



1943

Report Member of House of Delegates of American Bar Association

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Recommended Citation

Owens, Wm. G. (1943) "Report Member of House of Delegates of American Bar Association," *North Dakota Law Review*: Vol. 19 : No. 12 , Article 2.

Available at: <https://commons.und.edu/ndlr/vol19/iss12/2>

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REPORT
MEMBER OF HOUSE OF DELEGATES OF
AMERICAN BAR ASSOCIATION

Mr. President, Officers And Members Of Bar Association Of North Dakota:

Gentlemen:

In accordance with the bylaws of the Bar Association of North Dakota, you conferred on me the honor of representing the Association as a member of the House of Delegates of the American Bar Association. It is my duty to give you a report of my doings and observations while attending the Sixty-sixth annual meeting, held at Chicago, Illinois, August 23rd to 26th, 1943. Judge Harry Bronson of Grand Forks, as your state delegate, also attended.

It was impossible to attend all session of the various sections, nor report on subjects treated, a full and detailed review of which can be had from the pages of the American Bar Journal which each of you should have, and to which I will refer later in this report, however, Judge Bronson and myself attended every session of the House of Delegates and most of those of the Association, so will give you, briefly, a report on matters which I deemed most interesting to us lawyers in North Dakota.

Please note the very full attendance, especially by lawyers from eastern sections of the United States, also from the west coast cities and Texas. Southern lawyers seem most interested, while the central sections are noticeable by their absence. North Dakota and Montana each had two delegates, while South Dakota, Minnesota, Iowa and Wisconsin had a fair representation. From such observation, it would seem that our Association has lost a bite of its interest in Association affairs. Will that reduce our enthusiasm in the organized work of the lawyers? To my mind, that shouldn't be, for, if so, our profession will lose its influence, not only in the law, but in local, governmental and civic affairs. In this time of trouble and stress in worldly, as well as local, affairs, the influence of the law must be upheld; therefore, the work and interest of lawyers therein should be intensified. This observation draws our attention to the gradual up-rooting of the lawyer. I mean the increasing, unauthorized practice of law. Every lawyer in North Dakota, who is awake to matters involved in his profession, must observe the gradual creeping into the law business by some, in his own community, who are not licensed to do so. A number of laymen are in the bankruptcy business; notary publics are drafting wills and legal documents; government employees and agencies doing most of the mortgage and title business. What are we as lawyers doing to protect our business?

The American Bar Association has, for more than fifteen years, been investigating, having hearings, soliciting support, recommending legislation. During the past three years, it has accomplished marked success in wiping out a number of inroads

existing in the law business. You have no doubt read our statute, making it a crime to practice law in this state without a license yet most of us meet a violator every day, but few do anything about it. The American Bar Association is asking and recommending that the committees of local and state Bars having to do with that subject get busy. That is one of the really big problems before the American Bar of today.

Not only the law profession is menaced by inroads into its business, but the medical profession is now howling for help. Right now there is pending in The Congress a proposal placing in the hands of one Man-Surgeon General of the Public Health Service—the power of authority to hire doctors, establish rate of pay, schedule the service, establish qualifications, determine the number of patients a doctor may have and determine what hospital or clinic may provide service. In fact, it is thought, if such a proposal is enacted, its provisions are so sweeping, that the entire system of American medical care would be destroyed. I refer to Senate Bill 1161, sponsored by Senator Robert F. Wagner of New York and Senator James Murray of Montana.

The lawyers of America took notice of the trend of such legislation and at the meeting of the House of Delegates on August 31st adopted the following resolution:

“The House of Delegates is opposed to any legislation, decree or mandate that subjects or subordinates the practice of medicine to Federal Control or regulation beyond that imposed under the American system of free enterprise.”

It is thought that the lawyers should actively combat any proposed legislation which subjects, or subordinates, any profession beyond that imposed under the American system of free enterprise, yet we, as lawyers, have done little or nothing tending to forestall legislation permitting practices before various boards, bureaus or departments by those not learned in the law or which fixes rules; therefore, such laws go so far as to deny the right of appeal to the court from the decisions of boards and bureaus by the aggrieved party. Have we come to the belief that such is the desire of the American people. Are the people to be denied the right to hearings in the courts under the rules of law and equity?

The lawyers must take a hand, at least to the extent of bringing to the attention of the people such proposed modifications of the American way, or the democratic way of doing things, which relate to personal property rights of the individual.

You have watched the gradual changes in the regulating of business and industries by the imposition of executive orders, rules and regulations by varied bureaus and boards, which orders are treated as LAW. We as lawyers took little or no hand in such steps or law making but it is noticeable that the people are getting wise to the rules imposed on them and no doubt in time

will appeal to the lawyers for help to enact laws relieving or modifying their troubles. When such a time comes, will we of the profession be informed as to ways and means? True it is that much of this has come to us under the guise of "War regulations" but we are concerned with the "due process" clause of our Federal and State Constitutions and what will be done with them after the war. The American Lawyer must lead the way in preserving those inalienable rights, many of which seem now to be suspended. Read the address "Encroachment of Administrative Boards and Judicial Functions."

Taxation was a paramount subject before the convention and the House of Delegates. Academic and able debate was had on various phases of the subject all of which one can get in the Journal.

Your delegate was particularly interested in the section "Real estate trusts and estates" particularly so because of the federal statutes preferring government claims against the estate of a dead man. We have many such claims in North Dakota. Taxes against estates gifts, and trusts created by a decedent. All these are problems for the lawyers and courts handling or having jurisdiction of estates. Federal laws go so far as to place the responsibility on executors, administrators and even the judges of the courts, should the government claims be overlooked or the required tax be not paid before distribution of the assets. The lawyer has the duty of directing the handling of the estate by the executor or administrator,—unless a preacher or notary public be the advisor. The court has the right to rely on the attorney, but the government seems to take the attitude that the judge is responsible for the taxes should a mistake be made. Likewise, gifts and trusts so created must be carefully construed and administered according to the law. Obviously, that is a job for the lawyer. In our great state, many of the County Judges are laymen and cannot be expected to be familiar with the statutes or the court decisions on close questions relating to the administration of those subjects. In passing I am prone to remark that in some instances the lay-judge seems to exercise more common sense than some of the lawyers (probably the judge don't want to get stuck, so gets side advice from the district judge or maybe the tax collector). In North Dakota our statutes grant certain exemptions to the widows and children, preference for expenses of the last sickness and hospitalization. preferences of government claims, hold that the government claim comes ahead of expenses of last sickness, but lets the estate bury the corpse. Such ruling particularly affects the claims of our counties and states which have contributed to the care of so many of our people during last sickness. The subject is one for careful and detailed study of us lawyers, so much so that the American Bar has taken notice and has a section for study of those subjects. Our own Judicial Council is making a study of that particular field.

Many outstanding speeches were made to us. These are printed in the Journal, each well worth your study. I will not

take the time nor could I very well outline the pertinent matters dealt with. Will call attention to our privilege of listening to The Right Honorable Sir Donald Bradley Somervell, O.B.E., M.P., K.C., Attorney General of England, from London, a Justice from a Canadian Court, Justices and Judges from our own Courts, Senators, Leading Members of our American Bar; their papers and addresses were educational and outstanding. I listened to so many that I confess that I found myself wondering if the people who listened to some of our own efforts became so tired and exhausted as I did listening to those wonder speeches. From it all I am quite determined to recommend that you read those addresses given by our American Lawyers and study the papers and reports of those sections covering the subject matters in which you as practitioners are most interested. You will then have quite a comprehensive picture of our American Bar Association.

One subject must be impressed on our minds, that is, every judge and lawyer in our entire State should be a member of the American Bar Association—a dues paying member. The Journal alone is well worth the dues of \$8.00, which you pay for one year. We all subscribe to law periodicals, but in my opinion when the Journal gives us the up-to-date decisions of our United States Supreme Court, which is so necessary for every lawyer of today, to have that service alone will much more than return to you the amount of dues you give to your association. Besides that service you will have able discussions on subjects of historical value, law and legislation.

I am convinced that more of our lawyers should attend the meetings of the American Bar. No matter the cost, it is well worth the expense. One must come home with a feeling of being a better lawyer than his competitor who has missed the session. We have so many of our younger lawyers in the government service, some on the battle fronts, that we at home must not fail. We must keep up the home front by giving our services, actively, to the protection and preservation of our laws in the American way, that our government and our American institutions, created under those principles of law and equity, shall survive forever.

Respectfully submitted,

WM. G. OWENS
Member of House of Delegates
from North Dakota—Williston

STEPS IN THE PREPARATION OF A LAWSUIT

By Nels G. Johnson

THINGS THAT MAKE FOR SUCCESS IN THE LAW

One of the many things that young lawyers want to know when they are about to commence the practice of their profession is, "What makes the success in the practice of law? There is, of course, no adequate answer to that question. There are