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

North Dakota State Bar Association

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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 9:45 o'clock a.m. of Thursday, August 9, 1956, in the Minot High School, Minot, North Dakota, Norman G. Tenneson, President of the North Dakota Bar Association, presiding.

(Whereupon, President Norman G. Tenneson assumes the chair.)

(Mr. Bruce M. Van Sickle, general chairman for the Convention, on behalf of the President of the Ward County Bar Association, welcomed all members of The North Dakota State Bar Association to Minot; and, also, made several announcements regarding facilities available at Minot.)

PRESIDENT TENNESON: I am very pleased at this time to call on Lynn G. Grimson, our Executive Director, for his report.

Annual Report — Executive Director

Since this is the first report of the Executive Director since I assumed that office a year ago, and since it has been some time since a report has been made to the Association assembled in annual meeting, it would seem appropriate to outline generally the duties of the office and how it operates.

The office of the Executive Director was established in August of 1947. The purpose of the office was to handle the Association's general program under the direction of the Executive Committee, which is the governing body of the Association between annual meetings. That committee is composed of the President, Vice-President, Immediate Past President and Secretary-Treasurer of the Association, the Dean of the University of North Dakota Law School, and the Presidents of the six Judicial District Bar Associations. The Executive Director is not a member of the Executive Committee, since he executes the policies of the Association, but does not make them.

Actually, the Executive Director performs all of the functions of a Secretary of the State Bar Association, excepting those which the elected Secretary, a constitutional officer, is required to perform. Under our By-Laws, the Secretary is also the Treasurer and, as such, handles and has charge of all receipts and disbursements of the organization. However, all correspondence and routine work which normally would be handled by a Secretary is, under our arrangement, handled through the Executive Director's office. It is the duty of the Executive Director to maintain close contact with the President of the Association and the Executive Committee, and to act as a liaison between those officials and the committees active in Bar Association work. In addition, the Executive Director is required to maintain contact with other Bar Associations throughout the United States and with the American Bar Association, and to coordinate all activities of the Association.

After serving in this capacity for a year, I feel that I must first give full credit to my predecessor, the Honorable Ronald N. Davies, for the excellent manner in which he had developed the routine of office procedure and the methods of coordination of the work in the office. His services to the State Bar Association of North Dakota were certainly of great value in establishing the State Bar Association of North Dakota as one of the leading bars in the United States. The procedures and contacts which he had established have made possible the continuation of the program of the Association upon the change in personnel.

The State Bar Association, during this past year, has had thirty active committees. I will not in this report attempt to outline the work done by these committees, since their own reports will either be given at this meeting or printed in the annual proceedings. However, I would like to call attention to the good work done by several of the most active committees.

As Executive Director of the Association, I accepted an appointment from the American Bar Association as State Chairman in the ABA's recent 50,000 membership campaign. A quota of 151 new members was assigned to North Dakota, which quota, I am proud to report, has been exceeded. The credit for this work must be given to Past President Vernon M. Johnson, our Association's delegate to the ABA, who, as Chairman of the ABA Membership Committee of the Association, together with the members of his committee and others added to that committee for the purposes of the drive, spent much time and effort in the successful campaign. I cannot take the time to name all of those responsible for the success of the drive, but I feel that I should give special credit to Vernon Johnson, as Chairman, and to Frank Jestrab, who, according to my records, secured the greatest number of new members during this drive.

Another committee which has been very active throughout the year and whose work has been of benefit to the membership of the Association is the Public Relations Committee. Herb Meschke and the members of his committee have done an excellent job of preparing material for and publishing the News Letter, which has been mailed to the membership throughout the year. This activity, I feel, has been of much benefit to the membership, both as a clearing house for ideas and as a method of informing the membership of available openings or legal materials throughout the State.

As will be noted in the committee report, the Business Corporations Committee has also been very active in cooperating with the Legislative Research Committee in the preparation of legislation for the adoption of the Uniform Corporations Act and Uniform Co-operatives Act.

At our last annual meeting new forms were adopted for use in the probate courts for the administration of estates. Those forms have now been presented to the printing companies and, according to present reports, should soon be in the hands of the county judges for the use of the attorneys. The Committee on Probate Forms and Practice, under the leadership of Reuben J. Bloedau, has continued

its activities during this past year and is presenting to this annual meeting a set of forms for use in guardianship matters. This committee is also to be commended for its excellent work.

The Title Standards Committee, under the chairmanship of Bud Rueemmele, has continued its excellent activities and has prepared many additional Title Standards for approval by this annual meeting and, if approved, for publication in connection with the Title Standards book.

One of the outstanding activities of the year was the Legal-Medical Institute held at Grand Forks on December 2 and 3, 1955, under arrangements made by the Committee on Continuing Legal Education, under the leadership of Floyd Sperry. This was an outstanding institute of great value to all who attended. From the financial standpoint, also, the meeting was a success, since the receipts exceeded expenditures, thus leaving a small surplus for use of the committee in its functions of continuing legal education of the membership of the bar, as well as the public generally.

Also entitled to comment is the continuing activity of the Constitution Awards Committee. The annual presentations made by the State Bar Association of constitution award keys to high school students was again well received throughout North Dakota high schools. Chairman John A. Amundson and the members of his committee did an excellent job in continuing this important activity of the Association.

The Sectional Meetings Committee has arranged a very interesting and instructive program of sectional meetings for this annual meeting. Much work has been done by that committee in securing papers of interest for presentation to the membership of the Association and in planning for their presentation here. It will be worth while for all of you to attend as many of the sectional meetings as you can. The papers to be presented are outstanding.

In calling attention to the work of these particular committees I do not mean to in any way detract from the excellent work that has been done by all of the other committees. The great majority of the committees have held at least one meeting during the year and, as will be noted from their individual reports, have engaged in activities for the benefit of the Association and the public.

Only one plebiscite has been conducted during the past year, occasioned by the retirement of the Honorable William Hutchinson in the Third Judicial District. Excellent returns were received by the Judicial selection Committee from the ballots prepared and mailed by the Executive Director's office. The votes were tallied and Governor Brunsdale again followed the suggestion of the Association in appointing the Honorable Clifford Schneller from the list recommended as a result of the plebiscite.

The Executive Committee has held five meetings throughout the year, two of them in connection with the annual meetings. Matters of policy of the Association have been determined and adopted at these meetings, and the general business of the Association has been conducted. One of the principal endeavors of the Executive Committee and officers has been to improve the financial

position of the Association. The expense items have been carefully scrutinized and every possible attempt made to reduce costs of operation. On the recommendation of both President Heringer and President Tenneson, the Executive Committee adopted a policy requiring committee chairmen to secure the approval of the President before incurring expenses for committee meetings. In this way the expense of committee meetings has been held to a minimum, while still providing for a full scale of activity by the committees. A directive was prepared, approved by the Executive Committee and mailed to all committee members advising of the procedure of billing the Association in accordance with the statutory limitations for state travel. Out-of-state travel is permitted only upon prior approval of the Executive Committee, and in-state travel by officers only when authorized by the President or Executive Committee. All other expenses have also been held to a minimum.

The result of this policy is shown in the financial statement of the Secretary-Treasurer. The financial position of the Association has improved during this fiscal year. The bank balance as of June 30, 1955, was \$8,590.72, and the balance as of June 30, 1956, was \$13,390.92, an increase of \$4,800.00. Total receipts for the fiscal year were \$26,104.45 and the expenditures have been held to \$21,304.25, explaining the increase in the bank balance. Part of this increase is occasioned by an increase in Law Review income from the contribution by the University of North Dakota of \$3,000.00 for its share of the costs of publication of the Law Review. There has also been an increase in income from the State Bar Board, reflecting the increase in license fees. The financial position of the Association has thus been strengthened and it appears that increased activity for the benefit of the public can be instituted.

Last fall, at the request of the American Bar Association, the Executive Committee requested the Executive Director to poll the membership of the Association for their opinions on the proposed legislation for Social Security coverage for attorneys. The form of questionnaire suggested by the ABA was prepared and mailed to all members. The response from the attorneys was pleasing, a total of 392 questionnaires being returned out of a total of 685 mailed. The results of the poll showed an overwhelming preference for Social Security coverage, preferably on a voluntary basis, but if such could not be secured, then on a compulsory basis. The results of this poll were forwarded to the American Bar Association for its use in making a presentation to Congress and also forwarded to North Dakota Senators and Representatives. Letters were received from all four congressmen stating appreciation for the information thus secured and the statement of the preference of the North Dakota Bar. As you know, such legislation was adopted at the closing sessions of Congress and has now been signed by the President.

Another item that might be mentioned in this report is the matter of professional ethics. It is pleasing to report that during the past year only one serious case of alleged misconduct on the part of an attorney has necessitated a full-scale investigation by the Ethics

Committee and its recommendations to the Chief Justice and the State Bar Board. The matter of professional misconduct and of professional laxity is a constant irritant. In numbers, attorneys' breaches of law and ethics are fewer than in any other profession. However, since the attorney is always in the public eye, such breeches are bound to attract more attention. The Association has always undertaken to keep its own house in order. Minor difficulties, and you would be surprised at how many there are, have been adjusted through the Executive Director's office. The great majority of these minor complaints deal with failure on the part of attorneys to answer correspondence, especially in cases of forwarded matters. In some cases as many as half a dozen letters from a forwarding attorney in another state, followed by a registered mail letter, have gone unanswered before the attorney complains to the Association. If the matter can be satisfactorily disposed of by correspondence or personal contact through the Executive Director's office, no further action is taken. It is only matters of a more serious nature which are referred to the Ethics Committee and, after careful consideration and investigation by it, may be referred to the State Bar Board. I would like to stress to all of the members of the bar the extreme importance of keeping your legal procedures and business up to date and of advising those in distant places of all actions taken and the progress of the proceeding or business. It is through failure to keep clients informed that much of the bad reputation of our profession has arisen. Such is certainly at least poor public relations, and for the good of our profession generally our public relations must be improved.

The Executive Committee this year authorized the presentation to all newly admitted attorneys to the bar of North Dakota of a pamphlet prepared and issued by the Practising Law Institute entitled, "Building a Practice." This is a very informative and educational monograph covering the subjects in which a newly admitted attorney would be interested in connection with establishing himself in the profession. I am sure that the pamphlet will be of value to the newly admitted attorneys and that this action on the part of the Executive Committee will meet with approval.

Other matters that have been approved by the Executive Committee during the year and have been handled through the Executive Director's office are the mailing of various publications of the Association, the News Letter, the folder on preparation of Wills, a new publication on unauthorized practices and advance literature relating to the annual meeting. Some copies of previous Bar Association Publications, such as the "Handbook For Jurors," the pamphlet on title examinations, "Do You Need A Will?" and "Confidentially For You, Mr. Attorney," are available for distribution to attorneys in small quantities. It is expected that the Executive Committee may authorize the printing of additional supplies so that any number of copies desired can be secured for distribution to attorneys' offices, banks, county offices, and so forth.

You are all aware that a new Recommended Minimum Fee Schedule was adopted by the Association at its last annual meeting.

The schedule was printed and a copy mailed to the entire mailing list. Additional copies are available in the Executive Director's office and can be secured at any time upon request. The Fee Schedule Committee is still active and it is expected that additional recommendations will be made and amendments or additions to the Recommended Minimum Fee Schedule will be published upon adoption.

In closing, Mr. President, I would like to express my personal thanks and gratitude to the officers of the Association, the Executive Committee and members of all committees, without whose excellent cooperation and immediate response to any requests the program of the Association could not be fulfilled. These members of the Association have received no compensation for their services and are certainly entitled to the thanks and appreciation of the Association.

North Dakota was the first of the integrated bars in the United States. We still receive inquiries about our methods of operation and the programs that we have undertaken. We can maintain our standing and reputation with the bars of our sister states only if the membership continues to display the same interest in the activities of the Association in the future that they have in the past. I am sure that the officers to be elected at this annual meeting will continue and improve the excellent program of public service which has been already so successfully established.

Respectfully Submitted,
LYNN G. GRIMSON
Executive Director.

PRESIDENT TENNESON: Thank you for that very full and complete report. I will entertain a motion that the report be received and filed.

MR. GEORGE A. SOULE: I will so move.

MR. E. E. PALMER: I will second that motion. (Question put and motion carried.)

PRESIDENT TENNESON: We have a short written report from the Committee on Ethics and Internal Affairs of which Philip R. Bangs of Grand Forks is Chairman. I am informed that Mr. Bangs will not be here today so with your permission I will read the report.

"Mr. Lynn G. Grimson
Grafton, North Dakota

Dear Lynn:

"Replying to yours of the 11th, the Committee on Ethics and Internal Affairs has not found it necessary to have any meetings of the Committee during the past year.

"There was only one complaint that was serious enough to call for any extended investigation and the file in that matter was delivered to the Chief Justice of the Supreme Court, with the suggestion that the matter be referred to the State Bar Board for further investigation.

"Other complaints that were received were of such a minor character that no formal action was necessary.

"In view of the above, I don't see any need of filing a formal report, or making any statement on the floor of the Convention.

"Sincerely yours,
PHILIP R. BANGS"

PRESIDENT TENNESON: That report is in line with what the Executive Director has told you, that we have had only one complaint of any seriousness. I assume it to be in order to receive and file the Report.

MR. J. W. SHERMOEN: I will so move.

MR. E. E. PALMER: I will second.

(Question put and motion carried.)

PRESIDENT TENNESON: The next report will be that of the Committee on Legal Education and Admission to the Bar. O. H. Thormodsgard of Grand Forks is Chairman of the Committee and will present that report. The report contains some recommendations for legislation.

Committee On Legal Education And Admission To The Bar

The American Bar Association has adopted certain specific standards and policies. One standard is that it does not approve of law office study as a method of securing a legal education for the purpose of being eligible to take the bar examination. As of today, there are 24 states, two territories and the District of Columbia which do not recognize law office study.

In nine states, a person may qualify to take the bar examination by studying law in a law office for a period of four calendar years. In 12 states, a period of three years of law office study qualifies a person to take the bar examination. In two states, two years of law office study makes a person eligible to take the bar examination and in 1 state there is no provision as to office study. Wisconsin, Minnesota, Iowa, South Dakota, Nebraska and Wyoming — our neighboring states — have adopted the standards of the American Bar Association and do not give recognition to law office study.

The Committee on Legal Education and Admission to the Bar recommends for legislation in 1957 that law office study, either under a judge or an attorney, should not qualify the person to take the bar examination. A copy of the proposed bill is attached to this report.

Respectfully submitted,
C. L. FOSTER
HERBERT G. NILLES
MACK V. TRAYNOR
O. H. THORMODSGARD Chairman

PRESIDENT TENNESON: Dean, could I suggest that you read the Bill, or at least point out the changes that it makes in the existing law.

DEAN O. H. THOMODSGARD: The first is that it is an amendment to the present act:

"No person, except as otherwise provided in section 27-1125, shall be admitted to practice as an attorney and counselor at law in this state, unless he:

1. Is a resident of this state;
2. Is at least twenty-one years of age;
3. Is of good moral character;
4. Has completed, with the required passing grades, two years, sixty-four semester hours or ninety-six quarter hours, of college or university work in the university or agricultural college of the state of North Dakota or some equally reputable college or university, with a course of study which included courses in English literature, American and English history, economics, and civil government; and
5. Actually and in good faith has pursued a regular course of study of the law for at least three full years in the office of a member of the bar of this state residing therein and in regular practice, or with and under the immediate direction of a judge of the supreme court, district court, or county court of increased jurisdiction, of this state, or in some reputable law school of the United States, or partly in such office and partly in such law school. In computing such period of study, the school year of any such law school consisting of not less than thirty-five weeks, exclusive of vacation, shall be considered equivalent to one full year.

After July 1, 1960, no person, except as otherwise provided in section 27-1125, shall be admitted to practice as an attorney and counselor at law in this state unless he is a resident of this state, at least twenty-one years of age, of good moral character, and has completed at least three years of acceptable college work in addition to pursuing a regular course of study of the law for three years in some reputable law school of the United States, except that a person who has completed two years of acceptable college work may be admitted if he is a graduate of a reputable school of law of the United States which requires four years of full-time study or an equivalent amount of part time study as a condition of graduation."

So, as you will notice, it apparently drops out and omits a person who has been studying in a law office or before that of a judge, and this I may say was brought up by the Legislative Committee. If there are no further questions, Mr. President, I move that this report be approved and referred to the Legislative Committee of the North Dakota Bar Association.

MR. T. KELLOGG: I have a question, Mr. Chairman. Do I understand that that new provision required two years of other college work, in addition to three years law course?

DEAN O. H. THORMODSGARD: Yes. It will take two years of college and four years of law, or three years of college and three years of law. That is in accordance with the standards of the American Bar Association. Two years of college and four years of law or three years of college and three years of law.

PRESIDENT TENNESON: This is obviously a very important

matter and if there are any further comments or questions from the floor, I would like to have them at this time.

MR. M. K. HIGGINS: Mr. President, I would like to inquire — I may not have followed this closely enough to get the information, but I am wondering if that eliminates the law office study?

PRESIDENT TENNESON: As I understand it, after January 1st, 1960, it does eliminate them. I presume that date was picked to allow those now studying in law offices to complete their work.

MR. T. KELLOGG: I wonder if the Dean knows off-hand about how many of his graduates in the last several years would be in compliance with this requirement. That is, have they had three years of college work and three years of law or two years of college work and four years of law?

DEAN O. H. THORMODSGARD: I may say that at the University of North Dakota only students with three years of college may enroll; and in all approved law schools of the United States, they must have either three years of college and three years of law or two years of college and four years of law. That is the standard of the American Bar Association and that is the standard of member schools of the Association of American Law Schools. So that a student graduating now from an approved law school has either three years of college and three years of law or two years of college and four years of law.

PRESIDENT TENNESON: Any further discussion or comments? There is a motion that the report be adopted and referred to the Legislative Committee for appropriate action. Is there a second to that motion?

A VOICE: Second it.

(Question put and motion carried.)

PRESIDENT TENNESON: Thank you, Dean.

Next report will be that of the Committee on Uniform Laws with the Honorable John C. Pollock, Chairman. This report also contains a recommendation.

Committee On Uniform Laws

Your Committee on Uniform Laws for the year 1955-1956 begs leave to report:

There having been no Session of our State Legislature in 1956 we have no new adoptions of uniform laws to report. The adoptions made by the 1955 Session were reported in our last annual report of our committee.

At its 1955 Conference the National Conference of Commissioners on Uniform State Laws adopted three acts which were approved by the House of Delegates of the American Bar Association and by it were recommended to the States for adoption:

- (1) The Uniform Motor Vehicle Certificate of Title and Anti-Theft Act. This act is designed to make uniform the certificates of title issued by the several jurisdictions of our

- Nation and to facilitate preventive measures against theft of motor vehicles;
- (2) Amendment to Uniform Acknowledgement Act. This amendment to our existing act is to make uniform the form for authentication of acknowledgments on instruments to correct discrepancies which have been found to exist among forms now in use;
 - (3) The Uniform Arbitration Act deals with the whole subject of arbitration and provides for application to the courts for appointment of arbitrators where no provisions for such appointment is contained in the agreements between the parties.

Your committee recommends the early adoption by our Legislature of the Amendment to the Uniform Acknowledgment Act.

We also recommend that the Uniform Motor Vehicles Certificate of Title and Anti-Theft Act be studied to ascertain whether or not changes should be made in our existing statute covering the subject. Also recommend that the Uniform Arbitration Act be referred to our legislative committee to determine whether-or-not there is need for such an act in our State at this time.

Complying with the recommendation made in our 1955 report the President of our Association appointed a Special Committee to study the Uniform Rules of Evidence. In this connection we call attention to a series of articles which will appear in North Dakota Law Review. The author of the articles is Leo H. Whinery of the School of Law at the University. The first of such articles will appear in the July, 1956 issue, to be followed by a second one in the January, 1957, issue and the last to be included in the April, 1957, issue. And there is also another article on Uniform Laws which is in the July issue on post-conviction which is written by Kirk Smith, one of the advanced students at the Law School. I recommend that article to you also.

Thank you. I move the adoption of the report.

PRESIDENT TENNESON: That the recommendation be referred to the legislative?

JUDGE JOHN C. POLLOCK: Yes.

PRESIDENT TENNESON: You have heard the motion, is there any second to the motion?

MR. E. E. PALMER: I will second the motion.

PRESIDENT TENNESON: Is there any discussion on the motion?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: I will now call for the report of the Judiciary Committee which will be given by the Chairman, Milton K. Higgins.

MR. MILTON K. HIGGINS: Mr. President, Members of the Bar. I have been about as horrible an example as an absent committee member on this matter as one could well imagine it. Upon the unexpected death of the Chairman, Senator Day, I was asked to take over the Chairmanship of the Committee, and have done very

little except brief myself with that assignment. When I was requested to call a meeting of the Committee on July 9th, it appeared that that was the date agreed upon among certain of the members being the only one suitable for them, and it also happened at that time that I had an appointment out of the city and it made it impossible for me to attend. I, therefore, asked Attorney General Burgum, the only other member in the city, if he would serve as acting chairman, which he consented to do, and in my absence there was a meeting held at that time at which were present Mr. Burgum, A. E. Draeb of Hebron, Raymond Rund of Hope, Judge Gronna and Judge Porter, at which time there was quite an extensive discussion of the matter of the judicial retirement provisions.

Judiciary Committee

Sec. 27-1701. Retirement of Supreme Court and District Court Judges; Salary of Retired Judges.

When a Judge of the Supreme Court or a Judge of the District Court of this State shall have attained the age of sixty-five years and has served as such Judge for twenty years or more, or has attained the age of seventy years and has served as such Judge for ten years or less, he shall be eligible for retirement under the provisions of this chapter. Any such Judge who is or who may become eligible for retirement may make application to the Governor for such voluntary retirement, and the Governor shall, if he finds that such Judge is eligible for retirement, direct such retirement by written order, which order when filed in the office of the Secretary of State shall create a vacancy in said office to be filled in the manner provided by law. The provisions of this chapter shall apply to Judges who are retired either voluntarily or otherwise under the provisions of any act providing for the retirement of Judges for permanent or mental disability.

Each person who shall hereafter serve as such Judge for an aggregate period of ten years or more, continuous or otherwise, in either or both of such offices, and each person now serving as such Judge, shall, upon reaching the retirement age aforesaid, be entitled to receive and have paid to him retirement compensation in an amount equal to one-half of the annual salary or compensation of the office at the time of his retirement. If any person shall attain the age of seventy years, and has not served as such Judge for ten years, he shall, upon retirement, be entitled to receive and have paid to him, retirement compensation equal to that portion of one-half of the salary or compensation of the office at the time of his retirement which his period of serving bears to ten years. All retirement compensation shall be paid monthly, as other judicial salaries are paid, and such salary shall not be subject to an assessment of five per cent, as provided in this chapter.

Sec. 27-1702. Retention of Assessments from Salaries; withdrawal of Sums so Retained.

Every Judge of the Supreme Court and Judge of the District Court shall pay an assessment of five per cent of his salary into the

general fund of the state, which assessment shall be deducted from the salary of such Judge and retained by the State of North Dakota.

Any Judge of the State of North Dakota who shall be retired from office without becoming eligible for retirement pay under the provisions of this chapter, within one year of such retirement from office, upon making written application therefor, shall be entitled to payment of the amount which has been so deducted and withheld and retained by the State as herein provided, without interest.

If any former Judge, after having withdrawn such amount so paid and retained, shall thereafter become a Judge of this State, he shall return to the fund, within one year after becoming such Judge, the amount withdrawn by him, with simple interest at the rate of four per cent from the time of such withdrawal.

If any Judge of this State shall die before retirement as provided for in this chapter, his widow, administrator or executor shall be entitled to apply for and receive payment of the amount so deducted and retained by the State, which claim shall be made within one year after the death of such judge, and shall be filed with the State Auditor of the State of North Dakota.

When a Judge of this state has applied for and received retirement pay under the provisions of this chapter, or any other provisions of the laws of this State providing for retirement pay, or has applied for and been retired because of permanent disability to perform the judicial duties of his office during the remainder of the term for which he shall have been elected, and whose application has been granted, and who has received retirement pay by reason of such application, shall be deemed to have waived the right to apply for or receive any portion so deducted and withheld, and in case of his death, the same shall apply to his widow, executor or administrator.

Sec. 27-1704. Is hereby repealed.

Mr. President, at this time I move the adoption of the Committee's report.

PRESIDENT TENNESON: And I suppose you couple with that a motion that it be referred to the Legislative Committee for action.

MR. MILTON K. HIGGINS: I do.

MR. E. E. PALMER: I wish to second that motion.

PRESIDENT TENNESON: I might say that I know there has been general dissatisfaction with the provisions of the Judiciary Retirement Act. It is a matter that should be of interest to all lawyers and of some interest to Judges and they have given it a lot of thought and I am sure if you have any questions or comments Mr. Higgins would be very glad to answer them.

MR. C. A. WALDRON: Mr. Chairman, a point of inquiry: in the phrasing "permanent or mental disability," might it not have been intended to be "physical or mental disability" in the report? I just wonder if that might not have been the intent.

JUDGE A. G. PORTER: I might state that that is not changed under the present law, that section, the first section. It is only the first sentence or so in 1701 which is amended. That referred to disability statute.

PRESIDENT TENNESON: Are you ready for the question?

(No response.)

(Question was put and motion carried.)

MR. MILTON K. HIGGINS: Now, Mr. President, there were two other matters referred to the Committee. There has been a change in the situation by reason of the fact that the question of the publication of the official reports has been submitted to the electors and the change has been rejected. It is my own view, and it seems to be the consensus of the Committee, that there was a misunderstanding on the part of the general public that caused that, but nevertheless it does create a rather anomalous situation insofar as dealing with this is concerned and it is, therefore, the recommendation of the committee that this matter be submitted to the Legislative Committee for determination of what action should be taken, if any, at this time.

JUDGE A. G. PORTER: Mr. President, I believe you are wrong on that. The recommendation of the Committee was that it be referred to Judicial Counsel to recommend that matter back in conference with the Supreme Court.

MR. MILTON K. HIGGINS: I stand corrected, Judge Porter, and I ask that my statement be amended to show it be referred to the Judicial Counsel.

PRESIDENT TENNESON: Do I hear a second to the motion?

MR. E. E. PALMER: I will second that motion.

(Question put and motion carried.)

PRESIDENT TENNESON: Do you have anything further?

MR. MILTON K. HIGGINS: Yes, one other thing. On this we may have less reason for passing the buck, to use the ancient phrase. With reference to the status of the Chief Justice, on which there has been considerable discussion as you know in the last several years, this Committee respectfully requests that that be submitted to the Committee on Judicial Reform as it would seem more properly within the scope of that Committee than our own in view of the fact that this would probably be considered with other matters of judicial changes.

PRESIDENT TENNESON: I wonder if we have the correct name of that committee. I am not aware of any on Judicial Reform.

MR. MILTON K. HIGGINS: I do not have the written report of the meeting of July 9th and I may be mistaken on that.

PRESIDENT TENNESON: Perhaps you mean the committee on Jurisprudence and Law Reform.

MR. MILTON K. HIGGINS: I would stand corrected to that extent.

PRESIDENT TENNESON: I take it that it be referred to the Committee on Jurisprudence and Law Reform. Do I hear a second to that motion?

MR. G. A. SOULE: I will second it.

(Question put and motion carried.)

PRESIDENT TENNESON: We have another very important Committee; namely, a Committee on Title Standards of which Mr. Ruemmele is Chairman.

Committee on Title Standards

For sometime your Committee has felt that the adoption of title standards would be a decreasing proposition as those areas wherein a general agreement could be obtained would diminish in number. However, recent decisions and developments at times point out errors in judgment on the part of the Committee or a change in the judicial approach to questions, so that revisions or additions must be made to existing standards.

Your Committee recommends the adoption of the following revised Standard:

Standard 1.022

"On all instruments made and acknowledged subsequent to January 1, 1943, where the notarial seal is not affixed to the certificate of acknowledgment, if by the laws of the territory, state or country where the acknowledgment is taken and notary public is required to have a notarial seal, the instrument is not entitled to record, and if recorded does not constitute constructive notice."

Comment:

By reference to page 704, Patton on Titles, it will be noted that there are many jurisdictions wherein the Notary Public is not required to have a seal. On the basis of Section 47-1932, NDRC 1943, it would appear that the notarial seal is required only "if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which he is acting, he is required to have an official seal."

The Committee wishes to correct this Standard which it adopted in 1955. Your Committee recommends the adoption of the following new Standard:

"The fact of death may be presumed from a recorded certified copy of an order of a county court or a statement of the state tax commissioner relating to estate tax determination of said decedent's estate without the recording of a certified copy of the death certificate."

Comment:

The Committee feels that death is jurisdictional to the estate tax determination and that death should be presumed from any order or statement determining the estate tax by the proper officers or court.

Your Committee spent a good deal of time considering matters which did not seem subject to treatment by way of title standard but discussion of which would be of great benefit to members of the Association. The matters of estate taxes, both Federal and State, the proper creation of a joint tenancy, the required record showing for all types of conveyances, and other matters, were all discussed and it was concluded that such matters be submitted in article form and made available to holders of Title Standards for inclusion in the binder.

In the 1953 report of this Committee several statutory enactments

were recommended and the recommendation adopted by the Association, but were never presented to the Legislature as part of the Association's legislative program. Your current Committee spent a great deal of time considering statutory changes and have adopted for recommendation to the Association for inclusion in its legislative program specific statutory changes they feel are desirable.

A. NORTH DAKOTA ESTATE TAXES

Section 57-3732, NDRC, 1943, makes the lien of the North Dakota Estate Tax a lien upon "The property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor, *until the taxes are paid* or a bond is given for their payment."

This creates a situation wherein the possibility of the estate tax must be considered in every transfer. In order to make the lien of the tax consistent with that of the Federal Estate Tax lien, the Committee recommends that the statute be amended to provide a lien for such taxes for a period of 10 years from the date of death.

Unofficial inquiries in the proper State departments indicated that such a limitation would be acceptable to present officials.

In this connection the Committee would like to point out that by Opinion dated August 25, 1953, the Attorney General has held "that the tax commissioner does not have the authority to determine the estate tax for the estate of any resident decedent regardless of whether the decedent at his death owned all his property in joint tenancy or in sole ownership or otherwise. His authority is limited to the approval or disapproval of the determination made by the County Court. The tax commissioner can determine the estate tax liability only if the decedant was a non-resident provided there is no administration in this state upon the non-resident's estate". Procedure adopted by many attorneys prior to this opinion was to get a determination directly from the tax commissioner. The opinion casts some doubts upon the validity of such determination by the Commissioner in the case of residents, and a proposed validating act in the 1955 Legislature was not passed.

B. MARKETABLE RECORD TITLE ACT

(Chapter 47-19A, 1953 Supp NDRC 1943)

(1) The original recommendation of the Association was that this Act should be a 20 year act, but apparently the legislature changed it to 30 years, and then inadvertently it became a 31 year act.

The tendency is to shorten the period, as Iowa has done by bringing theirs up to January 1, 1940, with the thought of bringing it up to January 1, 1950, in the year 1960. A 20 year act would make it consistent with the 20 year adverse possession statute and make titles marketable of record which are in fact marketable.

Your Committee recommends that the above cites Chapter 47-19A be amended to provide for a 20 year period, rather than the present 31 year period.

(2) Included among the exceptions in Section 47-19A11, *supra*, is "d, Conditions subsequent contained in any deed;"

Section 47-0902, NDRC 1943, provides that "Property of any kind may be transferred except:

1. A mere possibility not coupled with an interest; and
2. A mere right of reentry or of repossession for breach of a condition subsequent which cannot be transferred to anyone except the owner of the property affected thereby".

This section is a distinct restriction upon the alienability of possibilities of reverter, created by the conveyance of a determinable fee, and of rights of reentry created by the conveyance of a fee simple upon a condition subsequent. From practical experience it is known that in many cases tracts have been conveyed as determinable fees or fees upon a condition subsequent. In trying to eliminate them the question arises as to whom such possibilities or rights of reentry passed upon the death of the grantor.

In Section 4.74 *American Law of Property*, it is stated:

"In a few jurisdictions, it appears that the right of entry and the possibility of reverter are not descendable interests, but that the heir takes by representation, the old English Law to the effect that descent is traced from the last purchaser being in effect as to these interests. . . . The better view, supported by a substantial body of authorities, is to the effect that possibilities of reverter and right of entry for breach of condition descend like possessory interests."

With no reported decisions in North Dakota, it would seem the only solution to the elimination of the right of entry or possibility of reverter is an action to quiet title. Your Committee has consistently taken the position that the elimination of needless quiet title actions is a desirable end, and consequently recommends that exception d. of the Act be amended to read:

"A mere possibility not coupled with an interest and a mere right of reentry or repossession for breach of a condition subsequent created by a conveyance of record less than 40 years;"

C. INSTRUMENTS OUT OF CHAIN OF TITLE

Section 47-1946, NDRC 1943, provides

"An unrecorded instrument is valid as between the parties and those who have notice thereof. Knowledge of the record of an instrument out of the chain of title does not constitute such notice."

The second sentence of that section was added in 1899 to overrule the well settled rule in other jurisdictions and adopted by our court in *Doran v. Dazey*, 5 ND 167, 64 NW 1023. The enactment of that sentence meant that even though you actually have knowledge of the record of an instrument out of the chain of title you may disregard it. This was substantiated by subsequent cases such as *McCoy V Davis*, 164 NW 951.

The historical basis for the "instruments out of the chain of title" is that the original recording laws provided only for a grantor-grantee index, and it was not supposed that one would have to search that index prior to a conveyance to the purchaser. Thus liens recorded prior to the date of the conveyance were con-

sidered "out of the chain of title." Whether this problem is still with us was discussed by Professor Richard C. Maxwell in 25 North Dakota Bar Briefs 176 (1949), and it appears that there is some doubt as to whether the requirement of the tract index has eliminated the historical rules as to instruments out of the chain of title.

Practical experience indicates that in many instances mortgages are recorded prior to the execution of a deed to the mortgagor. This leaves the question as to whether or not the mortgage is "out of the chain of title", so that subsequent purchasers and encumbrancers, on the basis of 47-1946, even though they have knowledge of the record of such a mortgage, might not safely disregard it and gain priority over it.

With the growing use of an abstract of title and an examination thereof before any kind of property transaction, the Committee is of the opinion that if there was any reason for the last sentence of Section 47-1946 it is no longer valid, and recommends that the sentence "Knowledge of the record of an instrument out of the chain of title does not constitute such notice" be repealed.

D. JUDGMENTS

In *Casey vs Corwin*. 71 NW 2d 553, our Supreme Court held that the mere entry of a judgment quieting title was notice to anyone and binding upon anyone in privity with a defendant.

This decisions placed the judgment book in the category as part of the record which gives constructive notice and was contra to the well accepted practice in North Dakota. No abstracter certifies to entered judgments and no attorney has ever requested or made a search of entered judgments as a general practice.

Lis Pendens statutes definitely provided that no pending action would be notice unless a lis pendens was recorded as provided by the statute, however, the Court limited that statute to pending actions only, stating they had no relation to the matter after judgment was entered.

To avoid the necessity of time consuming and expensive searches for entered judgments and to change the law as found by the Supreme Court, the Committee recommends that the Statutes be amended to provide: "that entry of any judgment affecting the title to or possession of real property shall not be notice of its contents or constructive notice of such judgment to a subsequent bona fide purchaser or encumbrancer nor to a privy of any party to such judgment who is otherwise a subsequent purchaser or encumbrancer in good faith, and for a valuable consideration, until an authenticated copy of such judgment be recorded as provided in Chapter 47-19, NDRC 1943;" and that a statute be enacted to remove the notice provided by judgments previously entered until an authenticated copy be recorded.

E. RECORDING REQUIREMENTS & CONSTRUCTIVE NOTICE

Statutes of this state prescribe definitely what instruments may be recorded and what they must contain to entitle them to record. The most requisite provision of the statute is that execution must

be established by acknowledgement, and then there are others pertaining to post office addresses, due dates, interest rates, and when and where payable, etc. Our Court has consistently stated that in order to be entitled to record the instrument must meet all the statutory requirements, and in failing to do this loses all the benefits of the recording acts.

The main reason for searching the record — either directly or by abstract of title — is to determine the marketability of record of a certain title. If any necessary instrument in the chain of title has an apparent defect, which makes it not entitled to record, the actual recording of it is of no avail, and it renders the title unmarketable of record. The basis for this is that only instruments "entitled to record" are admissible into evidence in the courts without further proof, and only when the record is composed of such evidence to prove prima facie title is it sufficient to constitute marketability of record.

The *Messersmith v Smith*, 60 NW 2d 276, case extended that reasoning to a latent defect in an acknowledgment, holding that if in fact the grantor failed to appear before the notary public the instrument was not entitled to record and if recorded gained no benefit from the recording laws, notwithstanding the fact that the certificate of acknowledgment was valid on its face.

The *Northwestern Improvement Co. v Morris*, 74 NW 2d 497, case, in holding for a subsequent bona fide purchaser as against a prior grantor, where the register of deeds failed to include a mineral "exception or reservation" when recording the instrument, implied that possibly in other cases or errors in recording the loss of title would be placed on the subsequent bona fide purchaser.

Your Committee is of the opinion that more certainty and stability should be given to the record — as it actually appears — notwithstanding the fact that there might be some patent or latent defects in fulfilling the recording requirements insofar as entitling it to record, so that subsequent bona fide purchasers could rely upon the record with more security.

To accomplish this purpose your Committee recommends:

1. That Section 47-1908 NDRC 1943 be amended to read:

"An instrument is deemed to be recorded when it is deposited with and accepted by the proper officer for record, if such instrument is subsequently recorded."

2. That Section 47-1919, NDRC 1943, be amended to read:

"The record of any instrument shall be conclusive evidence of the contents of the instrument so recorded, unless an action be brought for the reformation of such record within one year after the instrument was deposited with and accepted by the proper officer for record."

and further that,

"The record of all instruments deposited with and accepted by the proper officer prior to the effective date of this act shall be conclusive evidence of the contents of the instrument so recorded, unless an action be brought for the reformation of such record within one year after the effective date of this act."

3. That Section 47-1945 NDRC 1943, be amended to read:
"The depositing with and the accepting of an instrument by the proper officer shall be constructive notice of the execution of such instrument to all purchasers and encumbrancers subsequent to such depositing and accepting, if such instrument is subsequently recorded. All instruments entitled to record, the record of all instruments, a duly certified copy of such record, a copy of such recorded instrument, shall be admissible in evidence in all the courts of this state and may be read in evidence in all courts of this state without further proof."
4. That Section 47-1941, NDRC 1943, be amended to read:
"Every conveyance of real estate not recorded as provided in Section 47-1907, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release, of the form in common use or otherwise, first is deposited with and accepted by the proper officer for record and subsequently recorded, or against an attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name title to such land appears of record, prior to the recording of such conveyance. The fact that such first deposited, accepted, and recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed or quitclaim and release aforesaid, shall not affect the question of good faith of the subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof."

It will be noted that the recommended amendments would give the benefit of the recording laws to all instruments actually recorded, notwithstanding some patent or latent recording requirement defect. The amendments go to notice, contents, execution and first recording, and make the record conclusive evidence of the contents and admissible in evidence notwithstanding some recording requirement defect.

Respectfully submitted,
H. G. RUEMMELE

Mr. President, I move the adoption of the report and submission of the legislative enactments to the Legislative Committee.

MR. JOHN HJELLUM: May I inquire of the Committee Chairman, under the reform and recording statute, what would be the affect of the reception and recording of a foreign deed? Would that become valid in the hands of the subsequent purchaser as against the owner?

MR. H. G. RUEMMELE: After one year.

MR. JOHN HJELLUM: Let's say we have a person who is out of the country traveling in Europe or somewhere and during the time he is absent from the country somebody recorded it. Do you think he should lose his property to a subsequent purchaser? Isn't that what the results would be?

MR. H. G. RUEMMELE: Well, as a matter of the lessor of two evils, suppose he stayed out of the country twenty years.

MR. JOHN HJELLUM: Well, suppose the fellow lives here, is it customary to go up to the record to see if anyone conveyed the property away? What would prompt you to go to look if you don't know that someone signed your name to the property? It seems to me to be fair as far as forged instruments are concerned, but he shouldn't have to run to the record every year to see if he has it.

MR. H. G. RUEMMELE: Well, as a practical matter it wouldn't be too difficult in that particular case because you have non-regular items that would take care of it. We are talking merely now about record title. Record title is not good title.

MR. PAUL CAMPBELL: Mr. Chairman, isn't a forged deed void at the start? Why should he attempt to make it valid by some recording process?

MR. H. G. RUEMMELE: Well, the effort is not to make the deed valid, the effort is to make the record valid.

MR. PAUL CAMPBELL: Well, the deed remains void. I don't see the purpose of the act. It has no effect.

MR. H. G. RUEMMELE: Well, I could expound on my thinking for an hour on the subject. It's one of those things that I could discuss with you at a sectional meeting. But the whole point behind it is that the recording system that is now constituted in North Dakota is the most unreliable type ever enacted. The Supreme Court has told us that on a number of cases. Now, maybe we have gone too far and may have to come back a little bit, but I think the fundamental purpose behind the recommendation is very good.

MR. LYNN SHERMAN: My understanding is this: Our whole system of real property is apparently based upon the reporting system and upon the theory and velocity that we can rely upon the record.

MR. T. KELLOGG: Well, let's take the other case. Say the acknowledgment is forged, it appears to be regular on the face but the fellow never acknowledged the instrument, then under your theory, as I understand it, in one year the actual owner of the property would have no offense against the subsequent purchaser, nor would he under a forged deed. I feel that such legislature would permit people to be deprived of their property by forgery. As I understand it, that is the effect of the change. When the proper time comes I would like to offer an amendment to that proposed —

PRESIDENT TENNESON: We might move along here a little faster if we take these up in sections. Some, I am sure, are not controversial, the first recommendation is that we change title standard 1.022, relating to acknowledgments where a notarial seal is not required in a foreign state and that is the change in the existing standard and the second suggestion is that we adopt a new standard in regard to approving death from certified copies. Are there any discussion on these two?

MR. MILTON K. HIGGINS: I move we adopt them.

MR. E. E. PALMER: I will second that.

(Question put and motion carried.)

PRESIDENT TENNESON: Now, I will call for comments on the proposed changes in the North Dakota State Tax Law creating a statutory limitation of ten years. Are there any comments on that? In view of this Committee that there is no limitation in the present law. The next change suggested is a reduction in the time limit in the marketable title's act, act is 31 years, and the recommendation is that it be reduced to 20 years. Any comment on that suggestion?

MR. C. DUFFY: Mr. President, it strikes me that that might be going a little too far also. Isn't there now an exception in the case of minors and incompetents and so on, as against your 20-year statute what would happen to those?

MR. H. G. RUEMMELE: Well, there is an exception which grows out of the Iowa situation where the Court did interpret their act to cut-off —

MR. C. DUFFY: I don't think we ought to cut it off in direction— just cut it off and make the title good.

MR. H. G. RUEMMELE: I think the purpose and scope of the Marketable Record Title Act was a little bit misconstrued by many people. Marketable Record Titles that I have seen are market which says you can do this, and then it goes on and says that certain things are barred.

PRESIDENT TENNESON: In other words, an attorney can write an opinion stating that the title is marketable, when, in fact, it may not be.

MR. H. G. RUEMMELE: That's right.

PRESIDENT TENNESON: But he can only go from the record and with the benefit of these title standards.

MR. H. G. RUEMMELE: In this marketable record it says that they can show possession of record for 20 years then he has a marketable record title.

PRESIDENT TENNESON: Which may not be good in fact. Any further discussion on that particular recommendation?

(No response.)

PRESIDENT TENNESON: The next deals with Judgments and provides that these judgments that he discussed must be of record before they are noticed.

JUDGE O. B. BURTNESS: Mr. Chairman, I just have one question. I notice that they require an authenticated copy.

PRESIDENT TENNESON: I observed the same and wondered why it was there. Did you have any reason for preferring an authenticated copy over a certified copy?

MR. H. G. RUEMMELE: I don't know of any now.

MR. MILTON K. HIGGINS: It seems to me that doesn't take into consideration the situation where there is a notice filed of Lis Pendens and then there is a determination. Now, it seems to me the whole purpose of filing of the Lis Pendens is to serve notice on the general public that here is the action pending and you have got to go and find out whether that was determined and what the determination was, and it seems to me unless some exception is made to it you are wiping out the effect of lis pendens.

MR. H. G. RUEMMELE: Well, the Supreme Court told you that *Lis Pendens* has no effect after judgment.

MR. MILTON K. HIGGINS: Well, *Lis Pendens* is only a temporary proposition.

MR. H. G. RUEMMELE: After judgment *Lis Pendens* has served its purpose.

PRESIDENT TENNESON: Any further comment on that particular section?

MR. E. E. PALMER: Well, are they going to change that to authenticated instead of certified?

PRESIDENT TENNESON: Well, that's a minor change and I am sure the Committee would make it.

The next is with recording requirements and constructive notice.

MR. T. KELLOGG: Mr. Chairman, I would like to suggest that the Committee take that back for further study in view of the implications that might follow and I'll place that as a motion and I know that the Committee has given a lot of thought to it — serious thought — and I also know that their desire is to strengthen the recording act, but in view of the dangers that we might be running into, the Committee ought to give it further study.

PRESIDENT TENNESON: If you would hold your motion, if satisfactory with Mr. Ruemmele, the motion would be to improve these changes with the exception of the one you have referred to.

MR. L. OEHLERT: Mr. President, I was just wondering if we couldn't possibly amend that particular section and exclude forgery.

MR. T. KELLOGG: I wonder if that would cover everything. I think the whole thing ought to be studied further.

PRESIDENT TENNESON: As I understand it, both Mr. Ruemmele and the Second are willing to delete that from the recommendation report and that the question of forged deeds be eliminated from the proposed change in the statute.

JUDGE O. B. BURTNESS: May I make this suggestion, that that particular feature of the report be referred to the present Committee and also the Legislative Committee for consideration. I think there is some valuable suggestions in it. If we delete it, there is nothing left. I will make that as a motion.

PRESIDENT TENNESON: There is a motion before us and the motion is that we approve the suggested changes in the statute except that relating to forged deed and, so far as that is concerned it be referred to the Committee for further study and consideration. Any further comments or questions?

(Question put and motion carried)

PRESIDENT TENNESON: I might say that this is one of the real hard working committees of the Association. They have done a marvelous job in preparing these Title Standards and keeping them up to date and keeping up with the changes in the recording statute.

I want to commend Mr. Ruemmele and his Committee for a very excellent job.

We have the report of another very hard-working Committee and that is the Committee on Probate Forms & Practice of which Mr. Bloedau is Chairman. That Committee has met several times this year and has prepared, and has here today, some new suggestions on forms. You may remember a year ago we approved the forms for probate practice and now they have carried that on to guardianships, summary administrations and those forms are here and checked by the Committee and approved by them and they will be submitted to you for approval of the Association. If you do approve them, an effort will be made to have the various legal printers put those forms in use and ask the county judges and clerks to use them. I am very happy to call on Mr. Bloedau.

Committee on Probate Forms

For several years this Committee has been working on the problem of revising probate forms, mainly to achieve uniformity throughout the various counties, and also to simplify and improve the forms commonly in use. Thus, whenever possible, we have tried to make the same forms suitable for both administrators and executors, and suitable for both minors and incompetents, to reduce the number of blanks to be filled in, etc., thereby, we not only decrease the length of the individual forms, but also decrease the total number of forms required. Last year the committee completed revision of sixty forms, and submitted them to the Bar Association meeting where they were approved. Since then the Committee has revised the remaining forms, relative to Guardianship matters, Heirship proceedings, and Summary Probate, being thirty-six in number. A Committee meeting was held in Fargo on the 27th and 28th of April, 1956, and the Committee since then has completed its final work on these additional forms. Several sets of these latest forms are in the custody of the Executive Director, available for examination by the other members of the Bar, and if approved at this meeting, they will also be submitted to the printing companies. The forms approved last year have been in the hands of the publishing companies for several months, and it is believed that shortly after this meeting, they will be available both to the members of the Bar and to the County Courts, who will be notified promptly. Some delay is to be expected, since not only the publishing houses, but the County Courts are inclined to use the existing books and forms, before turning to the revised editions. However, it is believed that with the co-operation of the Bar, and particularly if the County Courts will insist on stocking only small amounts of forms until the new ones are available, their general adoption and use will be hastened.

For the time being, as soon as this Association approves the

thirty-six forms revised this year, they will also be submitted to the printing houses and should be available to purchasers before 1957.

Respectfully submitted,
HON. P. M. PAULSEN
HON. B. F. WHIPPLE
HON. CLARENCE G. MEAD
HON. F. G. KNEELAND
FORREST E. HENDERSON
O. S. GUNDERSON
MILTON K. HIGGINS
JOHN A. STORMAN
NORMAN G. TENNESON
R. J. BLOEDAU, Chairman

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

MR. TENNESON: And the approval of the forms?

MR. BLOEDAU: Yes.

PRESIDENT TENNESON: I know you haven't had an opportunity to examine these forms and you are going to have to pretty much take them on faith unless some of you want to defer action on the motion until you have had a chance to examine them. I have met with the Committee on at least one occasion and I know that they have done a very thorough job and I think the forms are a vast improvement on those we have at the present time. But, obviously, you haven't seen them and if you want to rely on the ability of the Committee it's up to you to decide.

MR. MILTON K. HIGGINS: Mr. President, I think in considering this we should remember that there is probably no set of legal forms in more horrible shape, has more unnecessary diversity than the ones that are now being used at present.

MR. PATRICK T. MILLOY: I have no hesitancy to approve the work of the Committee on Probate Forms so I think the question will be in order.

(Question put and motion carried.)

PRESIDENT TENNESON: Thank You, Mr. Bloedau, for a job well done.

The next report will be that of the Committee of the American Bar Membership of which Mr. Vernon M. Johnson is Chairman. As you know, Mr. Johnson is the delegate of this Association to the American Bar Association.

The American Bar Membership Committee

This has been a year of great activity for our Committee. The A. B. A. 50,000 new member campaign was initiated and completed. Our North Dakota quota was 151. I am happy to report that we have reached a total of 169, or 112 per cent of our quota. We are one of 17 states that met or exceeded their quota.

As of June 28, the national summary of new A.B.A. members was 32,364. Of this total, 13,279 were credited to the Junior Bar campaign representing 96.3 of their quota. In our State, we received excellent cooperation from the Junior Bar section under the direction of E. T. Pearson and they exceeded their quota.

There is one phase of this past campaign which our Committee would recommend as an annual activity. Frank Jestrab appeared before the graduating class of the law school and did an excellent job of selling the merits of membership in the A.B.A. As a direct result, after the newly admitted members of the Bar were sworn in, 21 of them signed up for membership in the A.B.A.

When the A.B.A. campaign was announced, we recognized that our existing Committee was inadequate to cope with the state-wide campaign which would be necessary. We held a meeting of our Committee at Grand Forks and set up a state-wide organization. We met with our Executive Director, Lynn Grimson, who has been appointed by the A. B. A. as its State Chairman to work with our State Bar Association. It was a great help to us that we could clear all of our reports through our Executive Director's Office.

The organization set up at Grand Forks was as follows:

1st Judicial District: Herbert G. Nilles, Chairman; John E. Rilling, Junior Bar Chairman; Carlton G. Nelson, Norman G. Tenneson, John S. Whittlesey, Myron H. Bright, Herman F. Wegner, Alan Foss, James E. Leahy, Roy A. Ployhar, L. T. Sproul, L. A. W. Stephan, Harold D. Shaft, Edward C. Gillig, Harold M. Hager, and Gordon Caldis.

2nd Judicial District: John C. Traynor, Chairman; John C. McClintock, Junior Bar Chairman; Paul L. Agneberg, Thomas D. Butler, Robert Q. Price, Robert L. Burke, Melvin Christianson, Asmunder S. Benson, and Joseph C. McIntee.

3rd Judicial District: Vernon M. Johnson, Chairman; Robert Lundberg, Junior Bar Chairman; John A. Zuger, Edgar P. Mattson, Thomas A. Roney, Linn Sherman, John A. Williams, J. O. Thorson, Dudley W. Butts, and John J. Tebelius.

5th Judicial District: Frank F. Jestrab, Chairman; Herbert L. Meschke, Junior Bar Chairman; G. S. Woledge, K. G. Pringle, Hon. Eugene A. Burdick, and Jonathan C. Eaton, Jr.

Mr. Grimson, Mr. Pearson, our District Chairman and all of the Committees gave us excellent help and co-operation. It would be difficult and unfair to single out any particular individual or group for special commendation.

In summary, it is the opinion of our Committee that the 50,000 new member campaign has been a success nationally and in our State. We feel that it has had a wholesome and stimulating effect on the entire Bar. We are happy and proud to have had a part in it.

Respectfully Submitted,

VERNON M. JOHNSON, Chairman

C. D. COOLEY, Mandan

CHARLES S. EGO, Lisbon

FRANK F. JESTRAB, Williston

CARLTON G. NELSON, Grand Forks

HERBERT G. NILLES, Fargo

WM. L. PAULSON, Valley City

ELVER T. PEARSON, Bismarck

G. S. WOOLEGE, Minot

I move the adoption of the report.

PRESIDENT TENNESON: Is there a second to the motion?

MR. AUGUST DOERR: I will second it.

(Question put and motion carried.)

PRESIDENT TENNESON: Do you have another matter, Mr. Johnson?

MR. VERNON M. JOHNSON: At the forthcoming meeting in Dallas of the American Bar Association the House of Delegates will take final action on a proposal that I think is of interest to all of you, and I think it's also proper that the matter be presented to you. Now, whether you want to take action as an Association at this time, or whether you want to defer action in order that you may think about it, I do feel nevertheless that action should be taken sometime during this convention as it would be helpful to the delegates from North Dakota and the house delegates as to how they should vote on this proposal. And it's the proposal to establish the section of negligence and Workmen's Compensation Law. Now, it's probably a first blush that doesn't mean too much to you, but the A.B.A. has 17 sections on permanent committees and this is an attempt to establish another committee and it has created a great deal of interest and, as a member of the house of delegates, I have received a great many communications, both pro and con, and the matter requires a two-thirds vote in the house of delegates and the creation of this committee has been approved by the Board of Governors, which is the required procedure; that is, the Board of Governors passes on the various proposals that come before the house of delegates and takes official action one way or another, and on this particular proposal they have taken action, and I might say just to give you some background, that the opposition to the creation of this committee has come principally from the insurance section and the gist of their opposition is that the matters that would be covered in this new section are now taken care of by the insurance section, and, of course, there is also in the comments that have been filed against it, comments directed at NACCA, and an insistence that this particular step is instituted by NACCA. There are some 648 members that have signed the petition to create this new section and I will just read briefly the one paragraph here that touches on it as far as the action of the Board of Governors:

"Notice is hereby given by the Board of Governors in accordance with Article 9, Section 2 of the By-Laws of the Association that there has been filed with the Secretary a proposal to establish the section of the Association on Negligence and Workmen's Compensation Law and that at its meeting on February 7, 1956, the Board recommended to the house of delegates that such a section be established. The statement of the needs for the proposed new section was presented by Paul W. Optigraph of Oklahoma representing 462 members of the Association and petition therefor and stated that they would enroll as members and pay the section dues of \$5.00 per year. Attention was directed to the predominance of personal injury cases on our court dockets and the fact that there are over two and a half million cases in industrial accidents each

year involving Workmen's Compensation and employer's liability. It was urged that there was a great need within the organization of the Association for a form of pre-exchange ideas on these subjects, a need which is not presently being filled by the section of insurance law, which although concerns the subject, represents primarily the point of view of the defendant or the employer. It was pointed out, also, that the establishment of such a section would make membership in the Association more attracted to the thousands of lawyers engaged in this type of practice and would provide the opportunity to exercise supervision over them. There was also presented to the Board the recommendation of the committee on scope and correlation of work that the proposed section be established, that the recommendation calling attention to the fact that the Association's failure to have such a section at the present time is responsible for the refusal of many lawyers specializing in the handling of plaintiff's cases to support the work of the Association. It was the opinion of the committee that substantial interest has been shown in the establishment of the section and that it will serve to increase the Association membership."

Now, whether I should bring it to a head by moving the adoption or just have a general discussion and motion from the floor, I —

PRESIDENT TENNESON: Do you have any recommendations, Chairman of the Committee?

MR. VERNON M. JOHNSON: Well, I am only one of the two delegates from North Dakota and I haven't discussed this with Mr. Nilles, but in view of the material that I have read it would be my recommendation that we approve the establishment of this committee and I so move. I would go on record as favoring the establishment of this new section.

PRESIDENT TENNESON: All right, it's now before you. Is there any discussion?

MR. J. F. X. CONMY: Did I understand you to say that that was a committee on Negligence and Workmen's Compensation Law?

MR. VERNON M. JOHNSON: It's to establish a new section on Negligence and Workmen's Compensation Law.

MR. J. F. X. CONMY: I am ignorant as to why those particular things should be combined in a section. It is my impression that our Workmen's Compensation Law doesn't deal primarily in the field of negligence. It seems to me it's a contradiction of terms as far as North Dakota is concerned. I was just wondering why those two fields should be in a section.

PRESIDENT TENNESON: In an attempt to answer your question, in most states they do not have a monopoly such as we have in North Dakota, and attorneys do represent claimants. I surmise that may be the reason why they want it here.

MR. VERNON M. JOHNSON: These two fields of law are the primary reason why NACCA came into being, and I think it's a feeling at least expressed in quite a bit of literature that I have read, that it would be much better if we were all in one group and that if they want this separate section that they have a separate

section. It is the feeling of these men that went outside of our Association and created NACCA that the insurance section doesn't adequately provide for the plaintiff or the end of that particular field of law.

MR. L. H. OEHLERT: Mr. Chairman, I just want to comment on that. Frankly, my mind is open on that subject. I question Mr. Johnson whether any of us are properly informed on whether-or-not that section is necessary to the American Bar Association. I thought at first it was in line with what you have generally stated. I have heard some rumbling in the background. I am a member of the insurance section, chairman of its membership drive in the state, and we also went over a hundred per cent in the increased membership in the insurance section, and that will be reported at the American Bar Association. I am a little dubious right at this point whether we should go on record as favoring that, Mr. Johnson, and in lieu thereof I make a motion that the matter be laid on the table for the time being, perhaps sometime later in this Convention or meeting we would be more disposed to take it up. I think it would be better to be settled by the House of Delegates at the American Bar after you gentlemen get down there to Dallas and then make up your mind, and I am perfectly willing to abide by the decision of the House of Delegates. That is the point of my remarks at this time.

PRESIDENT TENNESON: Is there a second to Mr. Oehlert's motion to table it for the time being.

MR. E. E. PALMER: I will second it.

MR. VERNON M. JOHNSON: Well, the only purpose I had in bringing the matter before this body is that it's going to be voted on at Dallas. I think it's a matter that concerns all of you and we have one of the highest percentages of A. B. A. members of any state in the Union. Now, recently we conducted a poll among you on this matter of Social Security and I think that it was helpful and it was an effort on my part to try to make any vote that we cast as representative of the thinking of this Bar as possible. I have been consulted by various members of the North Dakota Bar, and whether-or-not this motion takes a two-thirds vote to bring it off the table, I don't know, but I would, rather than have it completely tossed out of this Convention, I am wondering whether-or-not, after thinking it over a day or two and discussing it among yourselves, and the literature that I have is available to anyone, whether-or-not you would want to exercise a right which I think you do have of taking a stand on this thing and I know it would be helpful to us. If you don't want to, why we will vote it the way we see it and the way it's presented; but that was the only reason in presenting it and, of course, on the basis of Mr. Oehlert's motion, if it isn't moved again on business session of our Convention no action will be taken by the convention.

MR. L. H. OEHLERT: Frankly, at one time I have expressed my opposition to it to the other member of the House of Delegates, Mr. Nilles. Right at this instant, my mind is a little open still. I don't know enough about it. I understand there are some undercurrents, Mr. Johnson, that you may run into at Dallas. I am perfectly willing

to rely upon the good judgment of our two fine delegates from this State, but I think it would be better to wait to make up your mind when you get there because you may run into something that you are not aware of now.

PRESIDENT TENNESON: Would there be any objection, Mr. Oehlert, to withdrawing your motion and we make it a special order for business, say Friday or Saturday morning and give the Bar a chance to think it over?

MR. L. H. OEHLERT: Well, my motion is merely to lay it on the table, and as I understand the Rules of Order, it may be taken up at some later time in this Convention. I think it better to have it disposed of on that basis.

PRESIDENT TENNESON: Are there any further comments on Mr. Oehlert's substitute motion?

(Question put and motion denied.)

JUDGE A. H. PORTER: Mr. President, I would make a motion that we take the matter up tomorrow morning.

PRESIDENT TENNESON: Yes, we will have a meeting tomorrow morning and also Saturday morning. You are making that as a substitute motion, I take it? Well, we are now on the proposition of voting on the motion made by Mr. Johnson, as I understand it.

JUDGE A. H. PORTER: I am out of order, Mr. President.

PRESIDENT TENNESON: Are you ready for the question? All in favor of approving the creation of this new section —

JUDGE O. B. BURTNESS: Mr. Chairman, I think a very few of the members are in a position to vote intelligently on a question of that sort. I know I am not. I wouldn't vote one way or the other. I do feel that this Organization is fortunate in having two splendid men who will have the opportunity of voting on it where the vote counts. I don't believe we should attempt to instruct them on any question on which we are not thoroughly familiar with, but with Mr. Nilles and Mr. Johnson, both very competent men, I don't think they need any instructions on the part of this group and I, for one, would be much better satisfied to leave their final vote in their discretion after they have heard all of the evidence and know far more about it than any member here does.

PRESIDENT TENNESON: Any further discussion on the motion?

MR. J. W. SHERMOEN: Mr. Chairman, I would just like to point out that in my own estimation that I can't see anything particularly complicated about this section. We are all familiar with the work of the sections of insurance, real estate, etc. This particular section would deal with problems connected with negligence cases, Negligence Law and Workmen's Compensation. It seems to me that the attorneys in a particular area are the ones that should decide, and I should think our delegates would like to be instructed like Mr. Johnson has indicated. Furthermore, I can see no reason in my own mind why such a committee or a section should be opposed at all. If there are sufficient attorneys in our Bar Association that will make it a going and profitable section of our American Bar

Association, I think as representatives of all the Bar Associations should have some section.

MR. VERNON M. JOHNSON: I withdraw my motion so that Judge Porter can make his motion that it be brought up tomorrow during the business session. Regardless if the Association goes on record at all, frankly, I think there should be discussion because I think it is one of the most controversial, and also one of the most important matters that will come before the House of Delegates and I think that it certainly is something that the men in this group can express themselves on.

PRESIDENT TENNESON: The motion will be withdrawn and there is no motion before the house.

JUDGE A. G. PORTER: I will make a motion that it be brought up at the business session tomorrow morning.

PRESIDENT TENNESON: Is there a second to that motion?

MR. JOHN A. STORMON: I will second that.

(Question put and motion carried.)

PRESIDENT TENNESON: I believe we have time for one more report this morning. The Committee on Memorials of which Judge Obert C. Teigen is Chairman. I understand that Mr. Louie Nostdal will give the report on behalf of the Committee.

In connection with the last Committee Report, there are some certificates of appreciation for the work of the lawyers of North Dakota in enlisting new members in the American Bar Association. Mr. Grimson has them here and he would like to present them at this time.

MR. LYNN G. GRIMSON: This is a certificate signed by the President of the American Bar Association of appreciation of those chairmen workers in the various districts and counties who exceeded quota. This list is not complete. It was complete as of a month ago, so if I miss somebody in calling the names off that has reached their quota since that date, don't be too hurt. You will get your certificate later.

(Certificate's of Appreciation were issued to those chairmen and workers in the various counties and districts who had exceeded quota.)

MR. L. R. NOSTDAL: Mr. President, Members of the Bar. Judge Teigen is Chairman of this Committee and he wrote me and asked if I wouldn't read the report because he was uncertain if he could be present, so for that reason I will now present the

Committee on Memorials

Your Committee on Memorials of this Association has to report that since our last annual session Memorials have been prepared for seventeen members of the bench and bar of North Dakota. These memorials have been prepared for inclusion in the North Dakota Law Review (See page 284).

A list of the departed members of our profession and their North Dakota addresses are as follows:

Carlton B. Bach, _____ Minot, North Dakota

Adrian E. Buttz,	Leeds, North Dakota
Russell D. Chase,	Jamestown, North Dakota
Van Herbert Crane,	Mott, North Dakota
Percy Crewe,	Williston, North Dakota
Carroll E. Day,	Grand Forks, North Dakota
B. A. Dickinson,	Minot, North Dakota
Edward O. Haraldson,	Lansford, North Dakota
Earl Reed,	Jamestown, North Dakota
Hugo P. Remington,	Lisbon, North Dakota
Arthur R. Smytne,	Devils Lake, North Dakota
Ellis G. Snowfield,	Langdon, North Dakota
Karl Henry Stoudt,	Minot, North Dakota
Edwin James Taylor,	Bismarck, North Dakota
T. H. H. Thoresen,	Bismarck, North Dakota
Otto Thress,	Dickinson, North Dakota
T. A. Toner,	Grand Forks, North Dakota

Respectfully Submitted,
Committee on Memorials

OBERT C. TEIGEN

C. W. BURNHAM

J. F. X. CONMY

L. R. NOSTDAL

R. H. POINTS

OLAF M. THORSON

JOHN E. WILLIAMS

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

MR. E. E. PALMER: I would like to second that with the thought that the Bar stand in silence.

PRESIDENT TENNESON: I had that in mind.

(Question put and motion carried.)

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

PRESIDENT TENNESON: We will stand adjourned until tomorrow morning at 9:30.

MORNING SESSION, FRIDAY, AUGUST 10, 1956

At 9:30 a.m., Friday, August 10, 1956, the meeting was called to order, with President Tenneson presiding.

PRESIDENT TENNESON: The first report we have this morning is the Committee on Constitution Awards of which John A. Amundson of Bowman is Chairman. I understand that Mr. Amundson will be unable to be here so I will ask the Executive Director to read the report. I might say that Mr. Amundson took over after the resignation of the chairman of that Committee without any previous experience in the work of the Committee, and he has done an excellent job during the past year operating under the difficulties that he did.

Constitution Award Committee

Dear President Tenneson:

"I am pleased to report that 218 high schools throughout the State of North Dakota participated in the Constitution Awards pro-

gram of the State Bar Association of North Dakota.

"Presentations of the certificates and the keys were made during the months of April, May and June of this year. All presentations, with the exception of five, were made by members of the State Bar Association.

"Literature and placards were sent to 379 high schools. Numerous letters were received by the committee requesting assistance and advice on the methods and procedures of selecting the students for the awards. Many of the superintendents expressed their reluctance to select the students in the same manner in which they had done so in the past.

"It is my recommendation that the Constitution Awards Committee establish a flexible system of standards by which the schools can select the student most worthy of the award, if they so desire to do so.

"An order for two hundred additional keys has been sent to Josten's Company, Owatonna, Minn., so that the Bar Association's policy of having an advance supply of the keys on hand can be continued.

"The following expenses were incurred by the Committee:

Express Charges, Mandan, N. Dak. to Bowman, N. D.	\$ 2.19
Printing of envelopes, letterheads, placards, certificates and form letters	101.10
Postage	37.36
Secretarial	93.43
Telephone	50.82

Total	\$284.90
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"On behalf of the Constitution Awards Committee, I wish to express my sincere appreciation for the interest and cooperation of the members of the Bar Association exhibited in the presentation of the Awards.

Respectfully submitted,
JOHN A. AMUNDSON,
Chairman"

PRESIDENT TENNESON: Do I hear a motion that the report be received and filed?

(Motion made and seconded.)

(Question put and motion carried.)

PRESIDENT TENNESON: We will next have the report of the Committee on Criminal Law, of which Ray R. Friederich is Chairman.

MR. RAY R. FRIEDRICH: Members of the Bar. The Criminal Law Committee, as I understand, is one of the more recent Committees of our Association. I believe this is the first report in detail to be given to the Bar. Fortunately, some of the members of the Committee were prosecutors, others were ardent defense attorneys, and so I hope as a result that neither of them went overboard in particular preference to their side of the case. Following is the Report:

Criminal Law Committee

Your committee on criminal law met in the Court Rooms in the Courthouse at Carrington, North Dakota, on June 2, 1956. The reports of previous committees were examined and the recommendations therein contained noted by the present committee. A rather sizable number of issues were considered, but only those upon which a definite agreement could be reached by the committee are related here. Following is a list of the recommendations of this committee:

1. As was reported in the committee report of 1955, it is again urged that the "Negligent Homicide" or "Manslaughter by Automobile" statute introduced in the House of Representatives at the 34th Legislative Assembly by re-introduced at the next legislature, as a substitute for the present manslaughter statute to be used in those instances where death results from an automobile accident. It is believed that the present manslaughter statute which is resorted to in death by automobile cases, is outmoded, and particularly inappropriate for modern use. The legislation introduced in the House of Representatives at the 34th Legislative Assembly appeared to the committee to be appropriate, and it is suggested that such a measure again receive the support of the Bar Association.

2. The committee urges the repeal of Subsection 3 of Section 12 of Chapter 253 of the 1955 Session Laws (Compulsory Reporting of Automobile Accident Statute) which provides as follows:

"No reports or information mentioned in this section shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the commissioner shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the commissioner in compliance with the law."

The section appears to serve no useful purpose so far as the investigation of automobile accident cases is concerned, and should therefore, be repealed, and if literally interpreted virtually destroys the value of an official investigation by an officer for purposes of litigation.

3. The committee urges the adoption of an act providing for the depositing of a chauffeur's or operator's license with the officer demanding bail, in lieu of any other security required for appearance in court for violation of the motor vehicle laws, in accordance with Chapter 101 of the Indiana Law presently in force in that state which reads in substance as follows:

CHAPTER 101

(H. 47. Approved March 1, 1951)

AN ACT providing for the deposit of chauffeur's or operator's licenses with officers demanding bail, in lieu of any other security required for appearance in court for violation of the motor vehicle laws.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE
STATE OF INDIANA:

SECTION 1. Whenever any person lawfully possessed of a chauffeur's or operator's license theretofore issued to him by the Bureau of Motor Vehicles shall be arrested and charged with a violation of any section of either the Acts of 1937, Chapter 71, known as the Uniform Operator's and Chauffeur's License Act; the Acts of 1939, Chapter 48, known as the Uniform Act Regulating Traffic on Highways; and the Acts of 1945, Chapter 304, being an act entitled "An Act concerning motor vehicles, trailers and semi-trailers, concerning the ownership thereof, providing for the registration and licensing thereof, providing for the licensing of persons operating motor vehicles, creating a bureau of motor vehicles, defining its authority, powers and duties, defining penal offenses and fixing penalties, and repealing all laws in conflict and declaring an emergency," approved March 7, 1945, or any acts amendatory of or supplemental to said acts, he shall have the option of depositing his chauffeur's or operator's license with the officer or court demanding bail in lieu of any other security required for his appearance in any court to answer said charge; Provided, that this option shall not extend to nor shall this act be applicable to cases of arrest for violations of section 52 of the above-mentioned Acts of 1939 nor to sections 16, 17 or 18 of the above-mentioned Acts of 1945, nor to any acts amendatory of such sections of said acts.

SECTION 2. Whenever any person as described in section 1 hereof deposits his chauffeur's or operator's license as provided in section 1 of this act, either the officer or the court demanding bail as hereinbefore described, shall issue said person a receipt for said license, and thereafter said person shall be permitted to operate a motor vehicle upon the public highways of the state during the pendency of the case in which the license was deposited.

The committee suggests, however, that this provision apply only in those violations where the penalty does not exceed \$100 fine or 30 days in the county jail or both. In other words, all instances where the penalty is more than 30 days in the county jail or \$100 fine or both, the regular bail procedure presently in force must be followed.

4. The committee came to the conclusion that the present justice court in use in many counties throughout the State of North Dakota is an unsatisfactory judicial system, and that a more suitable court arrangement should be established providing for judges who have some legal training, and who are more qualified to interpret the law and preside in criminal and civil cases.

5. The committee further urges a modification of the present statute of limitations providing for an extension to six years the time in which an action may be brought for embezzlement of public funds by a public official. It is felt by the committee that the present time allotted for the institution of such actions is insufficient, and that perpetrators of embezzled public funds sometimes

escape prosecution because the present statute of limitations does not afford sufficient time in which to uncover the embezzlement or to make the necessary investigation to properly prosecute the offender.

6: The committee recommends the reduction of the present statute of limitations to one year on those crimes designated as misdemeanors where the penalty does not exceed \$100 or 30 days in the county jail or both. It would appear to your committee that any person who wishes to proceed, whether a private individual or an officer, in criminal cases providing for no greater penalty than as set out above, should do so within one year following the commission of the crime, otherwise prosecutors should not be expected or forced into the institution of an action where the time elapsed since the commission of the crime is more than one year.

7. Your committee would recommend a modification in the present law allowing an information or an indictment in criminal actions to conform to the federal practice in that more than one count be included in such information or indictment. Prosecutors are frequently limited in their choice of a basis for the criminal action, because under the present law it appears that only one count can be included in an information or an indictment. The federal practice is more flexible, and would conform more closely to the modern view of criminal procedure.

8. The committee urges that if no action be taken towards the abolition of justice courts, that the Bar Association promote the completion of a manual for justices of the peace. There appears to be a great need for a simple, yet detailed, manual that can be studied by justices of the peace outlining such jurisdiction of the justice court, the procedure in such court, and the manner in which a justice court trial should be conducted. Such a manual should contain samples of various completed forms commonly used in justice court. The promulgation of such a manual it is believed would facilitate the practice in Justice Court considerably and would be a valuable service by the Bar Association.

9. Your committee further recommends that the staff of the probation officers presently employed by the State in conjunction with the State Penitentiary be increased to include one probation officer for each judicial district in the State. This would facilitate the courts in obtaining information prior to sentencing of second offenders or parole violators, and would serve a great benefit to judges in properly appraising the offender being sentenced for rehabilitation purposes. The present two probation officers are entirely insufficient to serve the large area and the great number of violators under their control, and it prevents the maximum use of such officers to the court and to the law enforcement officer.

The above and foregoing recommendations in most instances would require a modification of the existing law, and it is, therefore, urged that the legislative committee of the Bar Association consider these recommendations, and that if acceptable or if deemed of merit, that proper steps be taken at the next legislative assembly.

bly, to modify the existing law in accordance with the recommendation of this committee.

Respectfully submitted,
 RALPH J. ERICKSTAD, Devils Lake
 T. E. GEORGE, Jamestown
 LYLE E. HUSEBY, Fargo
 JOHN F. LAQUA, Langdon
 JAMES E. LEO, Grand Forks
 RALPH B. MAXWELL, Fargo
 E. J. McILRAITH, Minot
 DUANE R. NEDRUD, Minot
 C. J. SCHAUSS, Mandan
 RAY R. FRIEDERICH, Rugby,
 Chairman

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

PRESIDENT TENNESON: A motion is made that this report be adopted.

MR. JAMES R. JUNGROTH: Mr. Chairman, I would just like to raise one question of the report. Under the present Law a person must make statements to the highway patrolman investigating an automobile accident. These statements cannot be used against him later. However, in your recommendations, you are going to force him to make his statements and then use them against him.

MR. RAY R. FRIEDERICH: I am not familiar with that Section of the Code well enough to definitely agree that the perpetrator is forced to answer the questions, and your objection is then, do I understand it, that —

MR. JAMES R. JUNGROTH: Well, under the present rules it states that these reports shall not later be used in the prosecution of criminal action, and that's the part that you wish to take out. In other words what are you going to do is force a person to be a witness against himself.

MR. RAY R. FRIEDERICH: Well, of course, the objection that we have to this particular section of the new statute is this, it arises from these kind of circumstances. If the offender is smart the thing for him to do when he becomes involved in a traffic violation that might result in prosecution is to make sure that he gives everything to the highway patrolman that he possibly can. He can even assist him in going over that report, also its details right down to include the minute details, then he is comparatively safe, because just as soon as the prosecutor tries to bring up something relating to the investigation the attorney for the defense asks whether this question or this information was obtained in the course of the investigation and then, of course, it is objected to and pretty soon as a prosecutor you find yourself without a case; and you can readily see why it is of a tremendous disadvantage to the prosecutor.

MR. JAMES R. JUNGROTH: Shouldn't you then add that he can make statements to the highway patrolman if he so desires?

MR. RAY R. FRIEDERICH: Yes, possibly the privilege should be granted to the offender that he need not answer, or that if he

might in any way incriminate himself he need not answer the question. Possibly that should be explained further.

JUDGE A. G. PORTER: Mr. President, is there a motion before the house?

PRESIDENT TENNESON: There is a motion to adopt the report. I think the interest of discussing these in some order we might take them up as they are listed in the report, and, fortunately, the first discussion was to the change, and as to the second we will take that up first the reporting of accidents. Do you wish to speak on that?

JUDGE A. G. PORTER: I want to make a substitute motion that the report be filed and referred to the Legislative Committee.

PRESIDENT TENNESON: I think the Committee would probably like to have the reaction of the Bar to the report, either approve or disapprove all or any part of it, so I think as long as we are on this subject we might complete the discussion. Is there any further comment?

JUDGE C. L. FOSTER: Mr. Chairman, I don't think there is any question under the present law which requires a fellow involved in an accident to make his report to a police officer or highway patrolman. In our district, of course, after the first case where we wouldn't let anything in, Judge Thom, who had been letting it in to let the patrolman tell what he saw and what he found himself, not information received from the party. As a matter of fact, the report on the whole thing should go much farther because the entire act of 1955 is a holy mess and nobody knows what it is and nobody knows where you can go on it, and it's a so-called uniform law and it is absolutely no good from the standpoint of enforcement and it's no good in the courts.

PRESIDENT TENNESON: Are you ready to vote on this particular suggested change. Is there a motion that we approve or disapprove the recommendation?

MR. L. R. NOSTDAL: Mr. Chairman, it seems to me there is a substitute motion to submit this report to the Legislative Committee and I think that would take precedence of the first motion and I will second that substitute motion. That's a lengthy report and we don't know enough about it.

PRESIDENT TENNESON: I think you are correct from the point of parliamentary procedure that there is a substitute motion, and you second that substitute motion. Is there any further discussion on the motion?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: I understand that some of you didn't understand the motion that we voted on. The motion was that we refer the report to the Legislative Committee. That motion has been seconded. We will vote on it again.

(Question put and motion carried.)

PRESIDENT TENNESON: I think at this time I will call for the report of the Auditing Committee. The affairs of the Association have been audited for the fiscal year ending June 30, 1956. Mem-

bers of the Auditing Committee are Mack Trayner as Chairman, H. A. Mackoff and Roy Ployhar. They have examined the report and are ready to make their recommendations to you.

Auditing Committee

MR. MACK TRAYER: Mr. President, Members of the Bar. Your Auditing Committee was handed the auditor's report prepared by Wilker & Hendrickson, certified public accountants. Now, your Committee is not presumptuous enough to doubt the correctness of this report. We presume that the certified public accountants have checked the books, records and vouchers and that their figures are correct and we make our report on that basis. The report shows the fiscal year to June 30, 1956, and by comparison the preceeding year to June 30, 1955. I know you will be interested in one thing and that shows that we have a balance on hand on June 30, 1956, of \$14,654.66, so we are solvent. The report shows, you will be interested also, that our receipts from county fees at \$2.50 per case this year is approximately the same; about \$15,000. From the State Bar Board we have received \$6,100 this year, compared with \$3,874 the previous year. That is because of the increase in our dues. We received from the University of North Dakota the sum of \$3,000 on account of the Law Review, so our receipts from that source \$3,043, compared with \$577 the previous year. Our total receipts for 1956 amount to \$26,000, compared with \$21,000 for 1955.

Now, as far as the expenses are concerned, your committee has not checked these expenses to find out whether they are correct or necessary or desireable for the Association, but we take the figures as given by the auditors. I call your attention to this fact, that previously for the last few years we have been spending more money than we have taken in. The present administration has reversed that course. Last year, we spent over \$5,000 more than our receipts. This year, we have spent \$4,700 less than our receipts. Also, the report shows that the expenses of the Executive Committee amount to approximately \$2,400 less than the previous year, but there was an item of \$2,000 which was spent a year ago for the North Dakota Legislative Research Committee that was not spent this year. So on the whole, the report as prepared by the auditors looks very favorable, and on behalf of the Committee I move that the report be accepted and filed as the report of the certified Public Accountants Wilker and Hendrickson.

PRESIDENT TENNESON: Is there a second to the motion?

MR. C. A. WALDRON: I will second it.

PRESIDENT TENNESON: Is there any discussion on the report?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: We have a special order of business this morning which was turned over from yesterday following a paramount of discussion. It was felt that the Bar wanted to think about this matter more than they had an opportunity to do yesterday, and that relates to whether-or-not we wish to recommend to the American Bar Association the establishment of a new section on Negligence and Workmen's Compensation Law. So, the matter is

now open for discussion.

(No response.)

PRESIDENT TENNESON: Do I hear a motion one way or the other.

MR. A. C. STRUTZ: Mr. President, I move that that matter be tabled.

PRESIDENT TENNESON: Is there a second to that motion that the matter be tabled?

JUDGE C. L. FOSTER: I will second.

PRESIDENT TENNESON: Is there any discussion on the motion?

(No response.)

(Question was put and matter was tabled.)

PRESIDENT TENNESON: The next committee to report will be the Committee of Juvenile Problems of which Judge Albert Lundberg is Chairman.

JUDGE ALBERT LUNDBERG: Mr. President and Members of the Bar:

Committee on Juvenile Problems

Your Committee on Juvenile Problems, consisting of 13 members scattered over the State, has found it impractical to have a committee meeting. Consultations have been had among smaller groups of the committee members and extensive correspondence has been carried on to determine the consensus of the Committee: Your Committee accordingly reports:

(1) The State admittedly has a juvenile problem and this is not peculiar to North Dakota but is country-wide, if not world-wide. While the problem involves juveniles in the first instance, it must be evident that the solving of the problem is primarily an adult responsibility, although the cooperation and understanding of the older groups of juveniles is necessary and desirable.

(2) The Committee is of the view that the youth of today is basically the same in this generation as it has been in the previous generations and that the increase in juvenile delinquency must be ascribed to the conditions under which present day youth lives. Some of these conditions are: — the increased number of temptations; the greater number of laws and regulations with which they come in contact; the vanishing of the small, well integrated neighborhoods of the past; the impact of the automobile on our ways of living as not only providing a whole new category of law violations but providing a means by which youth is carried away from contact with the family and community controls that still exist. The new "neighborhood" is so wide that it reaches far beyond the controls necessary and society has not as yet devised new and adequate controls to fit conditions.

(3) Your Committee is impressed by the fact that children adopt as their standard of conduct, not only the standards of their immediate family, but the standards of their community. It is accordingly the responsibility of the adults to consciously adopt and maintain standards of conduct that are safe for the growing generation and to develop adequate means of guidance and control. What

the necessary means of guidance and control should be must, to some degree, be determined by each community, although the similarity of problems makes the experience of one community valuable to another and the growing uniformity of standards throughout the country resulting from our improved means of communication means that certain standards and certain methods of control can and should be country-wide.

(4) Your Committee is satisfied that no single or simple remedy is adequate; that the problem is one of great complexity and that much well-meaning effort is at present wasted by assuming that some one remedy can be a solution. As delinquency is conduct that fails to measure up to the accepted standards of our society it is evident that this age, as every other age and every other society, must develop — and continue to develop — means of guidance and control if a set degree of conformity to such standards by juveniles is to be attained.

Your Committee recommends that the Members of the Bar by reason of their familiarity with the processes of law and the structure of society and the means of social control, should assume positions of leadership in each community as those logically best-fitted to deal with the problem and we recommend that individual members, as well as local and district bar associations, devote themselves to the solution of this pressing and well-recognized problem. We urge that individual lawyers, and their professional associates, give aid and encouragement to the agencies already engaged in providing guided and controlled recreation and training for juveniles and that members of the Bar cooperate with such agencies and with the juvenile courts in formulating community standards of conduct aiming at the elimination of practices and conditions which now contribute to the delinquency of present day youth. In a society that changes as rapidly as ours, traditional means of guidance and control have proven inadequate and new controls, constantly changing with conditions, must be developed.

Respectfully submitted,
HAROLD L. ANDERSON
ERWIN BRENDL
DAVID L. DREY
ALAN FOSS
JOHN O. GARAAS
GEORGE MARGULIES
DALE R. McMICHAEL
MILTON E. MOSKAU
FRANK E. SHAW
E. M. STERN
PETER C. TANGEN
ELLA J. VAN BERKOM
ALBERT LUNDBERG,
Chairman

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

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

JUDGE O. B. BURTNESS: I will second the motion.

PRESIDENT TENNESON: Is there any discussion?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: Another very active committee during this past year has been the Committee on Unauthorized Practice of Law, of which J. O. Thorson is Chairman. I will call for the report of that committee at this time.

MR. J. O. THORSON: Members of the North Dakota Bar Association:

Committee on Unauthorized Practice of Law

During the past year your committee on Unauthorized Practice of Law has held one committee meeting and has conducted four investigations, and cooperated with the Attorney General's Office in another. The results of one investigation is, at present, awaiting action by the Executive Committee of the State Bar Association. Another investigation is being made in cooperation with one of the State's Attorneys in the western part of the State. The State's Attorney in that county believes that he will file a complaint against the offending party. One case is solved by the death of a banker involved and the fourth investigation was not conclusive of a violation and no action has been taken.

The work of this committee is a continuing one.

It is a work that should be participated in by all the members of the Bar in the State. It is more a question of educating the public, and, in particular, those individuals who seem to think that they have a right to "dabble" in legal affairs of others. Legal action should be taken against individuals only, your committee believes, when there is a clear case of a violation and then only when other methods fail. Your committee has proceeded along those lines the past several years.

The committee has been working on a pamphlet titled, "Do you Know," for distribution among persons who are suspected of engaging in the unauthorized practice of law, or who might become so engaged in the future because of their position or business relation with the public. This pamphlet is now printed and is in the hands of the Executive Director of the Association. It is the plan of the committee that the pamphlet will be sent to banks, real estate offices, insurance firms, abstract companies, county offices and other offices where legal advice is often sought by laymen. After the pamphlet has been sent and placed in these various places enumerated, the members of the State Bar Association will be asked to report any known violators in their respective counties to the Office of the Executive Director of the State Bar Association who will then mail such persons a special letter with an enclosed copy of the pamphlet and asking their cooperation in discontinuing such practices. Should further checking thereafter show that the person so sent such a letter and pamphlet, was still continuing this unauthorized practice of law, the Executive Director would then mail

a report of the same to the Committee on Unauthorized Practice of Law, with authorization of the committee to make a personal call on the offender and at that time the committee member making the call would take up the seriousness of the offense personally with the layman involved. If the layman involved then agreed to discontinue the practice, the State Bar Association would then take no further action in the matter. However, should subsequent investigation show that such unauthorized practice of law was being continued by the layman in question, then either criminal or civil action would be taken against him by the State Bar Association of North Dakota.

The committee also wishes to emphasize the importance of the work of this committee in overcoming any poor working relationships that may exist between an individual practitioner and the people in his community, often caused by the unauthorized practice of law by an unlicensed person. Several instances can be cited where persons engaged in the unauthorized practice of law in a community poison the public against the rights and duties that an individual lawyer had in his community. If the community is willing to take the advice and counsel of such a layman in preference to a licensed attorney, the results are often disastrous to the individual and shakes the confidence of the public in the services of the legal profession in general, and in the value of their local practitioners specifically. The 'weeding out' of the unauthorized practitioner in the community can often, and does often, create a new and very beneficial atmosphere for both the practitioner and the public. We point this out as an indirect, but substantial benefit to be derived by the association, by the elimination of unauthorized practice in our communities.

As practitioners in our various communities, we are all aware of violations by laymen. This unauthorized practice of law cannot be overcome without the support of each lawyer in his respective community. Your committee and the State Bar Association officers have no knowledge of these unauthorized practices and are dependent upon the services of each attorney who knows of such, to report the same for the attention of the committee, or of the Executive Director as outlined herein, heretofore. With the publication and issuance of the pamphlet, the State Bar Association and its membership is in a very good position to strike an effective blow against those persons who continue to practice law in North Dakota, unlawfully. Those persons often do so in a very sly manner, and unbeknown to anyone but themselves and the person they are dealing with. However, each attorney runs across instances of it in his practice each year and if he wishes to dig into the matter a little, he can find out more instances. Those persons who make it a practice to engage in the unauthorized practice of law, have gotten by with their unauthorized practice for many years without being called to account by anyone and as a result many of them believe that they are entitled to engage in these unlawful acts, or they believe that their violation is a petit one and that the State Bar Association does not care about the matter. Your committee hopes that the pamphlet printed and that the procedure outlined herein, which was the same

procedure recommended in the annual report last year, will be beneficial and strike a crippling blow to the unauthorized practice of law in North Dakota in the year 1956-57.

Respectfully submitted:

CHARLES G. BANGERT
O. B. BENSON
C. W. BURNHAM, JR.
E. T. CONMY, JR.
WALTER C. KING
HERBERT A. MACKOFF
KERMIT S. PETERSON
HARRY M. SCHWENKE
J. O. THORSON, Chairman

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

PRESIDENT TENNESON: I might say before putting the motion that the pamphlet which the committee prepared was sent to the Section of Unauthorized Practice of Law of the American Bar Association and they were highly pleased with it. They said, "Here is a device that we haven't thought about and are very much interested in it," and they think it will be very effective in promoting the work of the American Bar Association. I think that our North Dakota Committee should be commended for having devised this pamphlet, "Do You Know?" which points out violations of laymen in the practice of law and we are very hopeful that its dissemination will be helpful in curbing unauthorized practice of law.

Is there a second to the motion?

MR. J. W. SHERMOEN: I will second the motion. (Question put and motion carried.)

PRESIDENT TENNESON: During the past year we have had requests from lawyers over the State that there were some omissions from our fee schedule which we adopted a year ago. I took the liberty of re-activating a committee and they have prepared and will present a supplemental fee schedule, supplementing the present schedule. The Chairman of that Committee is Mr. J. F. X. Conmy.

MR. J.F.X. CONMY: Mr. President, Members of the Bar Association:

Committee on Fee Schedules

Your acting president, Mr. Norman G. Tenneson, determined to reactivate our 1955 Committee on Fee Schedules inasmuch as there were many inquiries on matters not specifically covered by our 1955 Recommended Minimum Fee Schedule.

The inquiry centered on the following items:

1. A minimum fee for appearance before state administrative tribunals and boards;
2. A minimum fee for appearance before city and county administrative boards;

3. A minimum fee regarding bond issues;
4. A matter incidental to probate fees where there is joint tenancy property concerned which would not pass by the Final Decree;
5. Office time not otherwise specifically provided for. (Note: This item is covered but is submerged in the text on Page 12 of last year's pamphlet.)

The 1955 Reactivated Committee was contacted by mail and we set forth following these introductory remarks the general consensus of our recommendations with regard to the above matters.

ADDITIONS TO 1955 RECOMMENDED FEE SCHEDULE

1. Appearance before State administrative Tribunals and Boards:
The same basic charges as for appearance in state district court in civil matters, including the same per hour charge for preliminary or supplemental work.
2. City and county administrative boards:
Minimum fee of \$50.00 for appearance, plus a \$10.00 per hour basis for all time exceeding one-half day on appearance, plus a \$10.00 per hour basis for all preliminary or supplemental work.
3. Bond issues:
 - A. General obligation bond issues:
Minimum of \$300.00; thereafter $\frac{1}{2}\%$ additional for such amounts over \$30,000.00, and up to \$100,000.00; $\frac{2}{6}\%$ ($\frac{1}{3}\%$) over \$100,000.00 up to \$300,000.00; $\frac{1}{4}\%$ additional thereafter.
 - B. Bond issues involving special assessments:
Minimum of \$500.00; 1% additional from \$30,000.00 to \$300,000.00; $\frac{1}{2}\%$ additional from there and on.
4. Joint tenancy property incidental to probate:
Include one-half of the value of the joint tenancy property and add this to the value of the property passing by Final Decree and compute fee on the total of these figures in accordance with the rate recommended for probate court fees. (Note: The above should not be confused with the recommended minimum fee for determination of estate tax in joint tenancy matters where no probate is involved.)
5. Time in office not otherwise provided for:
Minimum of \$10.00 per hour.

Respectfully submitted:

JOHN F. LORD, Mandan
C. F. KELSCH, Mandan
THEODORE C. KELLOGG, Dickinson
E. J. McILRAITH, Minot
VICTOR V. STIEHM, Towner
AUGUST DOERR, Napoleon
JAMES E. LEAHY, Fargo
J. F. X. CONMY, Bismarck, Chairman

Mr. Chairman, I would suggest that if these proposed additions to the recommended fee schedule are adopted that the pamphlet

put out last year could be simply supplemented by one sheet which would take care of this, and if it could be of the same size it simply could be stapled by our members who make use of this pamphlet to the pamphlet to which they already have.

PRESIDENT TENNESON: Do you move the adoption of the report?

MR. J. F. X. CONMY: I move the adoption of the report.

PRESIDENT TENNESON: Is there a second that the report be adopted?

MR. L. R. NOSTDAL: I will second the motion.

PRESIDENT TENNESON: Is there any discussion on the recommendations of the Committee?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: I think it would be well to direct the Executive Director to publish a supplement to these fee schedules so that you will all have them available for you; is there a motion to that effect?

MR. MILTON K. HIGGINS: I so move, Mr. President.

MR. PAUL CAMPBELL: I will second.

(Question put and motion carried.)

PRESIDENT TENNESON: I would like at this time to announce the composition of the resolutions committee and ask them to be prepared to report tomorrow morning. Anyone having resolutions to submit to the Bar Association should contact the Chairman of that committee. The Chairman of that committee is John A. Storman. The other members are Pat Milloy and Ted Kellogg.

I think I will ask for one more committee report before recessing for coffee which is scheduled for 10:30; we are running a little behind, but I would like to have this report; the report of the Committee on Public Relations of which Herbert L. Meschke is Chairman.

MR. HERBERT L. MESCHKE:

Committee on Public Relations

With this third report of the Public Relations Committee of your State Bar Association, it is the recommendation of the committee that the scope of its work be expanded.

During the past year, the work of the committee has been largely the continuation of projects previously initiated. Six issues of the State Bar Newsletter were published. Another pamphlet for public distribution was made available: "Will Your Will Speak for You", the movie, "Decision for Justice", was widely shown throughout the State, and another movie, "Dedication to Justice", produced by A. B. A. has been shown. The latter film is now available in a 27 minute version for TV distribution and should be widely shown throughout the coming year. Widespread publicity of the Medical-Legal Institute at Grand Forks was obtained. A proposed form of news release was prepared for the Constitutional Awards Com-

mittee so that the Bar could obtain the benefit of publicity in each locality that this Award was made.

It is the recommendation of this committee not only that the Newsletter, pamphlets, movies, and the news release activities of this committee be continued, but also that the committee undertake the following projects in the coming year:

First, it is recommended that a statewide Speakers Bureau be organized, financed and publicized. Manuscripts of speeches should be carefully prepared to develop topics of general public interest in such a manner as to impress upon people the necessity of timely consultation with their lawyer about their individual problems. Such a project might be organized within the membership of the committee. Financing would involve provisions for reimbursing participating members for mileage and out-of-pocket expenses. Initial publicity should be designed to make luncheon clubs, school and church groups, and convention planners aware of the ready availability of speakers upon selected legal topics of general public interest.

Second, it is recommended that an organized and continuing effort be made to obtain widespread institutional advertising of benefit to the legal profession as a whole. This year's committee has received little affirmative response from institutions that have been approached about this type of advertising. However, other states have successfully carried out such programs and there is much good material available. The problem is largely one of continued personal contact to sell banks, savings and loan associations, abstractors, and insurance agents upon the desirability, advantages, and worthwhileness of such advertising.

Third, it is recommended that the legal reference service established in Fargo during the past year be extended to the other cities in North Dakota. Such a service made available to the public throughout the state would do much to raise the prestige of the Bar as a whole, as well as help those who do not know where to go for advice.

Respectfully submitted,

W. C. LYNCH
JOHN C. McCLINTOCK
JOSEPH C. McINTEE
ELVER T. PEARSON
HAROLD W. BANGERT
ROBERT L. BURKE
EDWARD C. GILLIG
JAMES E. LEAHY
J. HOWARD STORMON
JOHN T. TRAYNOR
HERBERT L. MESCHKE, Chairman.

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

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

MR. GEORGE A. SOULE: I will second the motion.

PRESIDENT TENNESON: Any discussion on the report?

(No response.)

(Twenty minute recess taken at 10:45 A. M.)

PRESIDENT TENNESON: I would like to call at this time for the report of the Committee on Business Corporations. This Committee has been very active during the past year. I am sure you will all recall that a Business Corporations Act was introduced at the last session of the Legislature, passed in the House and defeated in the Senate. I believe a resolution was passed recommending the Legislative Research Committee to prepare a bill for the coming session. We will have the Chairman of that Committee, Mr. L. T. Sproul, and the proposed Code will also be discussed by the Chairman of the Corporate Sub-Committee of the Legislative Research Committee, Mr. Adam Jeffery, and by William Daner, the Code Revisor. Will these gentlemen please come to the stage.

MR. L. T. SPROUL: Members of the North Dakota Bar Association:

Committee on Business Corporations

This association at its 1955 meeting authorized this committee to meet with the Legislative Research Committee and William J. Daner, Code Revisor, and also with the Secretary of State for the purpose of agreeing upon necessary amendments to the Business Corporation Act heretofore submitted by this committee and approved by this association. This association at its 1955 meeting also approved this committee's plan of submitting to this 1956 meeting a completed final draft of the Bill for an Act adopting the Model Business Corporation Act, with such amendments found necessary as a result of such conference and cooperation with the Legislative Research Committee.

Pursuant to the action of this association, this committee did during this past year hold three meetings with the corporation subcommittee of the Legislative Research Committee and with Code Revisor William J. Daner. Considerable time and work have been put upon this subject by both committees and by Mr. Daner. Your Business Corporation Committee is now informed that the corporation subcommittee of the Legislative Research Committee, while it does not have a completed draft of the new Act ready for submission to this meeting, nevertheless, it will submit its work on this Act to this assembly for discussion and approval.

It is the further understanding of your committee that if the work and plan now being submitted receives the approval of this meeting, then the corporation subcommittee of the Legislative Research Committee will proceed to make the final draft and recommend the same to the Legislative Research Committee for presentation to and passage by the 1957 Legislative Assembly.

We ask that this association approve the work and plan so presented, and that this association authorize this Business Corporation Committee to continue its cooperation with the Legislative

Research Committee in getting the new Act before the 1957 Legislative Assembly for favorable consideration.

Respectfully submitted,

THEODORE KELLOGG
L. A. W. STEPHAN
FRANKLIN J. VAN OSDEL
DEAN WINKJER
JOHN R. DAVIDSON
W. T. DePUY
CLYDE DUFFY
PHILIP B. VOGEL
L. T. SPROUL, Chairman.

Mr. President, I suggest that no action be taken at this time on this report and that no action be taken until we hear from the Legislative Research Committee and Mr. Daner. These gentlemen are here now and are ready to report.

PRESIDENT TENNESON: If there is no objection we will handle it that way.

MR. ADAM JEFFERY: Mr. President and members of the Bar. I would like to express our appreciation on behalf of the Legislative Research Committee for being granted the privilege to appear here before you this morning. I might add that the Legislative Research Committee Sub-Committee on Corporations is composed of Senator Duffy, Representative Brooks, Erickson and myself acting as chairman, and Mr. Daner acting as our secretary and chief consultant.

The Model Corporations Act, as it is commonly referred to, was presented to the Legislature in the last session without prior study by the Legislative Research Committee. The Bar Association Committee presented the Act to the Research Committee shortly before the session started and the Research Committee was asked to prepare the Act in Bill form, which the Research Committee did do. When the Bill was introduced it was found very shortly after we started considering the act that it was not coordinated with the rest of our corporation laws, and we found that there were some other errors in the bill in drafting, and in order to try and get the bill integrated into our Code would have taken a tremendous amount of work which we did not have during the session. We did pass it in the House with the hope that if we would have the time and if the Senate would have the time to make necessary amendments that it could be adopted, but we could not find that necessary time so the Bill was defeated in the Senate by consent of all of us because we knew the bill was not in shape to be adopted.

I might now express on behalf of the Legislative Research Committee appreciation to the Members of the Bar Association that are serving on the Bar Association Committee on Corporations. They contributed a very valuable amount of information and help to us during the past year and a half that we have been working on the Act. Together with the Bar Association Committee we have evaluated every section of the Model Bill and we found a number of sections that we thought should be clarified and are in need of

amendments, and we have agreed to a number of amendments which, after we will have a full Research Committee hearing, will be discussed and perhaps approved. One of the primary subjects for discussion that we have had to reckon with all the time was how to integrate this Model Act into our present Code. It is a tremendous problem and we feel that we are in position now to get it solved, thanks to the very capable help of Senator Duffy who is serving on this Committee. We believe that the act when it will finally come to the Legislature this time, will be in such form that it can be adopted and also in such form so as to cause the least amount of disruption of existing corporations, and I will call on Mr. Daner in just a few more minutes to mention and highlight some of the changes that are being proposed to the Act as it was submitted to the Legislature the last time, and also how it is to be integrated into our Code — Mr. Daner.

MR. WILLIAM J. DANER: Thank you, Adam; Mr. President, fellow lawyers: This proposed Act is very important because it has widespread effect on so many existing corporations and that really is a problem, and it has been suggested — and I think it is workable — and it will aid you as an attorney too because we don't have the Act in your hands to look over before you give approval — although you have already given approval to the thing. It has been suggested and the sub-Committee is going to recommend that this act will not effect existing corporations until two years from 1957, that is July 1st, 1957. It will go into effect as other acts do on July 1st of 1957 for all newly organized corporations, and those corporations existing prior to July 1st, 1957, will not be affected by the act until July 1, 1959; unless by proper amendment of their charter they elect to be governed by the act, so that those that want to take advantage of the act may do so before 1959 if they want to.

It will enable us as attorneys to have in the Session Laws of 1957 the complete Act in printed form to look at and argue about and then in 1959 if there are some positive amendments that need be made that '59 session can erase any conflicts or errors that are made.

This Act is a Business Corporation Act and as such it covers profit corporations. It is not intended and we hope the language in its provisions will clearly spell out that co-operatives, fraternal corporations, religious and cemetary corporations and orphan homes, and so on will not be affected by this act, nor will insurance companies or banking corporations. It is a general business corporation act. In order that this will be so there will be a number of conforming amendments, you might say, passed with the Act wherein the Code there are references to the general business corporation laws; for instance, in the banking code or in religious corporations it may be that they make a short statement that the meeting will be held as prescribed for regular corporations. We will have to make amendments in those places so there will be no conflicts when the Act is passed. In addition to that those mechanics of integration we have the sub-Committee who will recommend certain amendments to the Act itself. It was thought that it would be well to have in this act none of the directors have to be residents of the State, so,

therefore, we wanted to have a provision for personal service of non-resident directors. There are some provisions in the Act applying to the by-laws and charters of the corporations which might necessitate a lot of paper work adjustment unless an amendment were made for existing corporations; and, for instance, it requires a registered office and name, and we have made an amendment to the effect that if a present existing corporation doesn't have a registered office and name then the business place as filed in their original articles and the secretary will be their registered office and their registered agent.

There is in the Act as approved by you gentlemen prior to this session a provision for a registered name for corporations; and it was the recommendation to the Sub-Committee to delete the provision that you can register a name and thereby bar anybody from using that same name. The Act is intended to give the managers and directors of the corporations the power to get things done without having to turn to the shareholders for routine approval, and sometimes it was felt that the Sub-Committee's philosophy overflowed into giving dictatorial powers and so some amendments have been made to bring that more in line with the thinking of North Dakota lawyers so that, for instance, by-laws will be amended by the shareholders and set out by the shareholders unless otherwise specified in the articles. The Act as originally drafted would put the recommendations and amendments in the hands of the directors only, unless otherwise specified it's the reverse. It puts the burden on the shareholders in the original way and we have put the burden on the directors.

It was thought well to put a maximum limit on the number of directors, such as fifteen, but the number hasn't been determined for the reason that in order to protect cumulative voting rights, if you have staggered terms you can water that down by having a great number of twenty-five or thirty-five directors, you water down your cumulative rights; so it was recommended that we have a maximum number of approximately fifteen.

There have been changes in the fee schedule made generally upward. I don't think we should take the time to go into those fees; however, that will be the situation. It will cost more to make your annual report and get your corporation into operation.

I hope that when this act goes into effect that the attorneys will, as they have in the past, cooperate by writing to our office and letting us know what you think of the application of the Act so that we can correct the deficiencies that will crop up, and I am sure they will crop up.

MR. PAUL CAMPBELL: Mr. Speaker, do you feel that this will still remain a uniform Act?

MR. WILLIAM J. DANER: This is not a uniform Act, Mr. Campbell. It is a model Act and intended to be made to fit the needs of the community involved.

PRESIDENT TENNESON: Mr. Sproul, do you have a motion you wish to make at this time?

MR. L. T. SPROUL: At this time, Mr. President, I would like

to move the adoption of the report of the Committee on Business Corporations which I have just presented and the adoption of the report of the Code Revisor and the Chairman of the sub-Committee of the Legislative Research Committee that has just now been presented.

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

MR. VERNON M. JOHNSON: I will second the motion.

PRESIDENT TENNESON: Is there any discussion. (No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: We have another very important Committee — The 50-Year Membership Awards Committee. These awards, I believe, were first given a year ago, and I will call at this time upon the very capable and efficient chairman of that Committee, Mr. George Soule.

MR. GEORGE A. SOULE: Thank you, Mr. President. Our Committee was appointed a year ago to recognize the members of our Bar who have been admitted to the Bar of North Dakota for 50-years. In order to express our appreciation of what these men have done for us in our Association, the men who were admitted in 1906, we have asked the Honorable Herbert A. Mackoff of Dickinson, a former president of this Association, to represent us and to tell these gentlemen how much we appreciate how much they have done.

MR. H. A. MACKOFF: Mr. President, and members of the State Association. I feel honored to be called on to say a few words on this occasion. As has been indicated by the President and the Chairman of the Committee, this practice of honoring those who have been admitted for 50-years to the practice of law was adopted last year. I am advised that we had the good fortune of having about thirty-five or forty of them last year who were so honored.

We are all cognizant of the fact that lawyers have contributed very materially towards the development of our country, in the early days of the history of our country and down to the present time. The lawyers have been very active and have contributed very much toward the development of the greatest democracy that we have ever known; and what was done by the lawyers of our country as is known it can be said in great measure that these members of the Bar of North Dakota in the contribution that they made toward the development of our own State — they were rugged men, men that had to anticipate hardships in coming out to this part of the country. They came here and they built up a State in which we can all be very proud. Many of them have had legends built around them and we honor the memory of the early men who were here in the State from the very beginning — before and after statehood. It is unfortunate that we had not had the practice years back of honoring the others who had been here before. I am glad to see that there are so many that we had here last year and we have a number with us still in our ranks. These men are rugged

men and have a good longevity. While they may be old in years they are young in spirit and heart, and we still have a good number of them in the ranks of that particular group who have done so much from the beginning of history in the State and up to the present time. We feel honored to know that they are still active men and are still contributing and have contributed so much, not only to the welfare of the profession itself, but to the State as a whole. What they have done for the Bar Association, and indirectly to the people through the Bar Association, is very much appreciated by all. At the present time we have ten men who have qualified, who have reached the fiftieth year since the admission to practice the profession in the State of North Dakota. I am very happy to be here for this occasion and to extend to you who have practiced for 50 years the solicitation and our good wishes on behalf of the Bar Association of the State of North Dakota, and to tell you that we are happy to be here with you on this fiftieth year of admission to the Bar of North Dakota. May you be here with us for many, many years to come; we hope to see you at our meetings and I am sure you will be an inspiration to the younger men that follow. May you have the very best of happiness and luck in the years to come. Mr. Soule will make the presentations of certificates. Thank you.

MR. GEORGE A. SOULE: Thank you, Mr. Mackoff. We have, as Mr. Mackoff said, ten men who were admitted to practice in North Dakota in 1906; at least we did have until Mr. Toner died a few weeks ago and we have his certificate prepared and we are sending it to Mrs. Toner.

50-YEAR MEMBERSHIP AWARDS

Mr. C. D. Aaker	Mr. E. C. Rudolph (Absent)
Mr. Charles G. Bangert	Mr. T. L. Sinnes (Absent)
Mr. A. W. Cupler (Absent)	Mr. T. A. Toner (Deceased)
Mr. R. L. Frazer (Absent)	Mr. J. E. Williams
Hon. Gudmundur Grimson	Mr. C. L. Young

MR. GEORGE A. SOULE: Mr. President, I move the adoption of the presentation of these certificates.

PRESIDENT TENNESON: Is there a second?

MR. E. E. PALMER: I will second the motion.

(Question put and motion carried.)

PRESIDENT TENNESON: Thank you, Mr. Soule. The next item of business is the election of officers to serve for the ensuing year. Nominations are now in order for the office of President.

MR. R. J. BLOEDAU: Mr. President and Members of the Bar. It is my happy privilege to present for your consideration the name of Floyd Sperry who is a lawyer of the Sixth Judicial District. He graduated from the University of North Dakota in 1927. He has in his time been a special assistant to the Attorney General and is at the present time serving, I believe, his fifth term as State's Attorney of his county. He has served for sometime on the American Bar Association Committee on Taxation and Mineral Laws and as president of our District Bar Association, has been instrumental and de-

serves some of the credit for having our district go over the top of its quota of the membership drive of the American Bar Association. He is a member of the Judicial Counsel, and has been, I believe, for five years, Chairman of the Committee of Continued Legal Education, and in that capacity he has been largely instrumental in arranging approximately seven legal institutes in which you are familiar with; and I think this work contributed to a great extent in this Association receiving the award of merit of which we can be justly proud.

In addition to this he has, of course, been president of the Bar Association of the Sixth Judicial District and a member of the Executive Committee of this organization for the past two years. I don't believe it's necessary at all for a prolonged speech to add my luster to his qualifications and, therefore, Mr. President, I nominate for office of President of this Association, Floyd Sperry.

MR. F. F. JESTRAB: I second the nomination of Floyd Sperry as President of the North Dakota Bar Association. I have worked with Floyd Sperry on the Committee of Legal Education and he is a tremendously hard-worker and very dedicated to law. Prior to the announcement of the 50,000 member campaign of the American Bar Association Floyd was a member of the group of volunteer workers who associated themselves together to try to reach very substantially the goal of the American Bar Association membership of North Dakota lawyers. He spent a lot of his own time. I am very happy to second the nomination.

MR. F. J. KOSANDA: Mr. President, Members of The Bar Association. Once in a great while in every organization an honor is accorded one of the younger members of that group as was accorded me when it was suggested that I second the nomination of one of our more distinguished members for the nomination to the office of President of our organization. I want to say it is a privilege to second this nomination of a man who has given unselfishly of his time, who has conscientiously and sincerely performed his duties as far as our organization is concerned, a man who has been a member of our Association for some twenty-nine years, who graduated from our State University, and a man who has established himself as a competent, practicing attorney. To say this little thing, many is the time when I have driven out to Golden Valley over those gravel roads I could not help but admire the respect that this attorney commands throughout the entire State coming from such a small town, I could not help but think how he commanded the respect of the City Attorney, particularly in Bismarck and Dickinson, which are some miles from his location; and so in conclusion, I would like to say that I consider it an honor and privilege to second the nomination of Floyd Sperry for the office of President of the State Bar Association.

MR. FIEDLEY: Mr. President, I move the nominations be closed and that the unanimous ballot be cast for Mr. Sperry.

MR. F. F. JESTRAB: I second that motion.

PRESIDENT TENNESON: The motion has been made that nominations be closed and that the Executive Director be directed

to cast the unanimous ballot of this Association for Floyd Sperry as President of the Association.

(Question put and motion carried.)

PRESIDENT TENNESON: I declare Mr. Sperry president of our Association.

The nominations are now in order for the office of Vice-President.

MR. JAMES R. JUNGROTH: Mr. President, as a representative of Stutsman County I would like to place the name of our favorite son. We sent out a circular and I am not sure that everybody read it so I would like to read it to you now:

"WHEREAS, John Hjellum of Jamestown, North Dakota has been an active member of the State Bar Association of North Dakota for the past 22 years, during which time he has served as President of both the Stutsman County Bar Association and the Fourth Judicial District Bar Association; and

"WHEREAS, the said John Hjellum has also served on numerous committees of the State Bar Association, including Chairmanship of the Sectional Meetings Committee and Unauthorized Practice of Law Committee; membership on the Business Corporations Committee which made a study of our present business corporation laws, and redrafted a new business corporation act, and appeared before both the Senate and House Committees of the Legislature considering the same; and membership on the Continuing Legal Education Committee for the past several years; and

"WHEREAS, the said John Hjellum has also served on committees of the American Bar Association, including the committee on Federal Estate and Gift Taxes; the Associate and Advisory Committee to the Standing Committee on Membership for the association year 1954-1955; and Chairmanship of the Fourth Judicial District in the recent '50,000 New Members' Campaign Committee; and

"WHEREAS, the said John Hjellum has rendered distinguished leadership and service to the State Bar Association; and

"WHEREAS, the said John Hjellum has indicated that he will accept the responsibilities of First Vice President of the State Bar Association if elected."

You can see that he is amply qualified and I nominate John Hjellum for Vice President.

MR. AUGUST DOERR: Mr. President, as a neighbor of John Hjellum, one whom I practiced law against and with, I heartily second the nomination made by Mr. Jungroth.

MR. HAROLD SHAFT: Mr. President, I rise for the purpose of enthusiastically seconding the nomination which these gentlemen have so ably made of our friend from Jamestown. There has been some talk here that Harold Shaft might be a candidate for this office. This was the work of some of my misguided friends who thought that my grey hairs would entitle me to that office. Now, when I was a young man, before I joined the company of "old man Mose" I always said that the work of this Association could be much better done if left in the hands of the young, enthusiastic, and capable men, so I, therefore, enthusiastically second the nomination of John Hjellum.

MR. E. E. PALMER: I move that the nominations for the office of Vice President be closed and that the Secretary be instructed to cast a unanimous ballot for John Hjellum.

MR. F. F. JESTRAB: Second.

PRESIDENT TENNESON: Any discussion?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: Motion is carried and I declare John Hjellum of Jamestown newly elected Vice President of this Association.

Nominations are now in order for the office of Secretary-Treasurer.

JUDGE C. L. FOSTER: I want to place before this assembly the name of Elver Pearson of Bismarck for Secretary of this Association.

MR. R. ALPHSON: I would like to put in nomination the name of Frank Kosanda.

MR. F. L. FORESGREN: I am very happy to second the nomination of Mr. Kosanda.

MR. H. L. MESCHKE: It gives me great pleasure to be able to second the nomination of El Pearson of Bismarck for the Office of Secretary-Treasurer.

MR. A. STRUTZ: I rise to second the nomination of Frank Kosanda.

MR. KROUSE: I would like to second the nomination of Mr. Pearson.

MR. E. E. PALMER: Mr. President, I move that nominations be closed.

PRESIDENT TENNESON: Is there a second to that motion?

(Motion seconded.)

PRESIDENT TENNESON: I will ask the Executive Director to prepare ballots.

(Ballots were distributed, votes cast and it was determined that Mr. Pearson was elected Secretary-Treasurer of the North Dakota State Bar Association.)

(Whereupon, the Business Session of the second day of the convention recessed at 12:30 P. M.)

SATURDAY MORNING SESSION — AUGUST 11, 1956 11:00 A. M.

PRESIDENT TENNESON: I think I will take up first this morning a matter that was carried over. It is apparent that we have a conflict between our by-laws and the by-laws of the American Bar Association as to when our delegates should be elected. Our by-laws provide they be elected on each odd numbered year and the by-laws of the American Bar Association which I have here provide that the term shall end at the even numbered year and shall be elected for two years. So the question as I see it is shall we amend our by-laws to conform to the by-laws of the American Bar

Association? That amendment would be to Article 9 of our by-laws and I take it would involve changing the words in the first and second lines, "odd numbered year" to "even numbered year." Is that a motion?

MR. F. F. JESTRAB: That is my motion.

PRESIDENT TENNESON: Is there a second?

MR. OEHLERT: I second.

(Question put and motion carried.)

PRESIDENT TENNESON: I think that we should at this meeting elect our delegate to serve for two years before the conclusion of this annual meeting of the American Bar Association. Nominations are now in order for the election of delegates. Mr. Hjellum.

MR. JOHN HJELLUM: I didn't know the particular amendment was coming up but I believe the Bar should continue the present incumbent for the next two year period due to the fact that he has only had one year. I would like to place a nomination in the name of Vernon Johnson for this two year period. I might also say in that connection that I was talking about this a little bit with Vernon yesterday and Vernon had indicated that he doesn't want to continue this position forever, that he would be very happy to step aside at the end of this two year period; so I would like to nominate Vernon Johnson.

MR. J. F. X. CONMY: I do want to second that nomination of Vernon Johnson and I was particularly pleased that Vern indicated that his intentions were not to try to hang on to it any further. The point is, I believe, though that to really function as a delegate they have to have a little time to be there and get their feet on the ground; and certainly I believe Vernon merits that opportunity and with that in mind, not having any idea of seeking to perpetuate anyone in the job I want to second that nomination.

PRESIDENT TENNESON: Are there any further nominations?

MR. HAROLD SHAFT: I move that nominations be closed and that the secretary cast a unanimous ballot for Vernon Johnson.

PRESIDENT TENNESON: Is there a second to that motion?

(Motion seconded, question put and motion carried.)

PRESIDENT TENNESON: Motion is carried and Mr. Johnson has been elected as our delegate to the American Bar Association.

I am going to ask the Committee on Resolutions to report at this time. I think they have several matters which are of extreme importance to the Bar.

MR. JOHN A. STORMON: Mr. President and Members of the Bar Association. The following resolution has been submitted to you with the approval of the Committee.

"Whereas, the State Bar Association of North Dakota and the State Judicial Council have approved the adoption of the new rules of civil procedure patterned after the federal rules; and

"Whereas, said rules were presented to the Supreme Court and hearing thereon held in June of 1955; and

"Whereas, no action has been taken by the Supreme Court on the adoption of said rules.

"Now, therefore, be it resolved by the State Bar Association of

North Dakota does hereby urge the Supreme Court to promptly act upon adoption of said rules in the interest of better administration of justice in our courts."

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

MR. J. A. ZUGER: Mr. President, I second that motion.

PRESIDENT TENNESON: Is there any discussion on that?

JUDGE AMUNDSON: Did you gentlemen read what Judge Medina said about Federal Court rules in the Fargo Forum yesterday? He said that they have to be completely revamped to get justice in a Federal Court. He is a man on the Circuit Court of Appeals and it seems to me he knows what he is talking about. I heard all you fellows bemoan the fact that the small-town lawyers should have this; all the big wheels from Bismarck and Fargo and Grand Forks don't need it because they have experience. Now to get up in behalf of the small-town lawyers. He has one or two cases in his lifetime in Federal Court usually and as far as learning a set of new rules after we have got simple rules here seems to me to be a ridiculous situation. There isn't half the congestion in North Dakota that there is in the Federal Courts. There is complete congestion there, and our rules are simple and I absolutely am opposed to recommend that the Supreme Court adopt it. I talked to the Supreme Court the other day about it and they said that the protests were that high before them (indicating), and I can't see where we are getting anyplace. We have got good rules and they should be amended if there is anything wrong. You want justice. Well, if you are going to get justice the simpler it is the better. I am talking from my experience as a trial lawyer and my experience on the bench which isn't very much; but, nevertheless, I find that these rules are adequate in North Dakota and I think we can handle our cases with great speed as any other court, and I absolutely am opposed and, of course, if you pass the resolution I will just have to write another letter to the Supreme Court.

PRESIDENT TENNESON: Might I make just one statement. I hate to disagree with Judge Amundson but I must. I have had the pleasure of being with Judge Medina the last few days. I know that he is heartily in favor of Federal Rules. I know that he was very much surprised that we in North Dakota had not adopted rules comparable to the Federal Rules. He endorsed them in his TV talk, he endorsed them on every occasion that I had discussed them with him and if the paper has made that statement I am sure that he will want to have it corrected.

JUDGE O. B. BURTNESS: I got the impression some how that maybe this resolution could be interpreted two ways. It seems to me that primarily the resolution was in asking the Supreme Court to pass upon the issue before it, but there is some wording right there at the end — in other words, what is the intent of this resolution? Is it again approving the rules and asking the Supreme Court to pass them as presented or is it primarily a request of the Supreme Court to pass upon them?

MR. JOHN A. STORMON: To act upon them.

JUDGE O. B. BURTNESS: I desire to move to strike out just the last words.

PRESIDENT TENNESON: Starting when?

JUDGE O. B. BURTNESS: I do think that the Bar of this State is entitled to get a decision from the Supreme Court. They may adopt some of them, they may reject some of them and all that. I don't like the idea — we have already passed resolutions in former years. I don't like the idea of telling them what they should do. That question is before them and I think the motive of this Association today should be to urge that they make the decision upon the matter submitted to them and that is the purpose of my amendment so that there remains a request for them to pass.

PRESIDENT TENNESON: Judge Burtness, as I understand your motion it is that we strike out the word "adopt."

JUDGE O. B. BURTNESS: Well, just to pass upon them.

PRESIDENT TENNESON: As it now reads to "urge the Supreme Court to promptly act upon and adopt said rules in the interest of better administration of justice in our courts." What is your motion? What words do you want stricken?

JUDGE O. B. BURTNESS: Well, the word "adopt". . .

PRESIDENT TENNESON: Then your motion is that the words "and adopt" be stricken from the resolution.

JUDGE O. B. BURTNESS: Well, I haven't a copy before me so I don't know.

MR. JOHN A. STORMON: The words "and adopt" will take care of it, Judge.

PRESIDENT TENNESON: Certainly there can be no objection to the words "in the interest of better administration of justice in our courts." Let's see if I have the amendment clear. It's to delete the words "and adopt."

JUDGE O. B. BURTNESS: I am in favor of the rules. I don't think that we have any business to say to the Supreme Court or anybody else that they must adopt the rules as submitted. I think that they ought to be able to exercise their power without being urged to adopt them exactly as submitted.

PRESIDENT TENNESON: Before we have further debate is there a second to the motion? I take it you second the motion Judge Amundson.

JUDGE AMUNDSON: I second the motion.

MR. J. A. ZUGER: I would like to state that I am for the rules of civil procedure and I am not opposed to Judge Burtness' amendment for the reason that this Association is now in favor of the adoption of the new rules of civil procedure and the purpose and intent of the resolution is to get the Court and ask the Court to act upon the new rules of civil procedure. I would be in favor of his amendment on that ground and not for any implications drawn that we have changed our position.

(Question put and motion carried.)

PRESIDENT TENNESON: The question is now upon the resolution as amended.

(Question put and motion carried.)

MR. JOHN A. STORMON: Mr. President and Members of the Bar. The following resolution has been submitted to the Committee on Resolutions and is submitted to you for your consideration and approval:

"Whereas, a recent order of the Indian Service of the United States Department of Interior provided that certain non-current Indian records in Montana be shipped out of that state to the Federal Records Center in Seattle and thence to the National Archives in Washington, D. C., and

"WHEREAS, it is believed that this order applies to Indian records in the State of North Dakota and irrespective of whether the special order so applies is in accord with policies heretofore pursued in this State by the Indian Service and the National Archivist, and

"WHEREAS, the removal from this State of certain records of the Fort Berthold Tribal Court dealing with divorce, guardianship, adoption, and other matters makes it impossible to resolve certain questions arising out of the leasing of certain Indian lands for oil and gas development without a trip to Kansas City, Missouri, and

"WHEREAS, the said matter has never been properly indexed or catalogued, and

"WHEREAS, when such matter is removed from this State it becomes, as a practical proposition, beyond the reach of our scholars and historians, and

"WHEREAS, no consultation has been had by the National Archivist or the Indian Service with the Department of History of the University of North Dakota, the State Historical Society, or the North Dakota Indian Affairs Commission, all to the great hardship and disadvantage of our people.

"NOW THEREFORE, BE IT RESOLVED that the North Dakota Bar Association in its annual meeting assembled does hereby express its opposition to and disapproval of the removal from this state of non-current Indian records per the above-described order and publicly and expressly object to any continuation of this policy, and

"BE IT FURTHER RESOLVED that the Indian Service and National Archivist be requested and enjoined to consult with the State Historical Society of North Dakota, the Department of History of the University of North Dakota, and the North Dakota Indian Affairs Commission prior to the removal of any Indian documents from this State, and

"BE IT FURTHER RESOLVED that copies of this resolution be sent to the North Dakota Congressional delegation, the National Archives and Records Service of the General Services Administration of the United States, the Chairman of the Department of History of the University of North Dakota, the North Dakota State Historical Society, and the North Dakota Indian Affairs Commission, in order that steps may be taken to preserve such historical records for our State."

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

JUDGE ALBERT LUNDBERG: I second that motion.

PRESIDENT TENNESON: Is there any discussion on the resolution?

MR. F. F. JESTRAB: I think it's a matter of some importance. I don't know whether any of you fellows have ever tried to inspect the record in traffic court in Newtown, but all of that material is in Kansas City, so they get down to Kansas City to look at the records and they're told they are out in a warehouse nailed in a box and there is no catalogue or anything. In regard to much of the matter of the general historical nature I am sure that we have scholars in this State who have papers in progress and the removal of this material would frustrate the purpose for the reason they just don't have the money to make trips back to Washington, and to remove this stuff and take it away from our scholars is very important.

JUDGE AMUNDSON: Mr. Chairman, for the first time in my life I concur with Mr. Jestrab.

(Question put and resolution carried.)

MR. JOHN A. STORMON: We are going to cut-out a large number of "whereas" that might be very appropriately used in presenting the various matters due to lateness of time and I am simply going to give you the resolves and following each resolve I will wait just a moment if anyone wants to be heard; if not, I will make the motion at the end of the various resolves. So if anyone wants to be heard on any matter will you please do so immediately and we will give it consideration.

"RESOLVED that this Association express to the Honorable Barnabus F. Sears of the Chicago Bar its sincere thanks and genuine appreciation for his challenging and informative address to our annual meeting, his observations on the North Dakota Law and his comments and recommendations evident his continued interest and tireless enthusiasm for progress in our judicial system. We are happy that he was able to be with us."

"RESOLVED that we express the appreciation of our Association to Judge Harold Medina for the inspiration of his presence at our annual meeting and for his fine address. This great jurist has exemplified the highest tradition of judicial conduct in our country, and his presence here has been an honor to our State and to our organization."

"RESOLVED, that we are grateful to the law book publishing companies for the part which they have taken in our annual meeting, and for the displays maintained by their representatives throughout the meeting.

"RESOLVED FURTHER that we express our thanks and appreciation to the donors of the prizes which were distributed to the members and which contributed materially to the attendance at business sessions and to the success of the meetings; and special appreciation expressed to these donors; Mathew-Bender Co.; Bobbs-Merrill Co.; Bancroft-Whitney Co.; Shepherds; Lawyers Co-operative Publishing Co.; Knight Printing Co.; Gaffaney's; West Publishing Co.; Westland Oil Co.; Senator Milton R. Young; Pren-

tice-Hall, Inc.; and all other organizations who cooperated along this line."

"BE IT FURTHER RESOLVED that we express to our President, Norman Tenneson, and to our Executive Director, Lynn Grimson, and all the members and officers and to the Executive Committee and to the various Committees who have served during the past session our sincere appreciation for a highly successful and profitable year.

"BE IT FURTHER RESOLVED that we express to the Committee on Sectional Meetings and to the leaders and to those conducting our sectional meetings our sincere appreciation for a job well done.

"BE IT RESOLVED that we express appreciation for the entertainment given to our ladies during this convention provided by the Ward County Bar Association and by our State Association.

"BE IT RESOLVED that we express to our Women's Auxiliary our appreciation for their interest in promoting the activities at the State Bar Association and for promoting an active program of awards and scholarships to promote interest in the objects of our Association and our organization in the State.

"BE IT FURTHER RESOLVED that we express our appreciation and thanks to the Ward County Bar Association and the members of our Association in the counties of Rolette, Wells, Pierce, McHenry, Burke, Bottineau, Mountrail and McLean Counties for the complimentary luncheon which we enjoyed Thursday noon.

"BE IT FURTHER RESOLVED that we have experienced from the City of Minot and the Members of the Ward County Bar Association during this annual meeting a fine hospitality that is traditional here. We thank the Eagles Club, the wives of the members of the Ward County Bar Association and all others who have participated for and joined in these acts of hospitality for our annual meeting."

Mr. President, I move that these various resolves be adopted. I am sure that you all feel as I do and that the members of the Committees do, that this has been a successful convention. Everything possible has been done for our enjoyment and we want these organizations and Associations to know that we sincerely appreciate the great effort and personal sacrifice that they have made for the success of the meeting.

PRESIDENT TENNESON: Is there a second to the motion?

MR. F. F. JESTRAB: I will second.

(Question put and motion carried.)

PRESIDENT TENNESON: I declare the resolutions duly adopted.

I think I might inquire whether there are any invitations for the Bar Association in connection with the meeting a year from now.

MR. GUNDERSON: Mr. President, on behalf of the Burleigh County Bar I would like to extend an invitation to the North Dakota Bar Association to hold its next annual meeting at Bismarck.

PRESIDENT TENNESON: Are there any further invitations? In accordance with customs the invitation will be referred to the

incoming Executive Committee and I am sure that Bismarck will be our host next year. Now, we have some more Committee reports. We have the Committee on Jurisprudence and Law Refrom of which Judge Amundson is Chairman.

JUDGE M. H. AMUNDSON: Gentlemen and Mr. President. The suggestion has been made that this Committee should be turned over to the Judicial Council and I think it's a pretty good one. However, our Committee has passed upon certain measures which I think merit your attention and they will be very briefly stated to you.

Committee on Jurisprudence and Law Reform

Your Committee makes the following suggestions for improvement in the laws as we now have them:

I

ADOPTION OF SO-CALLED HUBER LAW

We advise the adoption of the so-called Huber Law, as enacted and executed in the State of Wisconsin, where the convicted man goes to jail each night but works each day and his pay can be used for the support of his family.

II

CONSENT TO MARRIAGE OF MINORS

That the district court, juvenile court of welfare board approve marriages of minors where the boy is under eighteen and the girl is under fifteen, which family approves, and where it seems for the best interest of all concerned that the marriage be had.

III

NEW TRIALS ON LIMITED ISSUES

That there be enacted a specific statute granting limited authority to the district court to grant a new trial upon a specific issue or issues, such as the question of damages in a personal injury case.

IV

TRANSCRIPT TO BE FURNISHED ON MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT UNLESS WAIVED BY COURT

That it be provided that a transcript be furnished to the district court in motions for judgment notwithstanding the verdict, in order that such court may be put on an equal basis with the supreme court in passing upon such motion and reviewing the evidence.

Motions for judgment notwithstanding verdict are usually heard from 30 to 60 days after the case has been tried, which only arises in jury cases, and at a term wherein the court has tried several different jury cases so that the facts are not clearly remembered in any specific case. This would mean the necessity for granting an extension of time on the motion for judgment notwithstanding the verdict within a period of 60 days after the verdict in the case. Providing, however, that the district judge may, if the circumstances warrant it, waive the necessity for a transcript.

This is a rather large subject that could be gone into in great detail, but for the purpose of this report this suggestion is merely made.

V

ADVERSE EXAMINATION AT TRIAL
AFTER ADVERSE EXAMINATION BEFORE TRIAL

That it be made discretionary with the court whether-or-not to allow adverse examination at the trial where adverse examination has been had before the trial.

VI

SUSPENSION OF DRIVER'S LICENSES BY THE COURT

That the control of the suspension of driver's licenses be returned to the courts for the reason that the courts have first-hand information and greater knowledge of the facts and more capability of handling the situation than the State Highway Commissioner.

These suggestions are made for the purpose of provoking discussion and to be worked out in detail if they merit the attention of the lawyers and the bar generally.

While I was here a resolution was handed to me by one of our well-known lawyers who has tried a lot of cases with reference to the Workmen's Compensation Bureau. To boil it down—the resolution is lengthy and I am not going to read it—he asks that we permit, as I understand the facts, that the transcript of the evidence taken before the Bureau must be paid for by the claimant and the claimant usually hasn't any money so it makes an appeal impossible. What this lawyer proposes is that there be a trial *de novo* in the district court without expense to the claimant in order that the district court may see the witnesses and pass on the evidence and do more exact justice to Workmen's Compensation cases.

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

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

MR. F. F. JESTRAB: I will second the motion.

PRESIDENT TENNESON: Is there any discussion on the motion?

(No response.)

(Question put and motion carried.)

PRESIDENT TENNESON: What action, if any, do you wish to take on the resolution of the Workmen's Compensation bureau? That is not part of the report as I understand it.

JUDGE M. H. AMUNDSON: I would suggest it be made part of the report.

PRESIDENT TENNESON: Is there any objection—Maybe we better vote on it as part of the report.

(Question put and motion carried.)

PRESIDENT TENNESON: We have a report from the Committee on the Rules of Civil Procedure of which Mr. Jestrab is Chairman. As I recall, the only affirmative action they ask is that we request the court to act and that has been taken care of by the resolution. Do you desire to read your report, Mr. Jestrab?

MR. F. F. JESTRAB: No. I move the report be received and filed.

PRESIDENT TENNESON: You move the report be received and filed. Is there a second?

(Motion seconded, question put and motion carried.)

PRESIDENT TENNESON: We have a number of reports which we have marked "filed" here. They do not call for any affirmative action by the Bar Association. They are largely a report of the Committees' activities during the year. In view of the shortness of time I am going to read the reports and ask for a motion that they be received and filed.

Report of Committee on Legal Service to the Armed Forces.

Continuing Legal Education.

American Citizenship Committee.

Committee on Professional Cooperation.

Committee on Tax Laws.

Committee on Judicial Selection.

Committee on Traffic Safety.

Indian Affairs Committee.

Committee on Mineral Laws.

Legislative Committee.

Sectional Meetings Committee.

I believe I have covered them all.

MR. JOHN HJELLUM: I move they be received and filed.

(Motion seconded, question put and motion carried.)

MR. JOHN HJELLUM: Mr. Chairman, the Business Corporations Committee made a report the other day with reference to the proposed adoption of a new Business Corporations Act; and that will undoubtedly be done this coming legislature. Now, if that is done it's going to propose a lot of questions of what to do with the old corporations that are in existence at that time and I know that the Committee has been working on this and has some pretty definite ideas on this, or will have by that time, and it seems to me that they ought to make a written report at the next convention as to what suggestions they have as to the existing corporations and which ones should perhaps be amended to conform to the new law or what should be done, or some specific suggestions as to the law as they see it in application to existing corporations.

PRESIDENT TENNESON: Well, as I understand it the plan is that the new law will not become effective until July 1, 1959.

MR. JOHN HJELLUM: I understand that, Norm, but in the interim the law becomes effective in '57 but it doesn't effect the old corporations until '59. I thought that the group that is working with this should have the knowledge at their fingertips or someone else would have to go in there and dig and put in a week's effort trying to find out what ought to be suggested. I think it ought to be in the form of a report.

PRESIDENT TENNESON: Well, would that be taken care of in the form of a motion that the Business Corporations Committee be continued and report at the next annual meeting?

MR. JOHN HJELLUM: Yes.

PRESIDENT TENNESON: Would you make that motion?

MR. JOHN HJELLUM: I will make that motion.

JUDGE O. B. BURTNESSE: I will second it.

(Question put and motion carried.)

PRESIDENT TENNESON: Is there any old business that we haven't disposed of?

Any new business?

MR. G. W. ULSETH: I might say a word on Public Relations. I think the work done by the Public Relations of the Bar Association has been very good; however, it seems to me that there is a lot more that can be done and it would be of interest, it seems to me, for the Executive Committee to have the feeling of the Association as to whether we should urge expansion of that program in so far as funds available permit; and so I would like to move that the recommendation be made to the Executive Committee to expand the program as far as possible with the funds available for that purpose at their discretion to improve the standing of the lawyers in the State in whatever public relations programs they would deem advisable.

PRESIDENT TENNESON: That motion is in the nature of a recommendation to the Executive Committee.

MR. G. W. ULSETH: Yes.

PRESIDENT TENNESON: Is there a second?

(Motion seconded; question put and motion carried.)

PRESIDENT TENNESON: Is there any further new business? (No response.) If not, I would be very pleased at this time to ask Mr. Floyd Sperry to come forward.

MR. FLOYD SPERRY: Gentlemen; I want to express to you my sincerest thanks for the honor and privilege extended to me yesterday by electing me President of the North Dakota State Bar Association. I realize that it is a great responsibility and I want to assure you that I shall do everything possible to justify it.

Now, one of the first things that I should like to do is to present to the last president and vice-president some certificates of appreciation of their fine work. The first one I should like to present to Roland Heringer and I don't believe he is here this morning, but this certificate is to be presented to Roland for the excellent work that he did in organizing the work of the State Bar Association for the year 1955-1956, up to the time of his illness. I am very happy to learn that Roland has regained his good health and that he was able to be here with us during the convention. I shall present that certificate to Roland when I see him and if he is in town I shall see that he gets it before he leaves.

Next I should like to present to Norman G. Tenneson a certificate of appreciation for his wonderful work both as vice-president and as acting president of the State Bar Association. I know that we had a wonderful year under his administration; he had a double load to carry, he has done a wonderful job which has been concluded by this wonderful convention and the fine banquet that we had last night. Norman, I am very happy to present to you this certificate of appreciation. (Applause.)

The size of the audience today might indicate that I was expected to make an inaugural address but fortunate for you I don't have any, so those who pulled out did so unnecessarily.

I want to make a couple of announcements.

First, we are going to have a meeting of the Executive Committee in the Bison Room in the Clarence Parker Hotel immediately following this meeting.

Secondly, I should like to announce the holding of the next Medical-Legal Institute will be held on October 4th, 5th and 6th at the University and that will be put on by the Committee on Continued Legal Education upon which I have had the privilege of serving during the last five years. There is a panel of five speakers coming from the City of Chicago, and we know it's going to be on outstanding institute and we hope that it will be talked about among you and that we will have a good attendance there. We think that some wonderful work can be done in that way.

We have also planned in our hope to extend the work of the North Dakota Bar Association some additional institutes which will require setting up some additional committees. One of these will be on Probate Law Procedure, Estate Planning and Joint Tenancy Problems. Another will be on Record, Abstract and Title problems; and another one will be upon Administrative Law; and for that we expect to set up a new committee.

I, perhaps, should ask at this time whether anyone has any business to bring up before we adjourn the meeting. I don't know of any. As to the invitation that was extended I am sure that will be acted upon promptly and that the people in the City of Bismarck will be given notice without any delay as to the decision of the Executive Committee.

As we know, the State Bar Association is in wonderful condition at the present time. That was made clear by the very fine financial report approved by the auditors which was given to us yesterday. I sincerely hope that it will be that way at the end of the next year. I assure you that we will watch the money very carefully and try to give you the best service that we can for that money.

JUDGE C. L. FOSTER: I am glad that the Bar Association is in good shape — the Bar Board is not. Our last financial statement shows that with all our expectations in allowing \$600.00 only for disciplinary matters we should have at the end of our next year \$293.00 on hand. At the last session of the legislature the fees were increased. There was quite a little controversy at that time and there was a tentative agreement that at this session of the legislature the amount of money appropriated to the Bar Board from license fees should be increased from what we are getting now. I speak for the members of the Bar Board and we do not care whether we have a Bar Board or not. We are all serving on it at a great financial sacrifice, but we do feel that a Bar Board is necessary. We had one disbarment proceeding that cost us over \$2,000 and the guy died before we got him out. But we have got to have money in the Bar Board and we merely ask this Association to give it consideration so we can have funds to function on. If you are not going

to handle disciplinary matters it's all right with us but we don't like it any better than you do.

MR. J. A. ZUGER: Mr. President. I think I should say one thing here for the record and for the information of the Executive Committee. At the time of the session of the last legislature we went before the legislative committee. I went there as President of the Bar Association, to ask to raise the license fees to \$15.00. The Association was on record for asking for that with a split of ten to five. It had been six-fifty and three-fifty, I believe. At that time the Bar Board Secretary also appeared before the Committee with the suggestion of a fifty-fifty split. I could not as an individual or as one officer of this Association change what the annual meeting had done; but, at that time Ronald Davies was Executive Director and we harmonized and we did make the statement to the Bar Board members that we certainly believed it was the opinion of the Association to support the Bar Board at all times, and that if it became necessary to give them the support, financial or otherwise, and that we felt certain that the executive committee would do it. That was the clear understanding. I visited with Judge Davies when he was here at this meeting and we were of the opinion that one of our primary objects was a strong Bar Board to regulate both admissions and disbarment of our Bar. I want to state for the record and for the incoming Executive Committee that background of history of what Judge Foster has referred to. Now, we have a session of legislature coming up and if there is to be some other change in it or raise in fee we should make those kind of arrangements.

MR. FLOYD SPERRY: Thank you very much, Judge Foster and John Zuger. We have been aware of that problem for quite some time and it did come before the Executive Committee on a couple of occasions and it would seem to me that a request from the State Bar Board of a transfer of a certain amount of money to the State Bar Board might be in order, I'm not certain.

JUDGE C. L. FOSTER: Mr. Chairman, the State Bar Board doesn't feel that it should be in position to have to ask for anything or to have to ask for consideration given for its needs by the Executive Committee of the State Bar Association. At the present time we have no immediate need for funds, but we may have tomorrow. We want to be in position so that we can go on with our own function without asking somebody else to have a meeting to authorize money enough to function on. We have at the present time only one disbarment proceeding pending and that is an inexpensive one. There have been some complaints filed which are not yet referred to the Bar Board, but we do believe that we are entitled to a larger split out of the license fees and when we get that we feel that we can keep on without asking the State Bar Association for anything. That is the way we want it to be. We are not asking for anything at this time.

VOICE: For the benefit of the Executive Committee, might I ask Judge Foster a question? What split do you feel you should have?

JUDGE C. L. FOSTER: We feel at the present time that the

Bar Association is getting quite a lot of the money from the \$6.50 filing fee. We also feel that if we get \$7.50 out of the \$15.00 that we would be able to function normally.

MR. FLOYD SPERRY: I would like to say one further thing about holding these Medical-Legal Institutes. It only required an attendance of some forty or fifty to pay the expenses. For example, if a few lawyers, forty or fifty lawyers should want an institute on state taxes or income taxes or mineral laws, and would assure you that they would attend, we could put on some kind of institute anywhere in the State and it would pay off. The last institute that they had at Grand Forks, the Medical-Legal Institute, more of them paid out — we had about \$200.00 left after all of the expenses were paid.

I want to say one thing more and that is that within the next ten days every member of the Bar will receive a letter requesting you to indicate upon which committees you should like to serve, what preference you have. We hope that you will answer them promptly because we will be having a meeting of the Executive Committee during the early part of October and we would like to take final action at that time and get the show on the road.

Now, is there any further business?

(Mr. Frank F. Jestrab addressed the Association briefly regarding Bar Association fees and suggesting that the fees be increased.)

MR. J. F. X. CONMY: I make a motion that we adjourn.

(Motion to adjourn was made and seconded and the question was put and motion carried.)

MR. FLOYD SPERRY: We will stand adjourned.

(Whereupon, the 1956 Annual Convention of the State Bar Association of North Dakota was adjourned at 12:10 P. M., August 11, 1956.)

North Dakota State Bar Association Reports of Committees — Filed

Continued Legal Education

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

This committee met immediately following the 1955 State Convention at Williston, North Dakota and arranged for the holding of a medic-legal institute at the Student Union at the University of North Dakota, and which was held on December 2 and 3, 1955. Because of the additional work required in conducting this type of an institute the committee was expanded to include two new members, now making it a five member committee. We were also greatly assisted in organizing this institute by Dean O. H. Thorndsgaard of the University Law School and Dean F. H. Harwood of the University Medical Center.

Following introductory remarks made by President George W. Starcher, Ph.D., of the University, welcoming addresses by Norman G. Tenneson, acting president of the North Dakota Bar Association, and Doctor Phil Woutat, representing the State Medical Association, in addition to the chairman of this committee, a very learned discussion was given upon current trends in tort law, and the inter-professional relations of doctors and lawyers in the preparation and trial of personal injury cases, by Professor Thomas F. Lambert, Jr., Boston, Massachusetts. Professor Lambert remained throughout the institute and made valuable contributions to the discussions that followed.

Professor Christofer J. Hamre, Ph.D., gave a talk on human anatomy in relation to trauma, Professor James D. Cardy, M.D., of the University gave a talk on pathology and autopsies, followed by a discussion on organic consequences and sequelae of cranio-cerebral trauma, given by Doctor Lee A. Christoferson, of Fargo, North Dakota.

A paper was presented by Doctor Carl Johnson of the Quain and Ramstad Clinic at Bismarck, upon the medical aspects of injuries to the spine and lower back, and this was presented at an evening session.

Doctor H. L. Pappenfuss, from the University Medical School faculty gave a talk on Human Anatomy in relation to trauma.

At the request of the coroners throughout the state, there was a discussion of North Dakota's new coroner's law by the Hon. Leslie R. Burgum.

An excellent paper was prepared and presented by Attorney Franklin S. Longan, of Billings, Montana, upon the preparation of medical testimony. A very interesting panel discussion was had upon the adequate examination of the injured person, explanation of the various tests, what they prove and disprove and upon which Doctors M. J. Talbert, R. C. Painter, and Phil R. Berger, all of Grand Forks, North Dakota, participated, the moderator being Doctor A. K. Johnson of Williston, North Dakota. Doctor Froke of Grand Forks also made a very fine contribution to this part of the program.

Doctor E. L. Foss, from the Mayo Clinic, and from the section on plastic surgery, conducted a very fine discussion upon injuries to the soft tissues of the human body, followed by a talk given by John G. Freeman, Psychiatrist and Clinical Director for the State Hospital at Jamestown, North Dakota, upon the relationship of trauma to nervous disorders.

The institute was concluded with a discussion of the problems in the presentation of medical evidence, including the use of the hypothetical question, conducted by Lewis H. Oehlert of the firm of Nilles, Oehlert & Nilles, Fargo, North Dakota, and John F. Lord, Attorney at Law, Mandan, North Dakota.

The talks of Professor Hamre, Doctor Pappenfuss, Doctor Johnson and Attorney Longan were mimeographed and copies were sent to all registrants, free of charge.

The registration fee for this medicolegal intitute was \$10.00 per

person, used to help defray the cost of the institute. There were one hundred and twenty-eight paid registrants, and in addition the members of the faculties of the law and medical schools and all of the students in both schools were invited to attend as guests, and without any registration requirements. This institute more than paid the expense of conducting it, and while some phases of the program could be improved upon, it appears to have been generally considered a most successful institute of the Bar Association.

Outside of the short meeting held at Williston following the 1955 convention there, the medico-legal institute conducted at Grand Forks was arranged for by mail and over the telephone with very little expense. The committee did not again meet until on June 23, 1956, at which time it met at the Clarence Parker Hotel in Minot to arrange for the submitting of this report, a 1956 institute, and the general program of the work of this particular group of the Bar Association.

The various types of programs discussed by the committee at the June, 1956, meeting at Minot included the following:

1. Medicolegal institute,
2. Probate law procedure, estate planning and joint tenancy problems,
3. Record and abstract of title questions, relating to real estate and a trial demonstration of landlord and title questions, and
4. Administrative law.

After considering all of the phases of conducting these prospective institutes, it was decided that, for the time being, the most valuable and attractive program to be taken up would be a second annual medicolegal institute. It was thus decided to have this institute at Grand Forks at the Student Union, upon October 6, 7 and 8, 1956, the registration fee to be \$10.00, and a more extensive program is to be arranged than provided at the 1955 institute, covering a different variety of subjects than was discussed at that time. It was agreed that a tentative outline of this program should be immediately prepared, and which has been done by the chairman of this committee, the same having been distributed to the members, in order that the arrangements for the speakers and the planning of all of the details may be worked out as soon as possible. It is hoped that this will be a well attended and most successful institute.

Because of the growth of the work of this committee, its importance and the interest that has been taken in it from time to time, since the origin of this phase of the State Bar Association work we believe that it is in order to make a few general observations here. This committee came into being because there was a real need for it and because the leaders of the Bar recognized that need and decided that something should be done about it. The purpose was to provide continued training for members of the Bar and for an organization to make that training possible. The work is conducted upon a similar scale in practically every state in the Union and we have succeeded in North Dakota in helping lead the field in conducting institutes of this kind and which is now recognized by the

National Committee of the American Bar Association. In planning this work it has been the aim of the committee to offer such education as deals with problems most likely to arise in the average North Dakota practice. It is realized that there is a great deal of room for improvement in conducting these institutes and for further expansion and an important element of the work is your encouragement and your attendance.

We believe that a real service has been brought to the members of the Bar Association of North Dakota in carrying out their responsibilities in relation to tax matters, oil and gas law, the handling of personal injury actions and also in the other fields which are related to the practice of law, including the field of medicine.

This committee was first created in 1947 and in 1948 we conducted the first school, which was on income tax matters, held at Fargo, North Dakota, and which was well attended. A second school on tax matters was held in Fargo in 1950, and one at Bismarck in 1951, including a panel discussion of the Federal Rules of Procedure.

We then had a gas and oil institute, because of the new developments in this industry in North Dakota, and which was held at Bismarck, this having been one of our best attended meetings. In addition to that we conducted a Tax Institute at Minot, North Dakota, and two additional Tax Institutes, including demonstration of a personal injury action at Fargo and a like demonstration at Bismarck, in addition to the medicolegal meeting conducted at Grand Forks. It is thus seen that we have averaged more than one institute per year, starting with 1951, all of which have been conducted without any expense to the State Bar Association, this committee being self-supporting through the registration fees that were paid.

It is clearly seen that there is a great deal of ground to cover in the relations between the members of the State Bar Association and the State Medical Association because of the increased number of personal injury actions, the legal handling of which requires the help of the medical profession, and the reverse of which is also true. The problem that has arisen requires modern law and science to be brought into action which might bring about a renaissance for both.

The cooperation that is required in this continued educational work must come from the joint programs of the law and medical schools and the cooperation of the physicians and scientists with the members of the bar and bench. We believe that institutes of this kind will not only help bring about this required cooperation but that through it the members of the two professions will not only better serve themselves but can better serve their clients and the public which they are required to serve.

It is the recommendation of this committee that in conducting institutes of this kind that the cooperating of the National Committee be sought whenever it is available, and which assistance can be obtained in conducting nearly all of these programs. The cooperation given us by the National Committee has been exceptional and this has permitted Continued Legal Education for North Dakota

lawyers to become more extensively offered upon an advanced level and has also helped in improving the relations of our State Bar Association with the national organization.

This committee wishes to express its appreciation to President George W. Starcher, Dean O. H. Thormodsgard, of the Law School, and Dean F. H. Harwood of the Medical School, all at the University of North Dakota, and the State Medical Association and its Executive Secretary, Lyle A. Limond, for their assistance and help in conducting the 1955 institute at Grand Forks. The warm reception and pleasant cooperation given us at the University in conducting that institute was most thoroughly appreciated by the members of this committee and all who attended that meeting.

We also wish to thank the members of the North Dakota Bar Association and all others who have attended these institutes and who have made it possible to continue with this program.

Respectfully submitted,

Committee on Continued Legal Education,
FLOYD B. SPERRY, Chairman
HAROLD M. HAGER
JOHN HJELLUM
FRANK F. JESTRAß
LEWIS H. OEHLERT.

Indian Affairs Committee

The attention of your Indian Affairs Committee during the past year was largely focused upon the constitutional amendment pertaining to jurisdiction over Indian Reservations which was submitted to the voters in the recent primary election.

The North Dakota Supreme Court has held that before the state can assume jurisdiction over the reservations the state constitution will have to be amended. The above amendment would have given to the legislature the authority to determine when, and upon what conditions, the state would assume jurisdiction. It was the thought of your committee that the passage of the amendment would mean a step in the right direction in this field.

Your committee, in cooperation with the North Dakota Indian Affairs Commission, attempted to publicize the purpose and effect of the amendment. The amendment was defeated by a narrow margin in the election. Undoubtedly there were several factors which contributed to its defeat, such as lack of understanding of its purpose and effect by the voters, too many measures to be voted on and undoubtedly many were afraid that the state would be assuming financial obligations in a field of federal responsibility.

Mr. Robert Vogel, United States District Attorney, held meetings on each of the reservations in the state in an attempt to clarify jurisdictional matters involving state, federal and tribal courts. These meetings were attended by the affected federal, reservation, tribal and county officials, and much was accomplished in securing an understanding as to the respective areas of responsibility. Though there is general agreement on the matter of criminal juris-

duction, there are many border line cases arising wherein it is difficult to determine which is the agency to assume responsibility.

The most important federal activity in this area during the past years has been a study of the question of jurisdiction over federal lands within the states. Although not specifically dealing with Indian jurisdiction, the two are inter-related. The study has not been completed as yet, and indications are that in the coming years this matter of federal-state responsibility will receive more attention.

Respectfully submitted,

MELVIN CHRISTIANSON, Chairman
ROBERT A. FEIDLER
JOHN B. HART
M. C. HIAASEN
HARRY LASHKOWITZ
WILLIAM R. MILLS
DOUGLAS P. ROBERTS
Q. R. SCHULTE
JOHN C. WILLIAMS.

Committee on Judicial Selection

During the past year your committee has conducted but one plebescite. This was for the vacancy on the district bench created by the resignation of Judge Hutchinson.

An unusual situation developed in that only three nominees received three or more nominating ballots and a rather large number received one or two nominations. Heretofore it has been the practice of your committee to submit for the final ballot the names of the six nominees receiving the highest number of nominating ballots. In this particular plebescite your committee, with the approval of the president of the State Bar Association, decided that to include the five or six nominees who had received only two ballots each in the nominations would not be conducive to an expression of the choice of the Bar and we therefore submitted only the three highest nominees, each of whom had received a considerable number of votes.

On the final ballot we followed the usual practice of asking each lawyer to vote for all three in the order of his choice and weighted the final ballots on the basis of three points for first choice, two points for second choice and one point for third choice.

As he has done in all previous cases arising during his administration, Governor Brunsdale followed the recommendation of the Bar as established by the plebescite, resulting in the appointment of Judge Clifford Schneller.

Your committee is not entirely satisfied with the method it has followed as the system is open to the possibility of the high man in the plebescite not being the real choice of the Bar. Usually a large number of ballots contain no second or third choice. In several instances, if all who returned ballots had expressed their second and third choices, the result would have been that the man who received much the highest number of first choice votes would have

been relegated to second or third place on the weighted total vote.

However, we have been unable to devise a better system and would welcome suggestions either from the convention or individual members of the Bar.

Respectfully submitted,

COMMITTEE ON JUDICIAL SELECTION,
O. H. THORMODSGARD
DANIEL S. LETNES
HAROLD D. SHAFT, Chairman.

Committee on Legal Service to Armed Forces

Your committee on rendering legal services to the armed forces has taken care of all requests during the year and your committee appreciates the prompt attention given by individual members of the bar to whom the various matters have been referred.

It is of course the practice of the chairman to submit matters which come to him to some member of the bar living in the county where the serviceman resides.

Your chairman has also furnished information to the Committee of the American Bar Association with reference to any amendments of our law enacted by the Legislature for such modification as may be necessary in the so-called Compendium of Laws of the various states which is kept up to date by such committee.

Respectfully submitted,

O. B. BURTNESS, Chairman.

Legislative Committee

Your Legislative Committee has been marking time as there was no session of the Legislative Assembly during 1956, however, several matters have been referred to the Committee by members of the Bar during the interim to which we would call to your attention for your consideration, and the attention of the incoming Legislative Committee.

Senator Clyde Duffy suggests that Section 31-0116 be amended to provide for expert witness fees as may be mutually agreed upon, but in taxing costs such fee shall not exceed \$50.00 a day.

Mr. Joseph P. Stevens suggests the law be changed that where registered mail notice is required to provide that such notice be given by certified mail.

Joe also suggests that adoption of that part of the uniform partnership law enabling a partnership to hold and transfer real property as an entity.

Joe also suggests the re-enactment of Section 1-0412 validating separate deeds of husband and wife to homestead property.

Mr. George Soule recommends that our garnishment laws be amended, and in particular to extend the time within which to serve the Garnishment Summons and Affidavit, and to make the Demand Before Garnishment effective for at least 10 days, instead of the present 3 days.

Judge Albert Lundberg calls our attention to the lack of available

information on the legislative background or history of many statutes. He has had some correspondence with Mr. Murry, Research Director of the Legislative Research Committee, who suggests a change in the Joint Rules of the House and Senate, providing that a brief statement or digest accompany each bill indicating the purpose of the bill, and the source if copied from or followed from other states.

Judge Eugene Burdick calls our attention to our statute authorizing substituted service upon the Secretary of State in cases involving nonresidents operating motor vehicles on our highways, in the light of a recent Arkansas decision holding such service invalid where the damage occurred *off* the highway. He suggests that our law be amended to clear up an uncertainty in our present law whether the damage or loss occurs upon a public highway or upon public or private property.

Mr. Paul Campbell submits a proposed bill relative to the jurisdiction and powers of police magistrates in certain criminal matters.

There may be other matters that ought to be brought to the attention of this committee and we invite members of the bar to send their suggestions and recommendations to the committee from time to time.

There are still several projects under consideration held over from the 1955 Legislative Session which are set forth in our 1955 Report on page 403 of Vol 31 of the North Dakota Law Review for October, 1955, which we believe merit further consideration and study by the appropriate committees. It is advisable that the recommendations of these committees be made well in advance of the 1957 session in order to allow for the drafting of the bills before the rush that comes in the opening weeks of the session.

It would not be fitting to close this report without a word of praise and commendation to the lawyers of this state for the invaluable assistance given by them to the Legislative Assembly, without personal pecuniary benefit, and solely for the betterment of our laws to advance the cause of free men in a free social, economic and political society. The lawyers are held in high regard by the members of the Legislative Assembly.

Respectfully submitted,

MAURICE S. AKER	ROY A. NESTE
CARROLL E. DAY (Deceased)	F. J. SMITH
ADAM GEFREH	C. C. WATTAM
ADRIAN McLELLAN	PAUL CAMPBELL
ROBERT Q. PRICE	CLYDE DUFFY
R. E. SWENDSEID	GEORGE LONGMIRE
PERSHING BOE	J. GERALD NILLES
JOSEPH A. DONAHUE	ALVIN C. STRUTZ
DONALD C. HOLAND	FRANK I. WOELL
HARVEY B. KNUDSON, Chairman.	

Mineral Laws Committee

The above named committee had not yet held a meeting as of the date of this report for the reason that despite efforts by the chairman, it has not been possible to arrange a date suitable to all the members.

The members of this committee have been surveyed twice during the year with respect to suggestions on legislation and other matters. It is contemplated that a meeting will be held during the State Bar Convention at Minot, and at that time the agenda will be covered.

WILLIAM S. MURRAY, Chairman.

Committee on Professional Cooperation

I greatly regret that I cannot be present at the meeting of the State Bar Association of North Dakota this year because of conflict with the National Convention of the National Association of Claimants Compensation Attorneys. I particularly regret this situation because I am a member of the Committee on Relations with Bar Associations of NACCA, and desired to bring to the attention of SBAND to the services which NACCA can make available to our Association.

During the year I have been collecting articles on medicine and the law, and various codes, preparatory to preparing a code of inter-professional relations between the Bar Association and the State Medical Society. I have discussed this situation with Mr. Lyle A. Limond, Executive Secretary of the North Dakota State Medical Association, and various members of the Medical Association, and find them very receptive to such a code. Frankly, I have not had time to make a synthesis of the various codes and prepare one for this state, which still needs to be done, submitted both to the State Bar and State Medical Association for joint attention, and then adopted as approved.

For this purpose I have in my file the Cincinnati code, the inter-professional code of Wisconsin, the Iowa Standards of Practice governing lawyers and physicians, and the Arizona code; besides these I have the article "Medicine and the Law" from the AMA Journal, and "Aids for the Improvement of the Doctor-Lawyer Relationship", "Insurance Law Journal", with many other articles I shall be glad to pass on to any successor, and to serve on his committee for the drafting and preparation of a code and the securing of its adoption to both Associations.

I heartily recommend that our Legislative Committee put a bill forward to the Legislative Assembly of North Dakota covering expert witness fees for medical men, engineers, accountants, etc., as an interprofessional duty on our part.

I regret that office changes and press of work made it impossible for me to finish the committee work this year, and have the Code completed and adopted.

JOHN F. LORD, Chairman,

COMMITTEE ON PROFESSIONAL RELATIONS.

Sectional Committee

Your committee held several meetings during the past year at which time they arranged for mailing questionnaires to all members on topic preference for this year's sectional meetings, and after tallying the returns, contacted the persons who have prepared the papers for these meetings.

The following are the topics with speaker and section moderator for the convention sectional meetings:

1. Joint Tenancies under the Federal Tax Laws
 Speaker — Philip B. Vogel, Fargo, North Dakota
 Moderator — Kenneth M. Jakes, Bismarck, North Dakota
2. Check Lists: Probate, Quiet Title and Real Estate Mortgage Foreclosure
 Speaker—Roy Ilvedson, Minot, North Dakota
 Moderator — Fred A. McKennett, Williston, North Dakota
3. Planning Estates Under \$60,000.00
 Speaker — Vincent R. Murphy, Fargo, North Dakota
 Moderator — George A. Soule, Fargo, North Dakota
4. Examination of Adverse Party and Disclosure Proceedings
 Speaker—Clyde Duffy, Devils Lake, North Dakota
 Frank F. Jestrab, Williston, North Dakota
 Moderator — John C. Haugland, Devils Lake, North Dakota
5. Taxability of Joint Interests in North Dakota Estate Tax
 Speaker — Kenneth M. Jakes, Bismarck, North Dakota
 Moderator — Philip B. Vogel, Fargo, North Dakota
6. Check List on Title Examinations
 Speaker — Henry G. Ruemmele, Grand Forks, North Dakota
 Moderator—Everett E. Palmer, Williston, North Dakota
7. Common Disaster and Simultaneous Death Clauses
 Speaker — Floyd L. Dwight, Minneapolis, Minnesota
 Moderator — Roy A. Plovhar, Valley City, North Dakota
8. Prosecution of a Criminal Action
 Speaker — Lee Brooks, Fargo, North Dakota
 Moderator — Paul L. Agneberg, Cando, North Dakota

The sectional papers are being printed in a pamphlet and will be available for distribution at the convention. These arrangements for printing have been handled by our Executive Director.

This committee was composed of the following lawyers who have all worked and made this assignment very pleasant for the Chairman.

PAUL L. AGNEBERG
 RICHARD H. McGEE
 LaVERN C. NEFF
 GEORGE A. SOULE
 JOHN C. HAUGLAND
 FRED A. MCKENNETT
 ROY A. PLOYHAR
 W. R. SPAULDING
 EVERETT E. PALMER, Cairman.

In addition to this committee, I wish to thank yourself, our Ex-

ecutive Director, Lynn Grimson, Dean O. H. Thormodsgard and the members of the Executive Committee, who so generously aided and assisted in securing the speakers for the sectional topic papers.

Committee on Tax Laws

During the past year, the Committee on Tax Laws did not meet formally as a body. Work of the Committee was carried on by correspondence and though some effort was made to prepare an agenda for a possible meeting of the full committee, this was not accomplished in sufficient time to warrant calling a meeting of the Committee prior to the meeting of the Bar Association in August.

Matters which were called to the attention of the Chairman of the Committee and which are set forth here for use by the Committee on Tax Laws during the coming year are as follows:

1. Should Section 57-3706 of our State Tax Law be amended to conform to the provisions of the Federal Estate Tax Law providing that the gross estate of the decedent shall include the entire joint estate in which decedent was interested except to the extent that it can be shown that it was originally owned or contributed by the surviving tenant?

2. Should our Income Tax Law be amended to include a provision for withholding income tax?

3. Should our Income Tax Law be amended to include provisions for criminal penalty to be imposed on persons hired to fill out income tax returns who do not disclose on the return that they have filled out the return for the taxpayer?

4. Should our Income Tax Law be amended to include deduction of alimony payments by one paying them and taxing the payments to the recipient in essentially the same manner as alimony payments are treated under Federal Income Tax Law?

5. Should our Income Tax Law be amended to provide a standard deduction in lieu of an itemized deduction for personal expenses such as interest, taxes, medical expenses, as is presently provided under Federal Tax Law?

6. (See opinion of Attorney General, E. T. Christensen, dated August 25, 1953, addressed to J. A. Engen, State Tax Commissioner, Bismarck, North Dakota.) Prior to the issuance of the Attorney General's opinion just referred to, the tax Commissioner had been making determinations of Estate Taxes in cases of resident decedents where no probate had been involved and particularly in joint tenancy matters. Following the Attorney General's opinion, it might be said that these determinations are technically invalid. Should the Bar Association recommend introduction of a validating act to cure such determinations made by the Tax Commissioner prior to the date of the Attorney General's opinion.

7. Should an effort be made to further correlate North Dakota and Federal Estate and Income Laws, particularly in view of 1954 amendments to the Internal Revenue Code of the Federal Government?

In addition to the foregoing matters, suggested by the Chairman or members of the Committee, and representatives of the State Tax Commissioner's office, there were some suggestions made as to possible avenues of study which were so indefinite as not to warrant inclusion in this report. However, it is suggested that this correspondence be referred to the new Committee on Tax Laws so that the Committee will have the benefit of these suggestions in its deliberations during the coming year. During the past year, the Chairman has had occasion to meet with members of local and county Bar Associations and to encourage them to submit their problems with reference to tax matters to the Committee on Tax Laws from time to time.

Respectfully submitted,

COMMITTEE ON TAX LAWS,

WARD M. KIRBY, Chairman.

Traffic Safety Committee

TO THE HONORABLE PRESIDENT:

Your Traffic Safety Committee during the year 1955-1956 has handled all matters submitted to it by the executive officers of the Association which consisted primarily of material and requests from North Dakota members in defined areas; American Bar Association questionnaires; Traffic Institute questionnaires; and, requests for briefs and statutory resumes on North Dakota traffic laws and their administration.

Perhaps one of the most important functions of your Committee was active participation in the Second Traffic Court Conference held at Bismarck, North Dakota on April 25-26-27 of this year, a program for which is attached to and made a part of this report. Mr. Richard P. Rausch, committee member from Bismarck was designated to act for the Committee in the institute and he was ably assisted by Myron H. Atkinson, Jr. and R. W. Wheeler, both of Bismarck. To all of these men the Committee extends its thanks. Mr. Rausch, in addition to arranging for full time attendance at the Institute, registered as the official representative of the State Bar Association and participated in a mock traffic trial. The reports of Mr. Rausch, Mr. Atkinson and Mr. Wheeler are attached to this report in their entirety.

It is the recommendation of your Traffic Safety Committee that your Bar Association continue along the lines of traffic safety as laid down by the American Bar Association. We also recommend that the Bar Association fully cooperate and participate in Traffic Safety Institutes as it is the opinion of your Committee that through such institutes material of an educational nature is placed in the hands of enforcement agencies and officers and through such agencies and officers is disseminated to the public. It is the opinion of your committee that the ultimate goal of uniform and adequate traffic courts

and traffic safety will best be obtained by the education of the public through agencies and officers having to do with law enforcement.

TRAFFIC SAFETY COMMITTEE,
T. L. DEGNAN, Chairman.

American Citizenship Committee

No report.