



1950

## President's Page

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### Recommended Citation

Bangs, Philip R. (1950) "President's Page," *North Dakota Law Review*. Vol. 26 : No. 4 , Article 10.  
Available at: <https://commons.und.edu/ndlr/vol26/iss4/10>

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## BENCH AND BAR

## PRESIDENT'S PAGE

THE MEETING of the State Bar Association in Minot, during August, was well attended, but there is room for improvement in the matter of attendance and I am hoping that during the term of my office we can arouse enough interest through meetings of the District Bar Associations to insure a larger attendance at the next Annual Meeting of the Association.

If you are interested in having an Officer of your Association, or member of its Executive Committee present at any meeting of your District Bar Association, please notify the Executive Director, Ronald N. Davies, of Grand Forks, of the date and place of your meeting, so that arrangements can be made to send a representative of the State Association.

There will be a meeting of the Executive Committee in October, and notice of the exact time and place of the meeting will be given after we return from the meeting of the American Bar Association in Washington. If any of you have matters that you want to present to the Executive Committee, I suggest that you submit them, in writing, to the Executive Director immediately.

At that time appointments to the standing committees will be made and if any of the members have any preference in the matter of committee assignments it might be well to write direct and suggest which one you would like. In that way we may be certain that members are serving upon committees in which they have a genuine interest.

Your special attention is called to the Committee on Legal Service to the Armed Forces whose Chairman is O. B. Burtness. Because so many of our men and women are being called for active service the work of this committee is bound to increase. Referrals will be made by Mr. Burtness and his committee direct to attorneys throughout the state and we feel that it is of the utmost importance for the morale of our troops and for the well being of those left behind that the State Bar Association's entire membership make every effort to assist men on active duty with their problems.

In closing permit me to express my appreciation of the honor you have conferred upon me by electing me President of your Association. There is plenty of work to be done and with the help of



PHILIP R. BANGS  
President, State Bar Association  
1950 - 1951



EUGENE A. BURDICK  
Vice-President, State Bar Association  
1950 - 1951

the officers, committees and members, I am confident it will be done and that we will have another successful year in the Association.

PHILIP R. BANGS,  
President

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#### THE MISSOURI PLAN FOR SELECTION AND TENURE OF JUDGES

**B**ECAUSE of the national interest among those concerned with Judicial Administration which has been evoked by the plan adopted in 1940 in Missouri, the editors are printing this précis of that plan.

There are three fundamental problems relating to Judicial selection and tenure: (1) How to select competent men; (2) How to keep such men on the bench if they pursue to be good judges; and (3) How to get rid of them if they do not.<sup>1</sup>

The Missouri Plan is an effort to solve these problems. Implicit in the plan is a recognition of the broader problem: How to retain control by the people of the judiciary and still not subject judicial officers to the necessity of frequent campaigns in the political arena with its "practical politics," commitments, and promises which so often seem to follow. The primary purpose of the Plan was to take politics out of the selection and retention of judges.

The Plan calls for the appointment to any vacancy by the governor from three persons nominated by non-partisan Judicial Commissions. If the vacancy occurs in the appellate court, the commission which serves the nominating function has seven members, consisting of the Chief Justice of the Supreme Court, three members elected by the bar, and three laymen appointed by the governor. As to lower court vacancies, the commission has five members, the presiding judge of the court of appeals for that judicial circuit, two members of the bar, who must reside in that circuit, elected by the bar of that circuit, and two citizens appointed by the governor. Each judge so selected holds office for a trial period of not less than twelve months. At the next general election following that time his name is submitted to the people on a separate judicial ballot which reads: "Shall Judge..... of the..... court be retained in office? Yes..... No....." If the vote is favorable the judge serves a full term (trial courts, six years;

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<sup>1</sup> Hyde, *The Missouri Plan for Selection and Tenure of Judges*, 9 F.R.D. 457 (1950).

appellate courts, twelve years). At the expiration of his full term, the judge's name is again submitted to the voters in like manner. If the vote is unfavorable, the vacancy is filled by nomination and appointment as before.<sup>2</sup>

The Plan has apparently been considered highly successful,<sup>3</sup> though a proposal patterned after it in Minnesota met sharp criticism.<sup>4</sup> Unquestionably the Plan merits serious study by those interested in Judicial Administration.

ROBERT H. FORD\*

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JOHN C. LOWE

**F**ORMER District Judge John C. Lowe of Minot had a varied and interesting career as a telegrapher, hotel clerk, news reporter, court reporter, lawyer and district judge. He continued such varied career to the time of his death on May 4, 1950, at Donna, Texas, where he was manager of the Southern Fruit Producers Organization which operates several orchards owned by North Dakota men.

Born on a farm near Stella, Nebraska, December 6th, 1873, Judge Lowe worked as a reporter in Omaha and later in Chicago before being admitted to the bar in New York State. He came to Minot in June, 1903. His first venture was a business college in Minot and later he graduated from that to court reporter under the late District Judge C. B. Goss and from that position was elevated to the district judgeship in November of 1920.

Educated in the public schools of Nebraska and Kansas, Judge Lowe while on the farm gave attention during the winter season to the study of shorthand and telegraphy. While a student at Creighton University in Omaha, he served as a stenographer in federal courts and in 1898, went to New York College where he attended night classes in the New York Law School and was in the Law Department of the New York University. While attending Law School, he compiled and published a book for law students entitled "Lowe's Notes on Contract."

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<sup>2</sup> See Crowdus, *The Operation of the Missouri Non-Partisan Court Plan*, 27 J. Am. Jud. Soc'y 166 (1944); Mo. Const., Art. V. §29 (1945).

<sup>3</sup> See Hyde, *supra* note 1; Crowdus, *supra* note 2.

<sup>4</sup> Anderson, *Reorganizing Minnesota's Judiciary—A Layman's View*, 27 Minn. L. Rev. 383 (1943).

\* Assoc. Prof. of Law, University of North Dakota.

After retirement from the bench and on October 24, 1946, he was honored by the Ward County Bar Association at a farewell dinner given at the Minot Country Club.

During his sojourn on the bench, he was called in frequently to preside over terms of court in other districts.

His outstanding characteristic as a court judge was the strict discipline which he maintained at all times in the court room and his thorough grasp of the law of evidence and the speed and efficiency with which he decided law suits and rendered decisions. He lived a full and profitable career dying at the ripe old age of seventy-six.

His honesty and integrity on the bench, and as a lawyer, his firmness of discipline and grasp of legal principles, his kindness and consideration for young lawyers, and his all around standing as a man lives on after him.

Committee on Memorials:

E. T. CONMY

J. B. NEWTON

RAY R. FRIEDERICH

E. J. McILRAITH, *Chairman*

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JOHN F. SULLIVAN

THE NORTH DAKOTA BAR lost one of its most able trial and corporation attorneys in the passing of John F. Sullivan, Mandan, whose death occurred at his summer home at Detroit Lakes on June 8, 1950. Mr. Sullivan suffered a stroke during the fall of 1949, but had lately been showing signs of recovery. He was driven to his summer home on June 7th and died there the following morning.

Born at Estherville, Iowa on November 2, 1884, the son of Patrick and Elizabeth Harrington Sullivan, he received his grade and high school education at the Estherville schools, graduating from the High School of that city. He attended the Law Department of the University of Minnesota, graduating there-from on June 15th, 1905, and was admitted to the Minnesota Bar in May, 1906. After his graduation from Minnesota he took a business course at Cedar Rapids, Iowa and was employed by the law firm of Soper, Allen

and Alexander, at Estherville. In May, 1907, he removed to Mandan and entered the employ of the Mandan Loan and Investment Company as an abstracter, installing a card system which is used today in many of the abstract offices of the State. He was admitted to the North Dakota Bar on June 6, 1908 and entered into a partnership with J. M. Hanley, Mandan, which continued until the time of the appointment of Judge Hanley to the District Bench in 1915, at which time he formed a partnership with Judge S. L. Nuchols, whose place on the Bench was taken by Judge Hanley. There were various other associates, and at the time of Mr. Sullivan's death the firm name was Sullivan, Kelsch and Sullivan.

September 1, 1909, Mr. Sullivan was united in marriage to Nancy Wilkinson. Four children were born to the union, one of whom, Patrick August, died in infancy. The other children are twin daughters, Mrs. George Connor (Kathleen) and Mrs. John Kennedy (Nancy), both of whom reside in Minneapolis, Minnesota, and John Jr., who has since his father's illness made his home at Mandan.

Mr. Sullivan was a member of the North Dakota State Bar Association, the Mandan Elks, Catholic Order of Foresters, Mandan Rotary and Knights of Columbus. He was an ardent hunter and considering his busy life, a man of the out-of-doors.

He held retainers from many corporations and at the time of his death was Director and Attorney for the Montana-Dakota Utilities Company, and attorney for the Northern Pacific, Soo Line and various other utility and transportation companies.

One of the outstanding accomplishments of John Sullivan's career occurred in 1921 when he represented a committee of the North Dakota House of Representatives investigating the conduct of various State owned industries. As a result of the disclosures made during this investigation a recall election was had in that year, resulting in the recall of three of the State's constitutional officers. He also handled the prosecution and defense of many famous criminal cases in the State of North Dakota. A generous and forgiving man, his heart was not in the prosecution of a criminal case and once a conviction had been secured, he would be among the first to recommend the extension of clemency.

Besides his widow and children Mr. Sullivan is survived by two brothers, William J. of Mandan and Joseph of Milwaukee, both lawyers; also, three sisters, Mrs. Guy F. McKibben, Des Moines, Iowa, Mrs. Fred Parsons, Estherville, Iowa, and Mrs. Frank Stiener, Armstrong, Iowa, as well as four grandchildren.



Funeral services were held at the Cathedral of Holy Spirit at Bismarck, on May 12, 1950, with burial at St. Marys Cemetery.

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HENRY LEMKE

HENRY LEMKE was born in February, 1880, near Albany, Minnesota, in a log house built by his father. His parents with the rest of the family moved from there about 1882 or 1883 to Grand Forks, North Dakota, where they engaged in the hotel business. After a few months they moved to Pembina County where his father filed on a preemption and after six months made final proof and sold the same. They then moved to a farm near Cando, North Dakota, and Henry spent his boyhood days together with his brothers and sisters.

Like most farm boys, he spent his youth working on the farm and attending a country school about three or four months a year. Later he attended high school at Cando for one year, and then entered Preparatory School at the University of North Dakota. He graduated from the University as Bachelor of Arts and also as Bachelor of Law.

After graduation, he opened an office at Sarles, North Dakota and later farmed for a number of years near Lawton, North Dakota.

He was a candidate for the State Legislature in Ramsey County, and was later appointed County Judge, which place he filled until his death.

In his early boyhood he took great interest in agriculture and livestock. He worked with the rest of the family when the number of hours in a day of labor were a great deal longer than they are now. During harvest and threshing the day started at about five or six in the morning and continued until nine in the evening and sometimes later.

It was not an easy life but an active and pleasant one after all. The early pioneers enjoyed that life. Their ideas of life were thrift

and success, and achievement of that success gave a great deal more pleasure perhaps than the present generation realizes or would appreciate.

There was the hunting and the dogs and the great open space which the pioneers enjoyed, and which enjoyment is denied, to a large extent, to the present generation. The pioneer life in the United States proper and fascinating as well as a hardship, and it was also enjoyable. Then there were the long winter nights, sleigh parties, etc. Henry Lemke was interested in these and took an active part.

He was one of those men who did a days work and did it well and thus "earned a nights repose".

Committee on Memorials:

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E.J. MCILRAITH, *Chairman.*

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RESOLUTION

WHEREAS, Honorable William F. Lemke has recently passed on from life in this sphere, and

WHEREAS, The North Dakota State Bar Association desires to pay tribute to its departed member,

NOW, THEREFORE, BE IT RESOLVED That the North Dakota State Bar Association here and now attests to the fact that in the passing of the Honorable William F. Lemke it has lost a valued member and a loyal State leader.

William F. Lemke was born at New Albany, Minnesota, August 13th, 1879. Practically all of his life was spent in North Dakota, his early life with his parents near Cando, North Dakota, and the latter years of his life as a resident of Fargo, North Dakota, although a great deal of that time was spent in Washington, D. C. as a Representative of the State of North Dakota.

He graduated from the University of North Dakota in 1902, studied law at Georgetown University in Washington, and received his law degree from Yale in the year 1905, engaging in the practice of law that same year in Fargo, North Dakota. On April 16th, 1910, he was married to Isobel McIntyre of Fargo. Besides

his widow, he leaves three children, William Lemke, Jr., Robert Lemke and Mrs. Robert (Mary) Ely.

Mr. Lemke was for many years a prominent political figure in the State of North Dakota. He became a leader in the Non-Partisan League as early as 1914, and for many years was a staunch believer in and defender of the principles of that organization. He later affiliated with the R. O. C. faction of the Republican Party. He was a firm believer in state owned utilities and had the courage of his convictions. He drafted much of the legislation incident to the creation of the Bank of North Dakota and the state owned mill and elevator.

He served as Attorney General for the State of North Dakota, and later in 1932 began his career in Congress, as Representative of the State of North Dakota, in which position he served continuously to the time of his death, except for one term in 1941-42. He steadfastly worked for the good of his State and the United States, as he saw it. Even those who disagreed with his political philosophy recognized his sterling honesty and integrity.

His friends throughout the state and in the Congress in which he served for so many years are innumerable. He shall be greatly missed by all.

BE IT FURTHER RESOLVED, That this resolution be placed on the permanent records of the association and that a copy be sent to the members of his family.

Committee on Memorials:

J. H. NEWTON

RAY R. FRIEDERICH

E. T. CONMY

E. J. McILRAITH, *Chairman.*