the statement given your Committee members (paragraph two on page one), and also referred to it when first presenting my Resolution at the Valley City meeting in 1947. You will note my pointing out that the matters I complain of are quite different and distinct from those discussed in the aforesaid case.

As it is unthinkable to me that the Council and its Special Committee should not be well aware of the distinctions above referred to, I can only construe the Statement as an indication that in their view the practices I complain of should be permitted to continue, and further, that they do not intend to discuss the merits of any proposed reforms or the need for them.

Under the circumstances, I shall return to my original idea (see my original Resolution) that this is a matter to be reached and remedied only by Legislative action.

I am very grateful to you and your Committee for having striven, for the last two years, to bring this matter before the Council. It was a difficult and unenviable task and I wish you would convey my thanks to all of the Committee members."

In view of the action taken and the reply which we have received, we have no particular report to make but I would make a motion at this time that our Committee be discharged.

(Motion carried).

PRESIDENT GRAHAM: I have one short committee report, the Committee on Federal Income Tax Laws, Philip B. Vogel, Chairman. Is Mr. Vogel present? Is Mr. Fitzner here or Mr. Sorenson?

MR. S. A. SORENSON: Mr. President, Members of the Bar. I didn't know until a few days ago I was a member of this committee but I was very happy to have that honor to serve on this important committee. Phil Vogel sent a copy of the report to me which I will read to you now.

There has not been a revision of the Federal Income Tax statutes since the year 1939, and it is pretty generally agreed that, although it is difficult to write a tax statute, there is a real need for revision and recodification. The American Law Institute by virtue of a grant made by the Falk Foundation of Pittsburgh is now in the process of drafting an income tax statute. The reporters and committee members

for this section of The American Law Institute are represented by many well known taxing authorities, including Edwin N. Griswold and Randolph E. Paul. This committee submitted tentative drafts of a part of an income tax statute to the American Law Institute meeting which was held in Washington, D. C. on May 18, 19 and 20th. The discussion with respect to the project lasted for two days.

We have at hand a tentative draft of Sections 22 and 23 of the Internal Revenue Code, as codified by the American Law Institute. It should be remembered that these sections have to do only with the determination of Gross Income and Deductions. It seems to us from a reading of this draft that the work is of a very high standard. It is to be hoped that the institute will complete its work, and that its recommendations will be given serious consideration, when the Congress of the United States gets down to the job of recodifying our Income Tax Statutes.

I move the adoption of this report.

(Motion carried.)

PRESIDENT GRAHAM: I would like to make a statement at this time. At this time, it comes before you to select a delegate to attend the Washington Convention. It has been the custom in the past to have the President, the Vice-President and the Executive Director, and at the present time we are entitled to two delegates. One of those is Mr. Nilles, who has been there some time, and the other is the incoming President. They are elected for two years. I was elected for two years a year ago, and at this time I withdraw so as to give an opportunity to elect the incoming President as the other delegate. At this time, I make my resignation for the balance of the term of one year and nominations are in order to fill it.

MR. NILLES: Mr. President, I would like, before I make a motion, to cover some subjects that are immediately connected with this whole proposition. Our By-laws state that the Bar Association shall elect a delegate to the American Bar Association to serve in the House of Delegates of that organization for a two-year-term. Obviously a two-year term is short enough. Certainly there is no use of going for one year. I think Mr. President here will testify to that. However, we have always had the practice of sending the President, so that we have elected a delegate and he has served for a year and he resigns so his successor can fill the term. I think that is wholly unsatisfactory and I think we ought to get back on the basis of having a two-year delegate; that is to say, a separate office in this Association, an Association delegate, as our By-laws prescribe. Hence, in order to straighten the whole business out, I would like to make a motion consisting of three parts: First, that Judge Graham's resignation be accepted; secondly, that our incoming President, Philip R. Bangs, be named as his successor in the House of Delegates as the representative of this Association; third, in order that our President-to-be will also get a trip—and

I think he always is entitled to it—that Eugene Burdick be sent at the Association's expense to Washington; and, fourth, that we also send Ronald Davies, the Executive Director. I believe that then next year Mr. Burdick will have had his trip as an officer of the Association, and then you can elect in the odd-numbered years, as the By-laws provide, a delegate who will serve two years and who need not necessarily be the President. I think we ought to go on record as sending annually the regular delegate and the Executive Director. Whether it is the President or not is wholly immaterial. I think we also ought to send the Vice-President rather than the President because he will have the advantage of that Association preliminary to his serving as our President the year following.

To restate the motion, it is: First, that your resignation be accepted; second, that Philip R. Bangs serve out your term in the House of Delegates; third, that we send Eugene Burdick, Vice-President; and fourth, send Ronald Davies.

MR. SOULE: I will second the motion.

PRESIDENT GRAHAM: That includes the payment of expenses?

MR. NILLES: That includes all expenses to be paid by the Association. I might explain that the House of Delegates meets twice annually. One of their meetings is at the annual meeting at Washington and there is always the winter meeting at Chicago, which is usually held in February. So far as expense to that is concerned, the House of Delegates of the A. B. A. pays the transportation to the Chicago meeting, so the expense of this Association would be relatively small. At that meeting, of course, only the official delegate would attend. As far as I am concerned, being a State Delegate, I am elected by the A. B. A. members and I get the same consideration as at the Chicago meeting but I pay my own expenses to the annual meeting.

PRESIDENT GRAHAM: Is there a second to the motion?

MR. SOULE: I seconded the motion.

PRESIDENT GRAHAM: Is there any discussion?

MR. EUGENE BURDICK: At this point, would it be any advantage, Mr. Nilles, in sending the Vice-President as an alternate to the President?

MR. NILLES: I don't think the rules provide for that.

EXECUTIVE DIRECTOR DAVIES: The rules do not provide for an alternate delegate from a State Association.

(Motion carried.)

PRESIDENT GRAHAM: We have heard now all the committee reports except five and I believe we can safely take care of those tomorrow morning. I presume that a great number of you may desire to attend the sectional meetings this afternoon so there will be a recess until nine-thirty tomorrow morning.

(At the Convention Banquet, held Friday evening, August 25, 1950, at the Minot Country Club, an address was given by Mr. William S. Green, St. Paul, Minnesota.)

AND, THEREAFTER, at 9:30 o'clock a. m. of Saturday, August 26, 1950, the general convention was called to order, President F. J. Graham, presiding.

PRESIDENT GRAHAM: The meeting will come to order, please. Unfortunately last night the giving out of the prizes was overlooked. I had to change the program around so much it was inadvertently overlooked, so it was suggested that we make the disposition of them here this morning. Before doing that, there are a few things to clear up which we would like to take care of first. I believe Mr. Hjellum has a report.

MR. JOHN HJELLUM: Mr. President and Members of the Bar. I want you to know that the Unauthorized Practice of Law Committee, which is making this report, really has a file. That is why I brought it up here. We have had the usual number of complaints. One was a demand for payment which simulated legal process and which originated in our Executive Director's home county, but it wound up in Minnesota and some Minnesota attorney sent it to us, and that matter received attention.

Another matter was the case of representations by an alleged employee or former employee—the letter wasn't quite clear—of an Internal Revenue Service soliciting tax work and representing that if he received this work that the employer need have no fear about being prosecuted or investigated for income tax matters. This matter was turned over to Mr. Davies for investigation, and it sounded a little bit like William Green's address of last night.

Then we had a case from Minot in connection with an income tax consultant, and it just happened that this man accommodated us by removing himself from the state before the matter was given attention. Then still another matter was the filing of a summons and complaint in Justice Court by a layman in Fargo, and, of course, he had the names of a couple of attorneys on his summons and complaint but they didn't know anything about it and this was investigated by Mr. Davies and it was ascertained that these lawyers actually did not know about it and had not authorized him to do it. It seemed the statute was a little inadequate in that case for prosecution of a layman. If the attorneys had been at fault, they would have been liable to prosecution but not the layman.

I might just say in connection with that that Mr. Davies has been very helpful to this committee in assisting in both investigations and otherwise.

We furnish a speaker to the Cass County Underwriters Association on the subject of how far members of that association may go in ad-

vising on matters involving estates, trusts, wills, and so forth. In this connection, it might be well to point out that the American Bar Association has annual conferences with adjusters, trust companies, life underwriters, accountants and so forth in which they go over these matters of concern between both groups and try and iron out the difficulties, and they try to draw a line in which each field may lawfully and without criticism engage. As you know, the line is pretty narrow in some cases and they have really helped a great deal to alleviate the difficulties between the two organizations. This speech by Conmy—who, by the way, is a member of this committee—tends to help just such a situation as that.

Then we had a solicitation matter, that is, a solicitation by a member of our group and this has been referred to the Ethics Committee. Another matter was the income tax investigation—or, rather, in connection with income tax experts and accountants and so forth. Those of you in the Counties of Grand Forks, Cass, Burleigh and Ward received a letter from Mr. Davies calling to your attention the fact that the committee had received some complaints as to the conduct of certain people who were doing income tax work and asking you if you knew of any specific instance in which they were infringing in the field of law, and to that letter we received seven or eight or perhaps nine replies from various attorneys, none of whom had any specific instance and most of which stated that they knew of no specific instance in which the so-called tax experts were infringing on the practice of law. We also have a letter or two which say, "Go slowly on this matter. After all, the accountant is probably better qualified to do income tax work than we are." Anyway, as a result of circularizing those four counties and of the replies we received, no definite information as to infringing in the practice of law. We just mention that to the bar here as a whole and if you give a specific case—and that is really what it should be—we suggest that you refer it to the Unlawful Practice of Law Committee for attention. If you get the right set of facts, it could well be that the prosecution of such a case would bring about the alleviation of some of these problems and some of the criticism that some of the members of the bar have been making.

I want to read a little quote here from this Bercu case which I think is appropriate because I know there is a feeling on the part of many lawyers that accountants are better qualified than we are to do this work, and that just isn't a sound position. They may be better prepared than some of us to do the work, but they are not better prepared than attorneys as a whole; and, of course, the man who makes that contention always picks the firm that specializes in income tax work and has done it for years and years and he ignores all these people on the outer fringe, the man who sets himself up as an income tax expert and probably doesn't know anything about accounting, either; in other words, the individual in the small town. I am quoting now from the Report of the Standing Committee on the

Unauthorized Practice of Law, and they are quoting a decision from the New York Appellate Court:

"It is much too narrow a view and one revealing an inadequate perception to regard the tax law as mainly a matter of accounting. More than most specialties in the law, tax law is drawn from and involved in many branches of the law. It bridges and is intimately connected, for example, with corporation law, partnership law, property law, the law of sales, trusts, and frequently Constitutional law. Quite obviously, one trained only in accounting, regardless of specific tax knowledge, does not have the orientation even in tax law to qualify as a tax lawyer. Equally obviously, as a matter of administration, he may not practice any phase of tax law regardless of what might be his subjective qualifications for the particular undertaking. Inquiry cannot be made in each case as to whether the particular accountant or accountants generally are sufficiently familiar with the law on a particular tax question to be qualified to answer it. An objective line must be drawn and the point at which it must be drawn at very least is where the accountant or non-lawyer undertakes to pass upon a legal question apart from the regular pursuit of his calling. Taxation, which permeates almost every phase of modern life, is so inextricably interwoven with every branch of law that one could hardly pick any tax problem and say, 'This is a question of pure taxation or pure law wholly unconnected with other legal principles, incidents or ramifications.'"

The position of the Appellate Division was made amply clear that no layman, however well informed as to some special branch of law, may establish himself as an adviser or consultant upon the law. It expressly enjoined Bercu from using the title of tax counsel, tax counsellor or tax consultant or any equivalent designation. That is thrown in for a little additional information because I know the average attorney doesn't have time to read these things.

Then we had one other matter which came to us from Williston, and they have a situation out there, as well as in other counties and cities which border the State of Montana, and perhaps it is also a problem on the eastern border of our state, where Montana attorneys practice law in our state without having a license to do so and without being admitted to the court. As I understand it, this has gone on for some time, but finally the Williston group has decided that it should stop, if it is contrary to the law, and they wrote to the Attorney General, received a report—I wish to correct that. The County Judge from Williston wrote to the Attorney General and asked for an opinion on attorneys from out-of-state practicing law, and they received an opinion from that office which said, in effect, that it didn't seem to be much they could do about it under Chapter 227 of the Session Laws of 1947, and the opinion did not refer to Section 30-2003 of the 1943 Code, which specifically refers to probate matters, so I wrote a letter to the Attorney General's office and called attention to that section

and asked for an additional opinion supplementing the former one and we received an opinion from the Attorney General's office which concurred with the feeling of the Williston group and myself, that a nonresident attorney could not, under Section 30-2003, have his fees allowed as an expense in probate and thereafter we have just requested this of Mr. Davies and his Executive Committee that he circularize the counties in the state—and, of course, it would be inapplicable to most of the counties—the County Judges, calling attention to this statute and to the effect that under the law they cannot approve attorney's fees of a nonresident attorney out of state. We think and hope that that will at least correct the difficulties the attorneys have been having in the bordering counties with reference to probates.

That completes the report and I move the adoption of the report.

By the way, this is an oral report, as you have seen, and the members of the Committee are Charles G. Bangert from Enderlin, and T. A. Roney from Carrington, Mr. Schwanke from Napoleon, and E. T. Conmy, Jr., of Fargo and myself.

(Motion carried.)

PRESIDENT GRAHAM: Mr. Soule, I believe, has a report to make on Law Lists.

MR. SOULE: Mr. President and Members of the State Bar Association of North Dakota. As soon as your Law Lists Committee was notified of our appointment, we wrote the publishers of the commercial lists and told them that we were considering sending out a questionnaire to our members to ascertain their ideas as to the value of law lists. Evidently, the law list publishers have a very close association because within a very few days I received letters from all of them, and all of those letters had much the same thing, they didn't think much of questionnaires, they didn't rate very highly the information that was received through them, and they made a few other suggestions, one of which was somewhat critical of the questionnaire that was sent out last year, in that it asked members of our association to vote on the value of these law lists regardless of whether or not they were subscribers to them or were represented in them.

This spring we sent out another questionnaire to all of the actively practicing members of our association. We sent out somewhat more than 400 of them and we received responses, I believe, from 51. Along with that letter, we sent each member a copy of this booklet, "The Lawyers Confidential Guide." That guide rates all of what we might call the general lists or all the lists other than commercial lists, and we asked our members to let us know whether or not they considered the ratings of those lists as set forth in this booklet as fairly correct. They all came back and said that from their experience they thought that this book is pretty accurate, so if you are about to sign up for or

have one of these general lists, you can look at this book and get a fairly good estimate of its value to you.

The publishers of this book do not attempt to rate the so-called commercial lists. They say that their productivity is so varied in the various parts of the United States that they can't very well place those ratings in one book, so we sent out a questionnaire and asked our own members to rate those commercial lists. When those questionnaires were returned, the information was compiled and here is what we found:

We found that our own members, from their experience, say that only those lists that are approved by the Law List Committee of the American Bar Association are productive. I was quite surprised at that, because if you read the material sent out by the American Bar Association Law List Committee, they always make it very clear that they rate these lists because of the fact that the lists are actually published to their distributors, that the publisher is reputable, but they always say, "We do not rate them on productivity," but in the end you can see that the reputable lists that are actually distributed produce business. So, if you are solicited by any law list publisher or I should say a publisher of a commercial list, you are throwing away your money if you subscribe for a list that is not approved by the American Bar Association. That list is not long and you will get it when you receive your copy of the annual proceedings. I would, though, like to read you the names of those lists. They are:

A. C. A. List, American Lawyers Quarterly, Attorneys List, B. A. Law List, Clearing House Quarterly, The Columbia List, The Commercial Bar, C-R-C Attorney Directory, Forwarders List of Attorneys, The General Bar, International Lawyers Law List, The National List, Rand McNally List of Bank Recommended Attorneys, The United Law List, Wright-Holmes Law List, and Zone Law List.

MR. ASMUNDER BENSON: Martindale is not on the approved list?

MR. HIGGINS: That is not a commercial list. It is a directory.

MR. SOULE: You mean Martindale-Hubbell? They are not. I do not believe they are rated by anyone because that is a general list. It is not a selected list for which you pay for your representation. We were very fortunate in having a member of our association, who desires to remain anonymous, contact the publishers of the Lawyers Confidential Guide and the publisher furnished us with somewhat more than 400 copies of this list without charge. I know many of us here have paid \$5.00 for this list and felt that we had made a good investment, so as a part of our report I would like to have included a recommendation that our Executive Director write the publishers of the Lawyers Confidential Guide and thank them for furnishing these guides to us and express our appreciation in appropriate language.



EXECUTIVE DIRECTOR DAVIES: I have done so.

MR. SOULE: Thank you, sir. One other benefit, as we see it, that has resulted from this committee is that we have kept out of North Dakota many of these so-called high-powered solicitors. I know down in Fargo in the normal year there are one or two or three of them always dropped in and took away money from some of us, and if you will review your Lawyers Confidential Guide when you get home you will find that after the list of law lists you will find a list of the reputable publishers' representatives and then you will find another list entitled "Publishers' Representatives Specialists," and some of those fellows are very, very high-powered salesmen and they can come into a town and take out several hundred dollars rather rapidly, and it is a pure donation. You have the names of the lists and of the men here so when you are being solicited by any representative of a law list, I suggest you pull out this book and start looking through it and if he is not a representative of a reputable law list you will find him packing up his bags and getting out rather rapidly.

It is our recommendation that the committee be continued because we really feel it is a worthwhile committee.

Mr. President, I move the report of the Committee be approved.

(Motion carried.)

PRESIDENT GRAHAM: We have a report on the American Law Institute Committee, Mr. Agneberg.

MR. PAUL AGNEBERG: Mr. President, Members of the Bar. My report is strictly oral and it will be very short indeed. Regarding the Committee on the American Law Institute, we have been in contact with the American Law Institute relative to having the American Law Institute come into the State of North Dakota and put on sectional discussions or what they call an institute. Relative to these institutes which they would be glad to conduct in the State of North Dakota, some of the titles of the institutes or the subject matter that they would be willing to put on, either in the western or the eastern part of the state, or they would be willing to put on an institute in both the eastern and in the western part—some of the subjects that they would cover would be Legal Problems in Tax Returns, Lifetime and Testamentary Estate Planning, Organizational Problems of Small Businesses, Bankruptcy and Arrangement Proceedings, Basic Accounting for Lawyers, Labor Relations Law, Price and Service Discriminations under the Robinson-Patman Act, and Legal Draftmanship, which would include the drafting of briefs, wills and trusts, partnership agreements and instruments used in organizing corporations.

Some of these subjects, as you will undoubtedly see, would not appertain to the problems in our state. Our Committee last fall got in contact with this American Law Institute a little too late and because of that fact we were unable to go ahead and have any of these

institutes in the State of North Dakota. However, I think that it would be a good idea for the new Committee on the American Law Institute to take this matter up with the American Law Institute and try to have some of these institutes throughout the state.

It is with that thought that the Committee recommends that the American Law Institute Committee be continued and we also recommend that the new Committee attempt to have the institutes or the discussions in North Dakota this fall, if possible.

Mr. President: it is with that recommendation that the Committee submits its report, and I move the adoption of the report.

(Motion carried.)

PRESIDENT GRAHAM: Then there is a report on Jurisprudence and Law Reform by Roy Ployhar. If Mr. Ployhar isn't here, Mr. Herigstad is a member of that committee and he is here. You can read it or state the substance of it.

MR. HERIGSTAD: Frankly, I wouldn't be able to give a summary of it and I don't know whether you would want me to read it. There are certain recommendations here. Perhaps I had better read it, although it will take some time.

The undersigned members of the Committee on Jurisprudence and Law Reform wish to make the following report to the officers and members of the State Bar Association. The Committee met at Minot, North Dakota, on April 29, 1950, with all members present and took up the following matters for consideration:

1. In view of the provisions of the Anti-deficiency Judgment Law, some of the members of the Bar of this state desire a clarification of the law on the negotiability of a note secured by a real estate mortgage. It was suggested, among other things, that such notes should show on their face that they are secured by a real estate mortgage. The Committee decided that it preferred not to express any opinion on the matter of clarification, but would recommend to the Legislative Research Committee that the matter be clarified by appropriate legislation.

2. The next matter considered by the Committee was in regard to instructions and comments on evidence by the Court in jury trials prior to argument by counsel. The Committee decided to open this matter up for discussion at the annual meeting with the recommendation that a special committee be appointed to consider this matter of procedure or that the same be assigned as a topic at a sectional meeting.

3. The next matter taken up for discussion was with regard to the right of additional defendants in Tort actions with particular reference to Joint Tort-Feasers. After considerable discussion and com-

ment, the Committee decided to recommend that appropriate legislation be enacted to allow this to be done.

4. The next matter discussed and considered by the Committee was with regard to the method and manner of approving settlements with minors. The Committee decided to recommend that we follow the substance of the Minnesota Law in that regard, with the exception of the provision relating to buying bonds. The general procedure followed in Minnesota is that of presenting a petition to the Court supported by the Affidavit of a physician showing the nature and extent of any injury sustained by the minor. After proper showing has been made to the satisfaction of the Court, the Court is then authorized to issue an order delegating the right and power to the parents of the minor or such other person as it may see fit, to sign receipts, pay bills and deposit the balance, if any, in the name of the minor, and file the deposit book with the Clerk of the District Court.

5. The next matter taken up before the Committee related to the nature and extent of proof required in proving up a default judgment for damages which may be collectible out of the so-called "Mercy Fund" provided under the North Dakota statutes. Some Committee members raised the question that the plaintiff should be required to not only prove his damages but also the negligence and liability of the defendant. The Committee decided to take no action in the matter because it felt that that was purely a matter for the Court to decide at the time of hearing and entry of judgment.

6. The next matter taken up before the Committee was in regard to a general plan for the reformation of Justice Court procedure and the qualifications of a Justice of the Peace. It was the understanding of the Committee that it would be better to assign this study to a special committee for that purpose, if such had not already been done. The Committee was also doubtful as to whether or not this matter would come within its jurisdiction.

7. The next matter taken up before the Committee was with regard to a request for the California Bar Association for suggestions as to our procedure relating to the preparation of Findings of Fact in District Court trials. The Committee decided to leave this matter to the Chairman to make a proper reply and felt that our procedure in this state was working out quite satisfactorily and needed no particular change.

8. The next matter taken up before the Committee was with regard to the request of Mr. George A. Soule with reference to Service of Demands Before Garnishment. Mr. Soule had outlined in a letter two situations under which the service of such demands was practically impossible. The Committee spent considerable time on this matter and concluded that these situations were extremely out of the ordinary and that no remedy for them seemed to be possible. The Committee also felt that any change in the present law, with the

idea of trying to remedy such situations, would do more damage than good.

9. The next matter taken up by the Committee was the question of the adoption of the Uniform Conditional Sales Act, and it was decided to recommend the same for adoption in this state.

The Committee also discussed and considered several other matters which were of lesser importance and probably did not come within the purview of the Committee on Jurisprudence and Law Reform. However, it was felt that committees on this subject should work in conjunction with the Legislative Research Committee and that some good legislation and reform can gradually be accomplished by maintaining an active committee.

Dated this 31st day of July, 1950.

Respectfully submitted, Roy A. Ployhar, Chairman, O. B. Herigstad, O. B. Benson, Harold Hager and J. K. Eckes.

I move the adoption of this report and recommendations that it contains.

DEAN THORMODSGARD: I would like to report that the Uniform Conditional Sales Act has been withdrawn by the Commissioners.

(Motion carried.)

PRESIDENT GRAHAM: I think Mr. Burdick has a report to make at this time.

EUGENE A. BURDICK: Mr. President, in the first place, I wish to acknowledge at this time the honor that was bestowed upon me yesterday and I want to assure you that with your help and the help of the officers I think we will have a splendid year under the leadership of our distinguished President, Phil Bangs.

There were several motions that were presented at the 1949 meeting that were laid over until this year. They have to do with streamlining our Constitution and By-laws. The first deals with the election of District Presidents to provide for the election of the District President for a term of two years so that there will be a carry-over on the Board at all times. This amendment provides that even-numbered District shall elect presidents in the even-numbered years and in the odd-numbered districts they will elect presidents in the odd-numbered years. The suggested amendment was proposed last year:

"The Executive Committee shall consist of the President and Vice-President of this Association, the Presidents of the several District Bar Associations of the state as such Districts are now or may hereafter be organized, the Dean of the School of Law of the University of North Dakota, and the President whose term of office expires in the preceding year, and the latter shall be a member of the Executive Committee until the next annual meeting after the expiration

of his term as President of the Association. The Presidents of the several District Bar Associations shall be elected for a term of two years, those in the even-numbered Districts being elected in the even-numbered years and those in the odd-numbered Districts being elected in the odd-numbered years. In the event of a vacancy in the office of President of any District Bar Association, the President of this Association shall appoint from the territory of such District Bar Association a member for the Executive Committee who shall serve thereon for the remainder of such unexpired term. The Secretary-Treasurer of this Association shall act as Secretary of the Executive Committee but he shall have no vote."

There are no other changes than those that are explained. Mr. President, I move the adoption of that amendment.

(Motion carried.)

MR. BURDICK: The next amendment is to bring our By-laws in conformity with the state statutes which provide that in the event of a vacancy on the State Bar Board there shall be three names certified. Our by-laws provide for certifying only two names. To get it in line and to simplify the procedure a little, this amendment reads as follows:

"For each appointment to be made to the State Bar Board, the Executive Committee shall select three members of the Association in good standing to be submitted to the Supreme Court. Members of the Association may make additional nominations by petition signed by ten members which shall be timely filed with the Secretary. Reasonable notice shall be given in Bar Briefs of the time within which such petition should be filed. If additional nominations are made, the Secretary shall then prepare a ballot which shall contain the statement 'nominated by petition' after all names are so nominated. The ballots shall be mailed to each member of the Association thirty days before the day when it must be returned, of which date notice shall be given by the Secretary when sending out the ballot. The President shall appoint a canvassing committee to canvass the ballots. Those receiving the highest number of votes up to the number of nominees to be chosen shall be presented to the Supreme Court as nominees of this Association for members of the State Bar Board."

Mr. President, I move the adoption of that amendment.

(Motion carried.)

MR. BURDICK: Mr. President, I would like to comment on the Blinn Report for a few minutes. The Blinn Report consists of a study of our system of jurisprudence in North Dakota, and it came upon the introduction of a resolution in the Judicial Council in 1947. The matter was given thought and when the Council again met in 1949, definite action was taken on the resolution and Dean Thormodsgard was commissioned to select a Professor of the School of Law, as I re-

call it, to conduct this survey and make this investigation of our judicial system. Then Professor Blinn submitted his report to the Judicial Council and the Judicial Council had a special committee, consisting of Charles Pollock, Supreme Court Justice Morris, District Judge Hutchinson, County Judge Halpern, Dean Thormodsgard and District Judge Porter, to serve on the special committee to study the Blinn Report.

After giving the report study and consideration, they recommended to the Council certain general propositions along these lines: That the committee favors the elimination of all Justices of the Peace except County Justices of the Peace; and that there shall be elected two County Justices in each county having a population of less than 20,000 and there shall be elected one additional Justice in each county having a population in excess of 20,000 for each additional 10,000 population or major fraction thereof.

The County Justices shall have jurisdiction to act as Committee Magistrate in matters of crime and jurisdiction to hear, try and determine matters where the maximum penalty does not exceed thirty days in jail or a \$100.00 fine or both. This resolution does not affect the method of enforcing village and city ordinances provided, however, that the County Justices shall have ex officio jurisdiction to enforce city and village ordinances.

The second part of the recommendation was that the Committee favors the elimination of the office of County Judge and the transfer of the probate jurisdiction to the District Court. The Committee recommends that the number of District Judges be increased to approximately 30 by the addition of approximately five additional District Judges. Acting on the Committee's recommendation, the Judicial Council expressed their appreciation to Professor Blinn for his excellent and extensive and exhaustive report and accepted the Committee's general recommendations and resolved to refer the matter to the Bar Association for its consideration and also urged the publication of the report in Bar Briefs.

I do not believe that it would be appropriate for the Association to take any definite action on the Blinn report at this time until you have had an opportunity to study it and make suggestions or criticize it, and then if the report should meet with universal approval before the next legislative assembly—and that fact can be determined—possibly some more progressive action can be taken on the report, although I don't believe it would be proper at this time, except to say that the Editorial Committee of Bar Briefs feels that the report is of such great import and of such historical value, to say nothing else, that it should be printed and it will be printed. I believe that all of you, when you finish examining this report, will conclude that the recommendations of the Committee and of the Judicial Council are well founded and that they should be implemented into law. Thank you.

**PRESIDENT GRAHAM:** Do you want to make a motion?

**MR. BURDICK:** I move, Mr. President, that the Blinn Report be published in Bar Briefs and that the matter be given further consideration.

**MR. HJELLUM:** I second the motion.

**EXECUTIVE DIRECTOR DAVIES:** Mr. President, may I ask a question of Mr. Burdick? I do not quite understand, was that Blinn Report in writing?

**MR. BURDICK:** Oh, yes.

**EXECUTIVE DIRECTOR DAVIES:** As long as that Blinn Report was made at the request of the Association and paid for by it, why was the report made to the Judicial Council and not to this body?

**MR. BURDICK:** The report was actually made at the request of the Judicial Council and we agreed to finance it in behalf of the Judicial Council, which is operating without funds. If you recall, at one or two meetings ago we voted to appropriate some \$1500.00 or \$2500.00 to the Judicial Council. Do you remember that? I believe it was \$2500.00. Of that amount, we have used approximately \$1,000.00 in making this investigation.

**PRESIDENT GRAHAM:** Is there any further discussion?

(Motion carried.)

**PRESIDENT GRAHAM:** Is the Committee on Resolutions ready?

**MR. STRUTZ:** Mr. President, I will make this short. Your Committee on Resolutions wishes to present the following resolutions:

**WHEREAS,** the Members of the Ward County Bar Association have so wonderfully entertained the State Bar Association at its annual session held in the City of Minot, on August 24, 25 and 26, 1950.

**BE IT RESOLVED,** that we, as Members of the North Dakota Bar Association, do hereby extend to the Ward County Bar and its President, Robert W. Palda, and his committees, our heartfelt appreciation for this wonderful hospitality;

**BE IT FURTHER RESOLVED,** that we extend our thanks and appreciation to the City of Minot, its Mayor and City Officials and to the Board of Education of the City of Minot, for the many courtesies extended;

**BE IT FURTHER RESOLVED,** that we highly appreciate the unselfish service rendered by the Honorable Fred J. Graham, our President, and the other officers serving during his successful administration;

**BE IT FURTHER RESOLVED,** that we highly appreciate the valued services rendered to the Association by the Committee on sectional

meetings and to the persons who prepared and conducted the successful sectional meetings;

We express our appreciation to Honorable William C. Green, of St. Paul, former member of the North Dakota Bar, for his attendance and entertaining address;

We further resolve that we express our sincere appreciation to the Honorable Harold J. Gallagher, President of the American Bar Association, for his valued, instructive and timely discussion of some of the vital problems facing the legal profession; and that we further express our sincere appreciation to Mr. Wiley E. Mayne, President of the Junior Bar Section of the American Bar Association, for his attendance and excellent address to the Junior Bar Section of this Association.

Mr. President, I move the adoption of this report.

MR. SOULE: I second the motion.

MR. BANGS: I would like, Alvin—I don't think you said anything about the women here in Minot. They have done a lot, too. Can't you put them in?

MR. STRUTZ: All right, we will amend it so as to include the women.

(Motion carried, as amended.)

EXECUTIVE DIRECTOR DAVIES: Mr. President, it is customary for me to make an annual report. Because of the lateness of the hour, I merely move you that the report of the Executive Director be received and filed.

(Motion carried.)

PRESIDENT GRAHAM: There is still one item of unfinished business. Last night it was expected and intended to give away the prizes that have been brought here by the various book companies, and in some way I overlooked it. I am going to call on Mr. Waldron this morning to dispose of the prizes in any way he sees fit. (Mr. Waldron disposed of the prizes.)

MR. WALDRON: That concludes the awards this morning. I would like to request that the records show that the Secretary of the Association is requested to send a letter of appreciation to these various concerns who have donated these prizes to the Bar Association.

MR. HERIGSTAD: I would suggest that you call attention to the fact that their names are printed on the programs which were distributed and that a program go to each one of the donors of the gifts, and in the securing of these gifts I would like to have you all know that Mr. Paul Campbell was very active in securing many of these gifts by writing letters and securing them for this Association.

PRESIDENT GRAHAM: So far as I know, this concludes the business of the Association, but before turning over the gavel to my suc-



cessor, Mr. Bangs. I desire to say a few words of appreciation. I again wish to thank all of the members of the bar for the kindly and friendly assistance which they have given me during the past year in carrying on the duties of this position, and I assure you that I have very much appreciated it and will always appreciate it. I thank you. I will turn the gavel over and perhaps you will say a few words of appreciation for us.

**PRESIDENT ELECT BANGS:** Thank you, Mr. Past President. I would like to have the members of the Executive Committee meet right here. If those who are going to attend the sectional meetings on the Uniform Commercial Code and the one on Real Estate Mortgages Foreclosure will go up now, why, we can be through by noon-time.

**MR. ASMUNDER:** I move at this time that we take a rising vote of appreciation to Mr. Graham, the Past President, for the splendid work he has done as President of the Association the past year.

**MR. MYRON H. BRIGHT:** I have a short report I would like to read to the group, if I may, a committee report. It will take about one minute.

**PRESIDENT ELECT BANGS:** I will give you two.

**MR. BRIGHT:** Report of the Junior Bar. The Junior Bar Conference of the American Bar Association met at Minot on August 25, 1950. This meeting was attended by several representative younger lawyers who are members of the North Dakota State Bar Association.

Mr. Wiley Mayne of Sioux City, Iowa, Executive Council Member of the Junior Bar Conference of the A. B. A., met with and spoke to the group, as did H. G. Nilles, of Fargo.

The Junior Bar elected Myron Bright of Fargo, as State Chairman for the ensuing year. The State Chairman was empowered to appoint the necessary committees and other officers to carry out the objectives of the American Bar Association within the framework of the North Dakota State Bar Association.

It was recommended that the President of the North Dakota State Bar Association appoint a Junior Bar liaison committee to work with and cooperate with the Junior Bar.

Respectfully submitted, Myron H. Bright.

Mr. President, I move the adoption of this report.

(Motion carried.)

**EXECUTIVE DIRECTOR DAVIES:** I now move that the 1950 annual convention stand adjourned.

(Motion carried.)

Whereupon, said convention adjourned.