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Proceedings of the Annual Meeting of the State Bar Association of North Dakota Held at Minot, North Dakota August 24 and 25, 1944

North Dakota State Bar Association

PROCEEDINGS

of the

ANNUAL MEETING

of the

STATE BAR ASSOCIATION OF NORTH DAKOTA

HELD AT MINOT, NORTH DAKOTA,

AUGUST 24 and 25, 1944.

The Annual Meeting was called to order on the 24th day of August, 1944, at 9:30 a. m., President O. B. Herigstad presiding:

MR. HERIGSTAD: The Forty-fifth annual assembly of the North Dakota Bar Association will now come to order, and we will ask the Reverend George C. Saunderson of the First Methodist Church of Minot to lead us in prayer.

REV. GEORGE C. SAUNDERSON: Our Heavenly Father, we know deep in our hearts that nobody should ever enter into anything that is very important without first invoking Thy blessing upon them. We realize that we as individual people are apt to forget our need for Thy guidance, and to rely altogether too much upon ourselves and upon each other, so we take this moment of quietness and meditation to acknowledge our debt to Thee, and to realize within our own thoughts our great dependence upon Thee for all things of life. There isn't anything we have that we can really call our own. There isn't anything we do that we can really take credit for ourselves. Thou are our Guide and our Help and our Sustainer of life even as the air around about us gives life, and food from the soil nourishes our bodies, and we know that man cannot live by bread alone, but must live also upon the things of the spirit. So we take this moment out of a busy day at the beginning of this important meeting to call upon Thee for Thy blessing and Thy guidance for all of the things which we have to do.

We thank Thee indeed for the opportunities of service which present themselves to us. We pray that we may measure up to the obligations that come, take the responsibilities of life seriously, and this day when the world has been torn to its very roots and more, and nations have been destroyed, and the things of the material world seem to be so important, help us as individual people, as citizens of this nation, and the world, to do all that we can toward the building of good will and peace.

We thank Thee for the things that are happening now towards victory, and we ask that Thy guidance may be with those who are responsible, the leaders of our nation and our allies. May Thy blessing rest upon those of our boys that are away from home, some of them in great danger even now at this moment, suffering privation, danger and even death. They need the comfort of Thy help and Thy Divine presence. May they be kept from evil. We pray for the coming of the day when they shall come home, and we take up the practice of peace and

building of things that shall work for the welfare of mankind. We ask that Thou wilt guide us thru this day. May it never happen to us that we rely upon ourselves, but upon Thee, Thy welfare goodness and mercy for us. Amen.

MR. HERIGSTAD: I was quite concerned for a while because I thought we had lost our Mayor. I find he had been sitting up at the county courthouse waiting for us there. It finally dawned upon him that we were here. We are happy to have him with us, and to have him give us a word of Welcome.

MAYOR V. E. SANDBERG: President Herigstad and Members of the North Dakota State Bar Association and guests: I want to assure you that it is indeed a pleasure for me to have this opportunity to welcome you men to the City of Minot. I have had an opportunity to deliver many addresses of welcome, but I am sure I feel a bit shaky in addressing a group of men like you. You know more about addresses than I do. I assure you the welcome is still there. It is customary for the mayor to present the key to the city. It isn't necessary. We left the town wide open so you can enjoy the freedom of our City.

I used to deliver good addresses of welcome. Your president was on the city council for five years, and I used to say, "O. B., such and such a convention is coming to town, and I want an address by such and such a time." He isn't there now, and I don't dare ask him so you can see why the impromptu talk.

In the city manager form of government, the mayor has no authority. He presides at meetings, and if anybody gets in the hoosegow, I can't get them out. With you gentlemen, I think it will be very rough. If I can't get you out, I can stay with you. We want you to have a good time. I know you came for other purposes. We want you to have a good time. We want you to feel at home. Anything we can do to make your stay here pleasant, we will be happy to do that. We will do anything we can. O. B. knows the ropes. Just ask him. He has lived here thirty-nine years. We want you to have a good time, and we want you to come again.

MR. HERIGSTAD: Thank you. I want to correct one thing. There has been a lot of scandal connected with my name, but I don't think I have ever been on the city council. We have a distinguished member of the Ward County Bar, the president of the Ward County Bar, and he also wants to welcome you. I am calling on our good friend, Ben Bradford.

MR. BEN BRADFORD: Mr. President, Members of the North Dakota State Bar Association, Ladies and Gentlemen: It is my privilege, and I regard it as a privilege, to supplement the address of welcome made by the mayor of the city to you, on the part of the Ward County Bar Association. I am really surprised to see the extent of the gathering today. I thought it was going to be smaller. I am very glad, indeed, that so many were able to get out and able to come here in disregard, to a certain

extent, of the war restrictions and regulations. I know we are going to have a fine meeting, and be enlightened. We won't have outside speakers come on this occasion, but I think there are members of the Bar here who are able to address you and edify you as much as outside speakers. The only loss will be to the outside speakers themselves in not being able to get acquainted with you boys and see our smiling country. The Ward County Bar is glad to welcome you and hopes you will have a good time.

I wonder if I might digress and sound a warning note, something I think each of you should take to his own office and his own associations, and spread the gospel as far as you can in these United States. I say the legal bar association is the first and middle line of defense to the citadel of our constitution, the bill of rights of the United States, and unless we, as a profession, stand firm in the defense of those things, all of the fighting and horrors of war will be suffered to no avail. If we win freedom for our country and lose it for our country, it will be no avail. I say to you to make it our business, first, last and all of the time to stand firm in the defense of the principles which we have seen in the last few years seriously and dangerously attacked. Let that sink in. Let us here in this outpost sound the warning note just as the private did in Pearl Harbor, of approaching danger. Let us hope that the upper officers, those in charge, will not disregard our warning. I thank you.

MR. HERIGSTAD: Thank you, Ben, for that splendid talk. We will have the response to those addresses of welcome by our good friend, the genial vice president, of our association, Bill Owens.

WM. G. OWENS: Mr. President, Mr. Mayor, Judge, and fellow lawyers of the Bar: I should have written out a speech to respond to this welcome that we have received, but the example has been set for me to speak extemporaneously. I assure you that when I do that I am liable to talk too long. If I had written out my speech, I couldn't read it very well, so you will have to take chances. The President wrote me and said it was up to me to respond to the welcomes which have been presented to you, and he expected that I would with my best oratory. I probably didn't recognize the fact, as a lot of lawyers outside of Minot do recognize, that the mere welcome to Minot calls for the finest burst of oratory that any lawyer can explode. I notice the good mayor has thrown the doors wide open, given us all of the liberty you will desire. That will be interpreted differently by the different fellows who are here, but I do notice that the good mayor and his organization doesn't guarantee the protection. So you will have to use your own judgment as to that. We are granted assurance that our brother attorneys, represented by our good friend Ben Bradford will surround us with so many good things, so much entertainment and so much to eat, and freedom, and good sights to see what

is developing here in the citadel of our northwest, that our morals will be safeguarded very well.

You know Minot is one of those cities to which we seem always to come. It is peculiar in itself. The old timers, you know, some we missed, who used to regulate things when the good doctor was a young fellow, was struggling to get started, —I have in mind the bar of that day, Jim Johnson, Judge Murray. We have Judge Palda with us. He is still doing his stuff and probably beating us to it, used to present a big key to the city, to anybody that came to the city and turn them loose. It is a little different. They have built the city by drawing to Minot the good things from the surrounding towns.

Of course, I come from Williston and I recall that when Minot needed a good superintendent of public schools here, they came up to Williston and got a professor we had to come down and be superintendent of the public schools, and when the state located here a college, a teachers' college. We used to call it a normal school in those days. The Minot fellows came up and got Superintendent McFarland to run your normal school, and it became the best educational institution in the state. I might enumerate a lot of good things that Minot came to Williston and obtained to help build Minot, consequently they are in a position to give us all of those good things they offer. We are glad to come and accept them. Mr. Mayor, your gracious welcome is not only gratefully accepted, by not only the judges, but members of the Bar from throughout the entire State of North Dakota. The members are here from every corner of this state. We are here to do those things which we think need to be done for the protection of North Dakota, its organizations and its institutitions. we are glad to discuss those things which we think are necessary here in Minot. We are sure we are going to have a great deal of help, encouragement and well wishes while we are in your city, and with these few remarks, and from the hearts of every attendant of this convention, and for the welcome you have given, we sincerely thank you and the citizens of Minot.

MR. HERIGSTAD: There was considerable doubt in the minds of the executive committee as to the advisability of holding a convention this year, but this splendid attendance we have fully justifiies the judgment of the executive committee in deciding to hold a meeting, and I am sure we in Minot are very happy at this time to have you all here. When I secured permission from Washington to use this courtroom for our assembly—it must be an assembly, and not a convention—it was with the specific understanding we were not to permit any smoking in this room, so I will be compelled to convey those orders from Washington to you gentlemen. You are welcome to smoke in the hall. Bill, if you will take the chair, I will inflict upon the assembly my address.

MR. OWENS: It is my privilege as your vice president to present to you the president of our organization for his annual

address. Members, I present President O. B. Herigstad of our Association.

THE LAWYER IN THE POST-WAR ERA

It is customary for the President, at the opening of our assembly, to deliver his annual address. The executive committee, when it decided that we were to hold this meeting, determined that it should be a streamlined convention. In conformity with that edict of our executive committee, this address will be streamlined.

First, let me express my deep appreciation for the privilege of serving you the past two years. I do not believe that any former president of your Association, since we have had an integrated bar, has had the honor of serving two successive years. As you all know, because of the action taken by our Association at Grand Forks two years ago, and because of the action taken by the executive committee, we had no meeting of our Association last year, and therefore no election of officers.

In my work as president of the North Dakota Bar Association, I have been privileged to come in close contact with many members of our association, and I have come to have a very high regard for the integrity, the ability and the patriotism of the lawyers of our state.

I am proud of the many members of our Association who are serving our country in the armed forces. Almost twenty percent of the total membership of our Association are serving Uncle Sam in that manner, which I dare say is a larger percentage than that of almost any other class or profession. They are serving their country with great credit to themselves, to our bar, and to our state.

I am also proud of the achievements of our lawyers who are fighting on the home front. They have taken an active and leading part in the war work. The National Defense Committee, of which there are members in every county of our state, has handled very efficiently the legal affairs of the soldiers and sailors of our state. Many of our lawyers have been chairmen of the different War Loan Drives, and of other war activities. Altogether they have made a record of which our Bar Association may be justly proud.

In my first editorial in Bar Briefs, I suggested that "during the coming year we must focus our attention primarily on the problems that have come to us because of the war." This we have done during the past two years, and I appreciate very much the splendid cooperation you have given me in that important task. I know of nothing more inspiring than to be permitted to work shoulder to shoulder with the loyal and patriotic lawyers of North Dakota in war work.

Again I thank you from the bottom of my heart for granting to me the honor and privilege of serving as your president.

In the past it has been customary for the president in his annual address to discuss some phase of the law, or some of the problems of the lawyer in the practice of his profession. I shall digress from that custom somewhat.

An independent bar has two functions. One duty of the lawyer is to advocate the cause of his client to the best of his ability. The other is in public affairs, where he represents only himself, to serve his country. And in these trying times we lawyers need to devote more time and attention to the affairs of our country. I have therefore chosen as my subject, "The Lawyer in the Post-War World."

While there are yet many grave problems in connection with the carrying on of the war that confront the lawyers of America, it is not too early, I believe, to give some thought to our place in the past-war world.

Ours is a government of laws. Therefore leadership in public affairs necessarily devolves upon our lawyers. In the past the lawyers assumed that leadership; they led the people in their struggle for independence; they set up a stable government and drafted a great constitution; they led us through the dangers of civil war and the period of reconstruction, and I believe that it can be truthfully said that it is the lawyers of today who are leading our people amid the gravest perils that have ever confronted our nation.

Now it might be well to look ahead and ask, "What service is the American lawyer going to render in the reconstruction of a war torn world?"

The first duty of the bar in the time of crisis is the duty of public leadership. The period of reconstruction will be an hour of crisis in our land, as well as in the entire world, and our country will need the loyal and intelligent leadership of our lawyers as never before.

It will be a period of readjustment and of harmonizing conflicting ideas and ideals. The lawyer who is public spirited will realize that great opportunity for rendering public service is ahead of him.

The post-war era will be almost revolutionary in character, and it is a well known fact that popular distrust of lawyers is characteristic of such an era. For the lawyer is generally a strong defender of the existing order. At his best he is seeking to preserve the lessons of experience, the tried and proved methods of settling disputes, of maintaining social order and personal security.

Often the leaders of so-called reforms, earnest fighters for the oppressed and underprivileged, become impatient with the legal barriers set up by our constitution, and staunchly defended by our lawyers, and so they cry out "Away with the lawyers." The danger is that this antagonism to the trained lawyer as a guide may bring into leadership ignorant fanatics

as the planners of a new order. When the advice and counsel of the experienced lawyer is rejected, the leadership of the inexperienced and uninformed though well-meaning citizen will be substituted therefor.

We hear it said on every hand that after the war we will not go back to the old order of things—that we will have a new set-up. There is a tendency to break away from constitutional restrictions, to get away from the balance of power set up by our constitution in the three departments of government.

The exigencies of the depression and of the war have created numberless administrative bureaus, as a needed supplement to the services of the legislative, executive and the judicial arms of our government. But these administrative bureaus have now grown into a monster that is eating up the legislative and judicial functions and obligations so rapidly that the average citizen is losing respect for both.

It is interesting to note how Congress often sidesteps a difficult problem of law-making. As for instance, when dealing with the problem of stabilizing wages and prices, it passes a vague law directing the President to stabilize wages and prices, and states that prices shall be fair and equitable. It does not limit executive action, and provides for only a restricted and uncertain judicial review, and the judges are told not to review the wisdom or legality of what the executives do. The judiciary often appears to be glad to escape responsibiltiy. One of the judges of the Supreme Court, in a recent opinion said, "Congress has long delegated to executive officers or executive agencies, the determination of complicated questions of fact and law. And where no judicial review was provided by Congress, this court has often refused to furnish one, even where questions of law might be involved."

It is claimed that these administrative bureaus will get us away from the inefficiency and delays of our republican form of government, and make our laws more flexible, and that the delays and trickeries of lawsuits are gotten away from.

A commission of practical men is supposed to make practical rules, and to enforce them by summary and informal procedures, granting exemptions from special hardships, and dealing promptly with the wrong-doers.

We have always recognized that the principles of the law of evidence are sound guides to distinguish fact from rumor. But now administrative commissions are authorized to receive practically any sort of evidence that may be offered, and it is left to the commission, generally inexperienced in the law, to do the job,—a job that would tax the powers of an experienced judge. And finally it is left to the commission to make the findings of fact and conclusions of law, and from such findings of fact and conclusions of law there is in many instances no appeal to our courts.

Perhaps this procedure may in some instances result in a more accurate determination of the facts than would be expected from an ordinary jury, especially when the members of such a commission are well informed regarding the business to be regulated. But we must bear in mind that not only is the jury guided in its deliberations by a judge schooled in the rules of evidence, but the record it makes is subject to review by an appellate court which is charged with maintaining the principles of evidence and procedure as laid down in our statutes or in judicial precedent.

If the rulings of these commissions were subject to such a judicial review, then administrative law would have to conform to legal principles which have come from the long struggle to make government the insurer of individual freedom. But no such restraint is placed on most of these administrative bureaus.

Thus we get a government of men instead of a government of law, in fact it becomes a government by a multitude of lawmakers, unrestrained by established principles of law and law enforcement.

The great liberal jurist, Justice Benjamin Cardozo, discussing a federal statute in the case of Standard Chemical and Metals Corporation vs. Waugh Chemical Corporation, 131 N. E. 566, said that when we put by government by law for government by men, "the individual is set adrift upon the uncharted sea of subjective prejudice and favor." Then he goes on to say the bureaucratic decision "unrestrained and unrestricted, becomes the test of right and wrong, and men are viewed as malefactors for failure to consent to the unknown and unknowable."

As one writer puts it, "We can well understand how, under these conditions, business planning becomes a fortune-telling affair, with hired sooth-sayers and political prophets examining the entrails of bureaucracy to guess whether the citizen may venture forth to the market place.

Take the Sherman Anti-Trust Act, for an example. While it has been on the statute books for fifty years, our government remains without a settled policy with regard to its interpretation. Every new Attorney General brings to American business this question: Will it be a strict enforcement of a common sense enforcement? Will the new administration follow the policies of the outgoing one?

Definite law is the basis of economic and political freedom, just as much as confusion in the law is the tool of communism.

We have been drifting away from established principles of law and law enforcement. Now in many instances men on bureaus not elected by the people, not responsible to the voters, make the laws—"the rules", as they call them,—prescribe the punishment for violation thereof, interpret them and enforce them. And in most instances there is no judicial review of

their decisions. We are to a large extent being governed by irresponsible bureaucrats.

To me the most alarming aspect of his growth of administrative bureaus is the usurpation by them of the functions of the judiciary. Take away the power of our courts and you have completely destroyed our democratic form of government. Our courts are the bulwark of free men. Every citizen, however humble he may be, can secure from our courts an enforcement of the rights guaranteed to him by the Constitution. When people lose faith in their courts they have lost faith in democratic government.

Our people seem to be losing confidence in constitutional government. The tendency to put all the power of the legislative, and judicial branches of our government into the hands of administrative bureaus is a trend toward totalitarian principles. Let us ask ourselves in all seriousness—are we drifting toward totalitarian government here at home, while we are sacrificing the lives of thousands of boys and spending billions of dollars to destroy totalitarianism abroad?

No greater issue will face America after the war than this,—shall constitutional democratic government be preserved? Who are better qualified than our lawyers to meet and solve that issue? They, better than any other group, can understand and appreciate the importance of preserving our constitutional safeguards, of maintaining the checks and balances so wisely set up in our republican form of government by the Founding Fathers; they, better than anyone else can appreciate the importance of preserving the function of our courts.

They have both theoretical and practical knowledge of the working of our system of government. They are accustomed to mastering intricate problems. They are generally leaders in their respective communities, and are every day making personal contacts with their clients, and these personal contacts in every community can be made centers from which their influence will again radiate throughout the land.

We have but to recall the achievements of one of the illustrious members of our own bar, to realize how important and far-reaching can be the leadership of the lawyer in governmental affairs. The Honorable L. L. Twichell for more than a quarter of a century exerted a profound influence on law-making in our state, and so can the lawyers of our country exert a great influence in the post-war era.

I said at the beginning of my talk, and I repeat for the sake of emphasis: The first duty of the bar in the time of crisis is the duty of leadership. The period after the war will surely be an hour of crisis. Ours will be the task of leading our people back to right thinking on governmental affairs. We must make them understand that the principles of law-making and of the administration of justice laid down in our constitution, which were evolved out of hundreds of years of experience, are far

more fair and practicable than any which a generation of so-called reformers and experimenters can produce. We must make our citizens realize that the Constitution is an expression of a philosophy of law, and the underlying principles of law-making and law-enforcement, and is the very foundation of our political system; that it is essential to the preservation of our free institutions to have the law-making power in a legislature that is directly responsible to public opinion, the enforcement of the laws in the hands of officials who have no part in law-making, and an independent judiciary to interpret our laws and to determine whether the laws enacted by the law-making body are in accord with the fundamental principles of our Constitution. We must endeavor to make our people realize that, as was said by one of our Supreme Court judges, in a famous case known as "Ex Parte Mulligan."

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, in all times and under all circumstances.

"No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of the Constitution's provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism—the theory of necessity on which it is based is false."

And as was said by former President Woodrow Wilson, in an address before the New York Press Club in 1912.

"Liberty has never come from government. Liberty has always come from the subject of it. The history of liberty is a history of resistance. The history of liberty is a history of limitations of governmental power, not the increase of it."

We must call our people's attention to the significant fact that under our constitution America has developed into a great nation. Under it we have enjoyed the greatest degree of freedom, individual enterprise and economic prosperity of any nation on earth, so that we have been the envy and wonder of the world. They will then realize that the constitutional government under which we attained our liberty and prosperity is the safest government under which we may retain these same privileges.

And above all, if America is to survive as a democracy after the war, we must have an enlightened and loyal citizenry. It is a well known fact that an alarming percentage of our citizens know very little about governmental affairs, take no interest in them, and do not even exercise the right of franchise. The lawyers, who have a better appreciation of the need for an informed and loyal citizenry, must after the war assert their leadership, must make our people realize that if this is to be a government by the people, as was said by Lincoln long ago, it must be by all the people. We must make them realize that

the privilege of the franchise carries with it the duty to exercise it, and that the man or woman who fails to exercise that duty is to a certain extent a slacker.

After the war and during the period of reconstruction, America will need as never before, intelligent, honest and unselfish leadership. It will need the guidance of men who have the welfare of America truly at heart. Too many of our people are being led by selfish political damagogues, who are seeking to perpetuate themselves in public office, who are not advocating what they think is for the best interest of our country, but what is popular. We need leaders like George Washington, who when certain members of the Constitutional Convention sought to have inserted in the Constitution certain provisions which they themselves did not believe were wise provisions, but which would be popular with the voters, arose and said, "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hands of God."

Where is such leadership to come from save and except from the lawyers of our land? We have a great task to perform; a great responsibility will rest on our shoulders after the war. If our lawyers will but give their country the same loyal and wholehearted service that they give to their private clients, I shall have no fear of the future of America.

A great challenge was thrown out to our lawyers by the former president of the American Bar Association, Walter P. Armstrong, in his annual address to the American Bar Association convention at Detroit, when he said,

"Our long-range objective both in peace and war is to uphold the ideals and perfect the processes of democratic government. Fighting for these things our sons are scattered throughout the globe. When they return they will have earned the right to hold us to strict account. While outside they have been shedding their blood to defend the citadel we must not surrender it from within. * * * * * * * * * The responsibility affords the opportunity. If the bar acts with boundless courage and unstinted effort it will reassert a leadership as great, if not greater, than any it has heretofore achieved. If it shirks, it will sink into a limbo from which it may not emerge."

Fellow members of the bar, upon us rest tremendous responsibilities, and to us are given glorious opportunities for service.

MR. OWENS: Mr. President, I surely express the thanks of our members. This was a very instructive and inspiring address.

MR. HERIGSTAD: There will be a little rearrangement of the program to suit the convenience of some of the committee members who are going to make reports, so at this time, I will ask for a report of the memorial committee by the Hon. Judge Burr.

JUDGE BURR: Mr. President, gentlemen and lady:

Judge Burr reads committee report.

REPORT OF COMMITTEE ON MEMORIALS

Your committee on necrology presents its report to the Association at this annual meeting in 1944—a report covering two years.

There are more pleasant occasions than that of dwelling upon the deaths of intimate associates. Yet there is a melancholy pleasure in recalling their good deeds, their fine influence, and the enduring friendship formed through many years of close association.

"Death rides on every passing breeze." So said a noted hymnist, and the truth of the thought contained in that sentence we all acknowledge. But the purpose of your committee is to make a permanent record, as accurate as it is possible for the committee to make, and so we present short sketches dealing with the following named lawyers who have died since the meeting of the Association in 1942, viz:

JOHN C. ADAMSON
THEODORE G. AUSTINSON
W. H. BARNETT
H. L. BERRY
E. W. CAMP
E. E. CASSELS
MARK CHATFIELD
THOMAS FRANCIS CRAVEN
JOHN H. FRAINE
JAMES E. GRAY
M. A. HILDRETH
CHARLES H. HOUSKA
WILLIAM J. KELLEY
W. J. KNEESHAW
H. A. LIBBY
CHARLES E. LOUNSBURY
T. H. MCENROE
IVAN V. METZGER
H. F. O'HARE
GEORGE M. PRICE
GEORGE PURCHASE
FRANK J. SIBELL
L. L. TWICHELL
JOHN A. VANWAGENEN
JAMES CAIN
W. L. T. GOODISON

All of us here were acquainted with some of them; most of us acquainted with many of them; and some of us acquainted with all of them. We write from record, from reputation, and from personal knowledge.

It is not our purpose to take the time of the Association to read all of what is written. Doubtless, following the usual custom, the report will be printed in the annual minutes. But, there are three mentioned herein whose skeleton biographies I am taking the liberty of reading to you.

Sometimes we get an impression from the human voice that we do not get from the reading of cold type. Thus, we want to refer to one of the most distinguished legislators of recent years—the Hon. L. L. Twichell, whose fame rests more upon his legislative ability and accomplishment than it does upon the trial of cases; to Judge Kneeshaw, a district judge greatly beloved; and to the Hon. Edgar W. Camp, a member of the constitutional convention of this state.

With reference to the latter it is safe to say his name is a mere memory to almost everyone present. Few of us had the pleasure of meeting him. But a man's fame does not depend entirely upon personal association; otherwise, it would be extremely brief, confined merely to the recollections of his own generation.

The lives of all these whose names have been read showed various and varied careers. We record facts as we find them; show the fields of labor, and refer to each man's work in his sphere of activity, whether the range be broad or restricted.

In the funeral ode to President James A. Garfield occurs this stanza which is appropriate here:

"Life's race well run,
Life's work well done,
Life's victory won,
Now cometh rest."

The tenor of this stanza is applicable to our deceased brothers in the profession. We differ in talents and opportunity, but each LIVES when he works according to the measure of his capacity.

We have asked Mr. John Zuger of Bismarck to say a few words with reference to these deceased lawyers, after I read the references to Messrs. Twichell, Kneeshaw, and Camp.

(See Memorials following Proceedings)

JUDGE BURR: The Hon. John Zuger who will speak to you is a very typical example of the agreeable minded lawyer who is willing to take first, second, or third place. It was only last Monday I asked him to do this because others who had been asked were unavailable such as Mr. C. L. Young who was to speak to us, so I asked Mr. Zuger to fill the place, and he very kindly agreed to do that.

JUDGE BURR: Now, Mr. Chairman, may I ask the privilege of presenting Mr. John Zuger, who will say a few words in harmony with the theme.

MR. ZUGER: Mr. President, fellow lawyers and friends: It is at this meeting of the Bar, at this time that our thoughts

naturally turn to those fellow lawyers who have died since our last assembly. It is the proper time to voice our feelings that we have in memory of those men. As Judge Burr called the roll of the names here today, you each again became aware of the loss of a friend or an associate. The community in which these men lived have already become aware of the loss of the valuable citizen, and the courts have noted the loss of an officer who ably assisted them in the administration of justice. I think the feelings and thoughts of men here today is one of deep personal loss. Mr. C. L. Young was to have spoken, and he was taken suddenly ill, and could not be here. When Judge Burr asked me to say a few words in memory of these men, I wondered just what I could say, lacking a close personal tie with most of them, but as I thought of it, I thought of what these men had really done for all of us, and I thought that their transitory friendship was really not the greatest contribution they had given us. This meeting today is a meeting of the men of a profession. When we speak of the profession of law, we speak of an organized calling in which men pursue a learned art, and they are bound together in that pursuit in a spirit of special service. When a young man comes out of a law school, he has been trained and specialized in intelligent technique. In other words, he has been given tools to make his livelihood, and I wondered today if members of the bar, particularly those members who feel this deep personal loss, do not forget that these men whom we remember today did during their life times, passing on to us that opportunity of public service. It is this which makes of our work a profession. That opportunity of public service. It is something not taught to us, not given to us. That spirit is acquired by daily association with others; acquired bit by bit thru others acts and attitudes and personalities, and their ways of life. And I think we can say that in that way these men live on with us daily just as they did when they were with us last. So I say again, that the greatest contribution they have made is not their transitory friendship.

JUDGE BURR: Mr. Chairman, may I say just a personal word? When I look over the association today and think about the time I attended the first meeting of the Bar Association way back several decades, and see there is only possibly one man in the audience who was admitted to the Bar when I was admitted to the Bar fifty years ago this coming October, I can see the result of these forces. After these well thought words given by Mr. Zuger, I move that this report be received and printed in the minutes of the Association.

MR. BRADFORD: I second the motion.

Motion carried.

MR. HERIGSTAD: We had a report on the present status of the new Code by C. L. Young. As you probably know, Mr. Young was taken ill and couldn't be here. He is a very faithful man to our Association so this morning I received this

letter and personal report, and with your permission, I will read it.

Bismarck, N. D.
Aug. 22, 1944.

Members of the State Bar Association
Minot, N. D.
Gentlemen:

It is natural that attorneys should be anxious to know when the new code shall be ready for delivery. It is impossible to make a precise promise, but the members of the code commission are doing their utmost to have the publication completed by November 1st of this year.

There is no doubt that the printers have suffered untold tortures in their efforts to perform their contract. It has been impossible for them to employ typesetters and proofreaders. These are primary requisites in the execution of a work of this character. The spirit of the publishers has been all that could be expected. In recent weeks they have been making most satisfactory progress and we are sure that they are doing all within their power to complete the work so that it may be in the hands of practitioners and officers for a time before the legislative assembly convenes for its next session.

I want to bring before this group a few facts which apparently are not generally understood. The legislative assembly itself made the contract for publication of the code. On behalf of the state the contract was signed by the lieutenant governor and the speaker of the house. Those officers were made a special supervisory commission. The work was undertaken by them with a zest. The preliminaries were taken in hand by Lieutenant Governor Holt, and details as to the form of work and its general appearance were agreed upon during his lifetime.

To those who may be curious about the character and quality of the code I may say that it is to consist of seven volumes. Each volume is about the size, and by that I mean the length, width and thickness, of a current volume of the Northwestern Reporter. The code is printed on eye ease paper with a slight greenish tint and each volume will have from eight hundred to eight hundred fifty pages. The binding is a dark blue buckram, the shade being somewhat near the shade of Corpus Juris Secundum. The lettering on the outside is in gilt and in my judgment the code will be one of the most attractive codes which has been published. The first five volumes contain the code proper. Volume 6 consists of the index and the parallel tables, and Volume 7 consists of annotations.

The commission at the request of the supervisory committee has continued to read proof and is doing everything possible to bring about the early completion of the work. We shall continue to urge the printers to expedite the work as much as possible and assure you that the work will be in your hands as early as may be in view of the emergency through which it has been necessary to plan its execution.

When ready for delivery the books will be distributed by the secretary of state. In this state the price will be $40.00. To outsiders it will be $50.00.

CLYDE L. YOUNG

MR. OWENS: I move the report be filed and made a part of the official record.

MR. HALVORSON: Second the motion.

Motion carried.

MR. HERIGSTAD: I learned last evening that we have with us a distinguished guest. I understand he made a splendid address to the Judicial Council. It was suggested we should hear him. At this time we shall hear from Mr. Carlson. He is here on naturalization, I believe, Mr. Carlson.

MR. CARLSON: Early last month I attended the Minnesota Bar Association at Duluth. I was impressed by the talk of the representative of the American Bar Association relative to the trend at the present time toward administrative law. And he stated much of our legal study and much of the legal effort would be directed towards a study of administrative law. A distinction he pointed out with regard to administrative determination and judicial determination that had not been impressed upon me sufficiently before was this. That in judicial determination a court by its inherent powers can weigh and determine facts from a preponderance of evidence, but administrative officials, not having those judicial functions, are compelled to see that facts are established before ministerial acts can be performed beyond what is known as the possibility of the adverse facts being subsequently established. And therefore many times with the legal profession appearing before administrative boards, I have noticed even in our department, great complaint at the amount and the nature of proof that is required.

At the present time there are thousands of boards that have been created that are performing administrative functions and making determinations. Many of them are recent and can make their own rules if they are within the authority that the law gives. For the past twenty-six years I represented one of the older of the administrative branches, the immigration and naturalization service. That is a service that deals entirely with people, and in our work we get into practically every county and hamlet in the country. The term "immigration and naturalization" is not entirely expressive of the functions that are administered by us. We have our alien control that includes the admission of aliens to the United States, and the exclusion of those not admissible, includes the registration of aliens who are residents of the United States, and maintaining records of subsequent residence. It includes the detention of them if they do not live up to the terms of our admission. It includes their deportation if any of them violate our laws. We have the patrol of the entire United States border. We have the administrative functions relative to naturalization, and besides that, we

have the maintenance of all the records of the service which includes millions of persons that are not ordinarily subject to any of our existing records here; and the issuance of all admission certificates of citizenship to persons who were formerly aliens and have acquired nationality in this country.

There are two main jurisdictions exercised under the nationality code. The first, naturalization. That is defined as the conferring of citizenship or nationality upon a person subsequent to birth. The other is all of the administrative functions which are referred to as nationality service. They are the functions which I have mentioned. Now a petition for naturalization is an application by an alien to be admitted to United States citizenship. And the law provides that a person can be admitted to citizenship only as specified in the chapter by filing of a petition for naturalization, and a determination by a Court that he has met the qualifications that the statue provides. All of the procedure is provided by statute. The naturalization jurisdiction is entirely conferred jurisdiction. The rules as to inherent jurisdiction do not apply, because the statutes specifies the procedure. The states have individually divested themselves as to all powers as to nationality. "Nationality" by its very terms imposes a sovereign, a foreign state that can have treaty relations with other sovereign states. There is nothing that a state can do that can deprive a person of nationality or confer nationality upon them. It is entirely a sovereign function. In an adjutication in a naturalization petition, it ordinarily appears to partake of the nature of an ex parte action. It is in reality and is actually a petition in parties. A petitioner is, of course, that instituted authority, using its authority in a certain manner. He is requesting a certain right, and that right is to be asserted against a respondent. The only and natural respondent is the United States. Therefore, a petition for naturalization is in fact an action inter parties between an individual and the sovereign United States.

While administrative determination is made us to nationality, the law also provides for a judicial determination, Section 903 of the Title 8, U. S. Code, provides that in the event a person claims nationality and that is not recognized, he may maintain an action but only in a United States District Court for a determination as to nationality, but that determination can only be made in the United States District Court. It cannot be made in the state court. There has been no conferring of such jurisdiction as to state courts. The fact that the statute confers the power to naturalize persons as citizens of the United States to state courts, is not a reinvesting of the individual states with any authority as to nationality.

It is merely making those state courts the agency of the sovereign United States in the exercise of that particular jurisdiction. The jurisdiction is entirely federal, entirely covered by federal statutes, and in no sense any part of state jurisdiction.

Any person who has been an alien and who has subsequently become a citizen can either be naturalized through a court or

by operation of law. Many apply for a certificate of nationality. That is an administrative certificate. The statute provides how the facts shall be established and how it shall be issued. I am aware that within the last few years, particularly during the end of the WPA, during the government employment eras, there was great demand for certificates, or certificates indicating nationality as nationality was a prerequisite to such employment, and I know there was a great deal of delay in delivering these applications, and our office became very much criticised for this delay. If you will bear in mind that most federal offices, and all administrative offices, are manned for an ordinary flow of business, any great rush like occurred from the period from 1938 to '40 would put any office far behind in its work. Even in this state, I understand, your administrative officers, such as the Board of Vital Statistics, had the same difficulty. Instead of a normal demand, there came at one time an abnormal demand. This caused many expediencies to be used in attempting to obtain notarized evidences of nationality. Bear in mind that the entire nationality act as I indicated is federal. The rules of securing evidence of nationalities or certificates, or anything to determine nationality, anything that might be a determination as to nationality status is entirely federal matter, and in determining status other than by naturalization, there must be also a determination of right. A person has asserted a right and the natural respondent would be the sovereign. Many efforts were made to obtain declaratory judgments under statutes that did not provide for them. Many efforts were made to obtain decrees, orders to show cause were in such instances served upon our officers, but the statutes do not provide for such procedure. It has come to our attention that in certain states, there are laws that have been enacted which do not in any way infringe upon any federal powers. They allude entirely to matters that are solely state jurisdiction, but we find that many of these statutes have been used in an effort to obtain what would be a declaratory judgment of nationality which are entirely notarized. In this state two statutes were used to that effect. One was enacted in 1941 providing for the declaration establishing of citizenship for the State of North Dakota. That is entirely a state matter. Each state is the sole judge of persons who have citizenship rights within that state, and state citizenship and federal nationality are two distinct things.

Another statute was in 1943 which provided for judicial determination of date and place of birth. All of the other states had statutes of a similar nature. One of them, for instance, of judicial change of name, and even in some state in divorce decrees it is required that a man be a citizen to maintain the action, but in all of these various forms of procedure, the statute provided that to maintain the action, one must be a citizen of the United States. Bear in mind, for instance, that with establishing the citizenship in North Dakota, what is the gist of that action? The gist is North Dakota citizenship, not United States citizenship. United States citizenship is a prerequisite to maintaining the action.

In maintaining an action for determination of birth and date of birth, the gist of that determines where and the date the person was born. The United States citizenship is not a prerequisite to maintaining the action. We find in many instances that the prayer for judgment would request that the court make a decree declaring and finding the person to be a citizen of the United States, and a citizen of the State of North Dakota, or also declaring the date and place of birth. That portion of the prayer was not within the terms of the statute and certainly not authorized by an federal statute. And we found many inquiries coming from attorneys where these statutes which do not at all relate to any federal jurisdiction, but stating to us that we now have a statute under which we can make a determination as to United States citizenship in the state court. Imagine the situation. If under the constitution of the United States is a party to any action, the action must be maintained in a court established by Congress, and that would be the courts of the United States. The state cannot summon the United States in that manner, and if a determination of nationality is made, it could not help but be a determination to which the United States was a party. Therefore, you as members of the bar, and I know the matter may come up before you frequently by clients who seek to have their status as United States citizens, or nationals of the United States determined, if they are aliens it may be determined in naturalization and the court may issue them a certificate. If they have ceased to be aliens, the federal status fully cover issuance of certificates of their nationality. The federal statutes prohibit the issuing of any cetrificates from naturalization records, except by the commissioner.

It has been noticed that several expedients have been used, such as having a notary public make them in an affidavit. I am of the conviction that the certificates that purport to recite the record and to stand for the record in the event that any of the records of the immigration and naturalization service are necessary in any judicial proceeding, or for complying for any statute, on proper application can be made and a duly certified or, if necessary, authenticated copy or certificate will be furnished for that purpose.

Our service desires to have the members of the Bar, as well as the Courts fully understand that we give a great deal of credence to that part in our title "immigration and naturalization service." We deal entirely with human beings. We desire to be of service, service to the court, service to the bar, service to all public agencies. Therefore, if there arises in your practice any matters that relate to citizenship, or relates to nationality of a person, a person claiming to be a certain nationality but not having the proof of it other than a personal claiming nationality by birth in the United States, if you will refer it to our service—to the Immigration and Naturalization Service, post office building, St. Paul, or post office building in Chicago, we will give you, the promptest and most efficient service that we can. I thank you.

MR. HERIGSTAD: Thank you, Mr. Carlson, for that enlightening talk. The time is growing short. I will ask our efficient secretary to make his report.

MR. MCBRIDE: Reads report.

REPORT OF EXECUTIVE COMMITTEE

During the past two years the Executive Committee held only three meetings. The first meeting was held on the afternoon of September 24th, 1942 at the Court Room in the Federal Building in Grand Forks, N. D. and there were present the President, Secretary-Treasurer and five other members, making a total of seven out of ten present. At this meeting the Committee decided to secure the notes from the University of North Dakota and continue publishing them in Bar Briefs for the coming year. A report was made by the Committee on proceedings in Frazier-Lemke Bankruptcies and on recommendation of the Association and of the Committee it was decided to bring an action to test the legality of operators soliciting persons to take the Frazier-Lemke Bankruptcy, and upon conference with the State Bar Board is was agreed that the expenses of suit would be fifty per cent by each, and that the cost for counsel be limited to the sum of $500.00; such committee to be employed by the President of the State Bar Association and the Chairman of the State Bar Board and that proceedings be instituted, subject to action on report of facts by the counsel, to be made to this Executive Committee and that the same be approved before suit is instituted. A vote of thanks and appreciation was extended to the Committee on Legal Section and especially to John J. Nilles, George A. Soule and Norman Tenneson for their continued and faithful service on such Committee and also the Chairmen and Discussion Leaders; that thanks be extended to the Grand Forks County Bar Association for the manner and conduct of the meeting just closed.

The budget recommended by the Secretary-Treasurer for the period from July 1, 1942 to June 30, 1943 was adopted as follows:

Secretary-Treasurer-Editor	$1500.00
Bar Briefs, Annual Number	325.00
Bar Briefs, Monthly Number	325.00
Executive Committee meetings	200.00
President's expense	200.00
Printing and Postage	150.00
Annual Meeting	200.00
Ethics and Internal Affairs	75.00
Miscellaneous	200.00
Bar Board Referendum	40.00
Emergency Laws	50.00
Sectional Meetings	200.00
TOTAL	$3465.00

Attention of the Committee was called to the fact that our numbers of members are still decreasing and that this budget

was as close as your Secretary could figure to the income to be expended.

Bar Briefs has again published all of the syllabli of decisions of our Supreme Court in addition to four pages of case notes referred to above, and the President's page and such other miscellaneous matters as were deemed of interest and could be included in the publication.

Early in 1943 an invitation of the Ward County Bar Association was extended to hold the next annual meeting at Minot. On account of the resolution presented to the meeting of the Bar Association and passed by a unanimous vote, there was no date set for the next annual meeting. It being left to the discretion of the Executive Committee to dispense with the annual meeting, and that the officers elected at the Grand Forks session continue to serve until the next general meeting of the Association. In that regard, I might say that South Dakota took the same action. They didn't have a meeting in 1943. Thus it was intended that during the present war emergency and until peace is declared, the Committee would have the discretion to dispense with the annual meetings, if it thought necessary, in compliance with the rules and regulations in regard thereto by the Federal Government; and that in accordance with such resolution, the President wrote to a great many members of the Bar for their opinions in regard to holding an annual meeting in 1943, and the large majority of the members responding were not in favor of holding an annual meeting in 1943. Thereupon the matter was submitted to the Executive Committee, and in view of the sentiment reflected by these responses, the Committee decided to dispense with the annual meeting for 1943.

During the month of August 1943, a proposed budget for the year 1943-1944 was submitted by mail to the Executive Committee, by the Secretary, and this budget was adopted, which is as follows:

Bar Briefs, Annual Number	$ 300.00
Bar Briefs, Monthly Number	325.00
Executive Committee meetings	200.00
President's expense	200.00
Printing and Postage	150.00
Annual meeting	200.00
Ethics and Internal Affairs	50.00
Miscellaneous	200.00
Secretary-Treasurer-Editor	900.00
Sectional Meetings	200.00
TOTAL	$2725.00

Early in May 1943 upon the request made by Hon. O. B. Burtness, Chairman of the National Defense Committee on Co-Ordination and Direction of War Effort that in order that the work of this committee might be handled by county assistance

officers, the number of the original committee of O. B. Burtness, Chairman, Mack V. Traynor, Nels Johnson, H. L. Halvorson, H. G. Nilles, John Sad, and Wm. G. Owens was increased by adding John Knauf, J. P. Fleck and M. L. McBride. This would provide a member of the committee from every section of the State. The committee then went to work, and secured the help of an attorney at law in each county in the state, to be known as Legal Assistance Officer for such county. This organization was perfected, and an attorney named in each county who agreed to act as called upon, to assist men and women in the armed forces. Needless to say this Committee, and the Legal Assistance Officers have performed a large amount of varied services.

Thereafter no other meeting of the Executive Committee was held until March 17, 1944, all other business being transacted by correspondence with the Committee, and on March 17, 1944 on the call of O. B. Herigstad, President, a meeting of the Executive Committee was held at Bismarck, N. D. for the purpose of considering whether to hold an annual meeting during 1944; and the transaction of such other business as might properly come before it. This meeting was held at the office of Hon. E. J. Taylor, Supreme Court Librarian, and there were present, President O. B. Herigstad, Vice-President, Wm. G. Owens, J. M. Hanley, C. M. Pollock, George Register and Secretary M. L. McBride. The action of the Executive Committee in not having an annual meeting in 1943 was ratified and approved. After discussion is was decided by the Committee that we hold a stream-lined annual meeting this year on August 24th and 25th, 1944, and that said meeting be only for a day and a half, in view of war conditions.

It was also decided by the Committee unanimously after discussion, that the proceedings against person's illegal practice of law in connection with the Frazier-Lemke Bankruptcy in view of the Federal action, be suspended to await the outcome thereof, and that bills from the attorneys to date be secured, and that this action be subject to the approval of the State Bar Board. The sentiment of the Committee seemed to be that the criminal prosecutions had secured the result sought by the civil actions to be instituted by this Association. Seven complaints against members have been made, but all have disposed of satisfactorily adjustment being made by mail. There were no disbursements from the budget on Ethics and Internal Affairs.

President Herigstad appointed a Committee on Resolutions for the annual meeting to consist of Judge A. M. Christianson, Chairman, G. S. Wooldge, Roy A. Ployhar, Nels G. Johnson and J. W. Sturgeon.

The evening of August 23rd, 1944, the final meeting of the year was held at the office of President O. B. Herigstad in Minot, at which time the reports and accounts of the Secretary-Treasurer were read and approved, subject to the report of the Audit-

ing Committee; and the Auditing Committee found such accounts to be true and correct.

Respectfully Submitted,

M. L. McBRIDE, Secretary

O. B. HERINGSTAD: In connection with the work of the committee on sectional meetings, I have been advised that this committee has sent up here all of the reports and briefs they had on hand for the previous meeting of this assembly, and they have them here, and any members who haven't secured copies of them can now get them before they leave so that everyone will have copies of the briefs submitted.

MR. McBRIDE: I will now read financial reports for the past two years.

SECRETARY-TREASURER'S FINANCIAL STATEMENT FOR THE FISCAL YEAR

From July 1, 1942, to June 30, 1943

Balance last annual meeting	$1,701.35	$1,701.35
Refund from Grand Forks County Bar Assn. on annual meeting	11.07	
Received from 1942 dues, State Bar Board	172.00	
Received from 1943 dues, State Bar Board	2,554.50	
Total amount received during year	$2,737.57	2,737.57
Total receipts		$4,438.92

EXPENDITURES

		Budget	
Bar Briefs, Annual Number	$ 282.76	$ 325.00	
Bar Briefs, Monthly Number	280.50	325.00	
Executive Committee Meetings	124.81	200.00	
President's Expense	100.00	200.00	
Printing & Postage	219.60	150.00	
Annual Meeting	295.37	200.00	
Ethics and Internal Affairs	24.32	75.00	
Miscellaneous	197.16	200.00	
Secretary-Treasurer-Editor	1,350.00	1,500.00	
Code Revision	215.89		
Bar Board Referendum	15.86	40.00	
Emergency Laws	29.50	50.00	
Sectional Meetings		200.00	
Float	1.85		
	$3,137.62	$3,465.00	
Total Receipts			$4,438.92
Total Disbursements			3,137.62
Balance on hand			$1,301.30

Minot, N. D.,
August 23rd, 1944

We, the undersigned, the Auditing Committee appointed to audit the accounts of the Secretary-Treasurer do hereby report that we find the above accounts true and correct and do hereby approve the same.

F. J. GRAHAM
O. B. BENSON

SECRETARY-TREASURER'S FINANCIAL STATEMENT FOR THE FISCAL YEAR

From July 1, 1943 to June 30, 1944.

Balance last annual meeting		$1,301.30
Received from State Bar Board, 1943 dues	$ 130.00	
Received from State Bar Board, 1944 dues	2,145.00	
		2,275.00
Total Receipts		$3,576.30

EXPENDITURES

		Budget 1943-44	
Bar Briefs, Annual Number	$	$ 300.00	
Bar Briefs, Monthly Number	302.13	325.00	
Executive Committee Meetings	59.52	200.00	
President's Expenses	208.14	200.00	
Printing and Postage	78.40	150.00	
Annual Meeting		200.00	
Ethics & Internal Affairs		50.00	
Miscellaneous	190.29	200.00	
Secretary-Treasurer-Editor	900.00	900.00	
Sectional Meetings		200.00	
Float	.50		
Total	$1,738.98	$2,725.00	
Total Receipts			$3,576.30
Total Disbursements			1,738.98
Balance on Hand			$1,837.32

RECONCILIATION OF THE ABOVE WITH THE BANK BALANCE

Above Balance		$1,837.32
Checks outstanding as follows:		
6/30/44	$ 9.00	
6/30/44	$ 2.10	
6/30/44	$ 74.30	
6/30/44	$ 38.76	
	124.16	124.16
Bank Balance		1,961.48

Minot, N. D.,
August 23rd, 1944

We, the undersigned, the Auditing Committee appointed to audit the account of the Secretary-Treasurer do hereby report that we find the above accounts true and correct and do hereby approve the same.

F. J. GRAHAM
O. B. BENSON

MR. HERIGSTAD: You have heard the different reports. They are unique in some respects. Our Scotch secretary seems to be able to balance the budget.

MR. MCBRIDE: I didn't read the report of the budget committee.

MR. HERIGSTAD: That has been approved?

MR. MCBRIDE: Yes.

MR. PALDA: I move they be filed and approved and printed in the annual proceedings.

Motion seconded by Mr. Burtness and carried.

MR. HERIGSTAD: We have some reports left and we would like you to be prompt.

MR. MCILRAITH: During the luncheon hour, there are two complimentary lunches, one for men and one for the women. The one for the women is in the basement of St. Leo's Catholic Church at 12:15, and the ladies ask that you inform your wives to be there promptly on time if possible. The luncheon for the men will be in the Odd Fellows Hall which is above Woolworth's Ten Cent Store, directly west of the Leland Parker Hotel on the second floor.

I desire to call your attention to the banquet which will be held this evening at 6:45 at the Country Club. The Country Club is seven miles west of the city and transportation will be furnished for all of those who do not have their own transportation, if you will be at the Leland Parker Hotel between the hours of 5:30 and six o'clock, and all members of the local bar who have cars, will you please have them there at that time in order to assist in transporting the visiting members to the banquet, and be sure and have your banquet tickets. Be sure to be there on time so that the banquet can start promptly.

MR. PALDA: Supplementing Mr. McIlraith, Judge Johnson just told us that we have transportation all arranged for at least twice as many as will require transportation so that nobody will have any trouble about that.

MR. H. E. JOHNSON: (Judge Johnson): That is on the condition that everyone that is here by car, out-of-town guests, will report at the Leland Parker Hotel as to how many passengers they can take out to the Country Club. There are many

people. I have put down some of the names of out-of-town lawyers.

MR. HERIGSTAD: Mr. McBride announced the resolutions committee has been changed. Judge Christianson told me he had to leave immediately after dinner. It will be impossible for him to attend that so our committee has asked Judge Nuessle to act as chairman of the committee.

Adjourned to 1:45.

AFTERNOON SESSION

MR. HERIGSTAD: We have a very efficient committee, but there is one thing they fell down on was the speaker's gavel. The next committee report is that of the Bar Board, the Hon. J. H. Newton. Mr. Newton will you present your report at this time?

REPORT OF NORTH DAKOTA STATE BAR BOARD

Due to the fact that no meeting of the State Bar Association was held in 1943, this report and the accompanying financial statement covers a two-year period, viz: from July 1, 1942 to June, 30, 1944.

The activities of the Bar Board have probably been more restricted during this period than at any time since the present Bar Board Act became effective. The admissions to the Bar have been fewer and likewise complaints of unprofessional conduct against members of the Bar have been less frequent.

During the year 1943 seven applicants were examined at the regular summer examination. All were successful and five were recommended to the Supreme Court for admission. In two instances the recommendation was withheld until the candidates had established North Dakota residences. Two young men with the armed forces were given special examinations and recommended for admission and they appeared before the Supreme Court and took the oath of office. In the case of one service man confined to the Veterans' Hospital, the Board recommended to the Supreme Court the waiving of an examination and the court directed that the candidate be admitted on his diploma from the North Dakota College of Law. Arrangements were made whereby the soldier was admitted before Hon. Daniel B. Holt at a ceremony held at the Veterans' Hospital.

No regular July Bar examination was held this year, as but two applications were on file. Arrangements will probably be made for the examination of these applicants later during the present year.

One applicant was admitted on a certificate of admission from a foreign state and the required period of practice in the foreign jurisdiction. One other application for admission on a foreign certificate was made, but after the investigation it developed the applicant did not maintain a North Dakota residence and admission was denied for that reason.

But two matters involving alleged profession misconduct were referred to the Bar Board by the Supreme Court. In addition, the Board considered the usual grist of matters which reached them by the way of informal complaints. Recommendation was made to the Supreme Court in one matter under investigation at the time of our last report. The report was to the effect that the charge had not been sustained and a dismissal was recommended. This report was adopted by the Supreme Court.

In one case where a disciplinary proceeding had been held in abeyance during the absence of the accused from the state, the Bar Board at the attorney's request revived the proceeding, held a further hearing and made a recommendation to the Supreme Court for a dismissal of the same, which report was adopted by the Supreme Court.

This year's list of licensed attorneys contains but 398 names, and the secretary's records indicate only eight attorneys, presumptively actively engaged, who have not paid the fee for the present year. By way of comparison, the list for 1934—one of the dark years of the depression—contained the names of 490 lawyers, with approximately 525 subject to the license fee. This depletion in the roll is attributed to deaths, retirements, removals and entry into the armed forces or government positions necessitating the removal of the attorneys from the state. During the years 1943 and 1944 the Bar Board has devoted a special position in the list to those who were previously licensed and are now with the armed forces.

Respectfully submitted

NORTH DAKOTA STATE BAR BOARD
GEO. F. SCHAFER, President.
C. J. MURPHY
H. G. NILLES

ATTEST:
J. H. NEWTON
Secretary

Dated August 1944

FINANCIAL REPORT OF
NORTH DAKOTA STATE BAR BOARD
July 1, 1942 to June 30, 1944

Balance July 1, 1942	$ 4,356.63
Collections from License Fees	8,390.00
Travel refund	4.84
TOTAL	$12,751.47
Disbursements July 1, 1942 to June 30, 1944	8,672.91
*Balance June 30, 1944	$ 4,078.56
*Included in the above balance is the amount due the State Bar Association for period covered by this report, vouchered but warrant not issued, 70 licenses at $6.50 each	$ 455.00

DISTRIBUTION OF DISBURSEMENTS

State Bar Association	$ 6,025.50
Per diem and expenses of members of State Bar Board	898.12
Salary and expenses of secretary	642.38
Postage	87.54
Supplies	34.53
Printing	250.74
Clerical hire to secretary and members of the Bar Board	512.00
Miscellaneous	33.23
Judicial Council	188.87
TOTAL DISBURSEMENTS	$ 8,672.91

MR. MCILRATH: I move the report be adopted as read and published in the proceedings.

MR. PALDA: Second the motion. Motion carried.

MR. HERIGSTAD: Next on the program is the report of the Committee on Legal Education, Dean Thormodsgard.

DEAN THORMODSGARD: The names of the committee members are as follows: Asmunder Benson, Bottineau; George P. Homnes, Crosby; Theodore A. Sailer, Hazen; Charles G. Bangert, Enderlin, North Dakota; O. H. Thormodsgard, Chairman, Grand Forks.

REPORT IN LEGAL EDUCATION AND ADMISSION TO THE BAR

Your Committee on Legal Education and Admission to the Bar reports:

The American Bar Association and The Association of American Law Schools have worked for years for certain minimum standards in legal education. At least forty states have adopted admission standards of two years of pre-legal college eduction and three years of law study of bar applicants. North Dakota has an excellent record in that it adopted those standards in 1931. Neither the war conditions nor post-war conditions would justify any state to relax these standards.

To prevent the demoralization of standards in legal education and admission to the bar, the "Section of Legal Education and Admission to the Bar" of The American Bar Association adopted the following resolution:

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR RESOLUTION ON PRE-LAW CREDIT FOR VETERANS

Adopted February 27, 1944

RESOLVED. That an approved law school may grant admission to a war veteran on the basis of pre-law credit allowed by an approved college or university, subject to the following limitations:

1. That the applicant has been discharged or relieved from duty under honorable conditions from the armed services of the United States or a co-belligerent;

2. That credit for military training as such shall not exceed eight semester hours;

"I may say here that prior to this time, students who attended a regular college or university would be required to complete sixty hours of regular academic work besides military science. Military science wasn't recognized. R.O.T.C. wasn't recognized. Most of the students have sixty-four or sixty-seven credit hours by the time they enroll in the school of law. Military Science or Physical Education is not counted. Here they are granted at least eight semester hours for entry into the law school.

3. That credit for study or intellectual growth while the applicant was in the armed forces shall be permitted if the achievements resulting from such study or intellectual growth have been evaluated by a testing program within the armed forces or by examination given by an approved college.

"It is contemplated that many of the men who have been in the armed forces, because of their various army and navy testing programs, that many of those courses will be evaluated and college credits given for them practically up to a year's course in college, and that may also take additional special examinations in those courses which they believe they can pass.

4. That the applicant has completed at least one academic year of study in residence, either in a civilian or in the uniform of his country, in an approved college or university;

"You will note here the standard is the same. Nearly one-half of the work acceptable for a college degree which the average college student can complete in two years. I have known students who have been in college for three years and during those two years they have completed one year of college work. You can't judge by the time requirement in college, but the time requirement plus the standard of one-half of the work acceptable for the college degree has been standard. The concession given to men who have served in the armed forces will be that they can at least make up one year of the course requirement by special examination, and by achievement tests which will be approved and recognized by the several colleges and universities. That is the resolution adopted by the American Bar Association as to what an approved law school should do. We have been an approved law school ever since the section on legal ed-

ucation has been in existence. We have been a member of the American Law Schools since 1905 and have followed those standards."

5. That the applicant presents a total credit equal to one-half of the work acceptable for a bachelor's degree granted on the basis of a four- year period of study either by the state university or a principal college or university in the state where the law school is located.

"There may be some objection to the insertion of Chapter 9, but you take the verbage out of that chapter, you will see that the standard is that he complete one-half of the requirements for a bachelor's degree which is the standard of the American Bar Association, and which is still maintained and approved by the section on legal education, and admission to the bar. I may say there are forty-three states of the union which have adopted the standards of the American Bar Association. Whatever changes, if any, must be made, it is our opinion that on changes need be made—if any changes must be made, I hope no changes will be made which will lower the standards of the American Bar Association so that North Dakota will become black on this map of the United States. I move, Mr. Chairman, that this resolution be adopted, put on file, and printed in the Bar Briefs.

For the purpose of evaluating credits under this rule, the Department of Education of the State of New York shall be considered an approved college.

Definition of "Residence" as used in Above Rule: Study while in the armed forces shall be construed to be done in residence if the work was done on a college campus in class under the direction of regular members of the college faculty, and if the college at which the work was given will accept credit for these courses towards its own degree.

It will be noted that The American Bar Association is vitally interested in young men and women, who have for years served in the armed forces of the United States. Their patriotic services have prevented these young men and women from securing their formal pre-law training and professional education. Fully realizing that many of them have secured special training and experiences during their military careers opportunities will be given all honorably discharged persons to translate their special training and experiences into college credits by means of examinations and achievement tests. Limited course credit also will be given for military training. College course credits for entrance into an Approved law school will be the same as before; namely, one-half of the work acceptable for a college degree. The resolution as to time credit requires only one academic year of study in a college, either as a civilian or as a soldier. College and universities throughout the United States have made arrangements as to courses and subjects in which examinations will be given.

The federal government is vitally interested in providing for free schooling for veterans. The college and universities have plans to give special courses for them and prepare them for civil life—either for a vocation or for a profession.

There will be a greater demand for well-trained lawyers during the post-war period than prior to the war. In view of the growing complexity of social and economic life, there is an increasing need for better trained lawyers. This is not the time to relax our standards. Colleges and universities will in good faith work with the Veterans Administration and help the veterans to secure equally as good a training as before the war. Future lawyers should not receive less training. An accelerated program has been planned, so if the veterans elect, they may go to school the year around.

In accordance with the Resolution of The American Bar Association, the special merits of veterans have been considered without sacrificing educational standards. There is no need for us in North Dakota to amend Chapter 90, Laws of 1931, which deals with "qualifications for admission to the practice of law," in that the above Resolution is not inconsistent with our statutory requirements.

The University of North Dakota School of Law has the opportunity to maintain its educational policy and admission standards in conformity with the recommendations of The American Bar Association and in line with the standards as adopted by nearly all of the states.

Respectfully submitted,

ASMUNDER BENSON, Bottineau, N. D.
GEORGE P. HOMNES, Crosby, N. D.
THEODORE A. SAILER, Hazen, N. D.
CHARLES G. BANGERT, Enderlin, N. D.
O. H. THORMODSGARD, Chairman,
Grand Forks, N. D.

August 12, 1944

All of the members of the committee have approved this report. Two of the members of the Bar Board have approved it. George Schafer has certain suggestions and my own suggestions.

MR. PALDA: Motion seconded.

MR. JUDGE MORRIS: I am quite concerned over one part of this report which apparently tends to interpret Chapter 90 of the Session Laws of 1931 dealing with the fixing of requirements for prelaw study, although the general trend of this report is excellent. The broadminded attitude of this committee as it approaches the general subject for credits for men in service is very fine. There has been throughout the United States quite a lot of discussion and considerable controversy on this question of standards, and the requirements not only of pre-legel study, but many

other additional requirements, regarding people who are in the service and who are coming back, and who want to continue their college or other education. There are apparently no general disagreements on this matter of lowering standards. Nobody wants to develop a body of lawyers who are incompetent, or to permit people to study law who are not competent to study, but there is some controversy as to what measure you should use in determining those standards. There is one school of thought that says that the only way you can decide what a yard is, is to have a yard stick straight and rigid; and another school of thought says you can use a tape measure just as long as you come out with three feet you still measure a yard. In other words, the standards that have been used of corresponding hours in college will not now properly measure the education that men are acquiring who have been in the service of their country, and without lowering any standards, a more flexible measure should be used than the rigid yard stick of so many semester hours spent in college, and there is where you come to the difficulty which arises out of Chapter 90. It provides, of course, for three years of study, regular study. There are two ways of getting your law study, one is by going to law school, and the other is by studying in the office of a lawyer or judge under proper registration. Before you are entitled to be admitted to the bar, that is what Chapter 90 pertains to. It has nothing to do with the standard the law school has set up either to matriculate or graduate, before you can be admitted to the bar, no matter which route you come, whether thru a law school or law office, you will have to show the state board of bar examiners, and the Supreme Court, you will have to show them you have the qualifications, as follows: "such applicants shall have completed, two years of college or university work in the state university of the State of North Dakota, or the Agricultural College of the State of North Dakota, or some equally reputable college or university, with course of study which shall include English literature, American and English history, economics, and civil government." Unless that provision is complied with, the state bar board may not recommend the admission of the young man or young woman to the practice of law no matter where they have studied law, whether it be in a law office, a university or college, or any other law school. What disturbs me about this report is that it says that you do not need to amend or change Chapter 90 in order to give credit on the basis provided by this resolution of the American Bar Association legal section which says that you need have only one year of study in residence in a university or college, and for the other year you can be given credit part just by the fact that you have been in the army, and you can be given credit on an examination basis for the knowledge you have acquired whether in an officers' school, or non-com school, or any other technical school operated by the army and not in any university or college.

What disturbs me is that after a while we are going to come up against the proposition that unless this provision is

relaxed, we will have people who have studied law and are not eligible to be admitted under that provision. That deserves a lot of study and thought, and if any change is made, it should be made only after a lot of study and thought, and should apply only to the people in the service. It should be liberalized only in favor of the people in the service. I feel that this body going on record now, as this resolution would indicate, is rather trying to freeze Chapter 90 of the session laws of 1931, so that anyone who later finds it taken up against the bar board, or the supreme court, we would have to go against the resolution. Now, I would hate to see that happen. I am confident that the Dean's laudable proposition can't be carried out under Section 90 without some relaxation. I would like to see that report changed to that extent, by striking out any reference to any Chapter 90. The rest of it is fine. The purpose of the law school is fine. The general idea is all right, but we are going to find ourselves in some difficulty with Chapter 90, I feel sure, if you pass it as it is.

MR. SCHAFER: Inasmuch as this subject matter also concerns the bar board of which I have the honor to be a member, it is probably in order for me to engage in an expression upon the report and sufficiency of the recommendations contained therein for the purpose we have in mind. I am only justified in taking a minute or two to express my views of it because it appears to be a case that the bar board, together with the supreme court have the responsibility of interpreting and construing and applying Chapter 90. If the school authorities of the university following the views of this committee in a legal study, and as approved by the Association, should undertake to admit war veterans after the war into the college of law without taking into consideration the construction which the court and bar board may place on that statute, which may be different, we should be headed for trouble in the administration of the act. I may say that at the moment, without committing myself finally on the matter, I am inclined to agree with Judge Morris that the particular plan which the committee recommends, and about to be adopted by the bar association cannot be carried out under Chapter 90, unless Chapter 90 is amended to let down the requirements of that statute.

I may say that although I have had only one opportunity to talk with only one member of the bar board—that was Mr. Nilles—we went over this matter at some length. I think I can truly say that he agrees with me in the knowledge that this particular provision cannot be carried out under that chapter unless it is amended. Therefore, I join in the concern of the Chief Justice on what we may be headed to; that if we adopted this resolution with the interpretation or explanation, place ourselves on record, and the school authorities follow that construction which the committee has temporarily put upon it, we may find ourselves in trouble. I feel, rather than to risk that difficulty, I feel it would be wise to consider, and I think it can be done without letting down the standards—I am not in favor

of letting down the standards—but we recognize immediately that the requirements of the American Bar Association lets down the scholastic standards, the standards in prior years, because the requirements says that a man will have two years of attendance—two years attendance is what the statute says —at the university or some college of equal standards, and this resolution says that in lieu of two years, that only one year of attendance be required, and it be substituted for one year of military experience the applicant has had if he is successful in passing some sort of test examination. I believe in the rule that we should consider, I mean the bar association, the bar board, the supreme court and the gentlemen at the university connected with the school of law, we should consider the advisability of asking the legislature to add a special proviso, limited, as the Judge says, and limit it, also, I would say, limit it in time, limited to a certain time so it wouldn't require subsequent legislation to eliminate its operation. In addition to that, may I say this as a personal view, I would be inclined to be more liberal than the requirement of the American Bar Association with respect to this second year or other year of pre-legal education. That, according to the language of the resolution, would require at least one year or residence. That would mean, as a practical matter, that if a veteran comes back after three or four years and has missed the opportunity to go to college at the age of twenty-three, twenty-four or twenty-five or twenty-six, he would have to take one year of academics before he could register in the college of law. I would alleviate that requirement. I would do it this way, not to relieve the candidate from passing the examination in the proposed courses, but I would permit the candidate to register in the college of law and a course, if that is where he is taking it, that in addition to those three years that sometime during the three years, he take during the summer school, or sometime in the college of arts sufficient to amount to two or three years, academic years, work, so that he could get through in three years and have three years of law, and the equivalent of one year academic work. As I see these men, and I call them men, not boys, they come back as men, those that have the ambition to study law will be far more advanced than a young man out of high school. If they have that ambition, that determination to become a lawyer, and that background, they will have no difficulty to comply with the requirements to take in a college education in addition to the three years of law, the equivalent of one year of arts during that three year period of law. That is my personal view on that aspect.

MR. HERIGSTAD: I believe this is of sufficient importance so that we should take some more time to discuss it. We have out of town guests. I am going to defer putting this motion until later on when we can discuss it further. Is there any objection to that? If not, we will go on with the other reports and come back to this later on. I think it is of sufficient importance so that we should give it full consideration. We have a few more reports. I suggest that they may be made short

because of time. We have the report of Roy Ployhar of Valley City on the unauthorized practice of law.

REPORT OF COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

To The State Bar Association of North Dakota:

Very few complaints have come to the attention of your Committee since the last meeting of the Association held at Grand Forks, North Dakota. This in itself should be gratifying to the members of the Association and indicates one of two things; that it, that our most consistant violators have either left the State or found more profitable fields in other activities. Most of the complaints that have come to the attention of your Committee, have been in the nature of minor violations and have been satisfactorily disposed of by correspondence. Undoubtedly many violations exist which are not called to the attention of your Committee and consequently received no attention.

The Committee has had no meetings but expect to hold a meeting at the time our Association meets to dispose of two matters which your Chairman feels should have the consideration of the Committee as a whole. Since the last meeting of the Association, your Committee has had considerable correspondence and has contacted one another in that manner. It seems to us that it is rather difficult to arrange for meetings when its members are scattered throughout the State and transportation is so difficult.

There has been a feeling on the part of some members of the Committee that the Association, as a whole, has not taken an active stand on the prosecution of certain unauthorized practices such as the solicitation of Frazier-Lemke proceedings. However, it seems that this particular menace has greatly subsided and that in all probability, it will not cause any great concern in the future. The most flagrant violation that exists at the present time is that of certain so called "collection agencies" usurping the rights of an attorney in bringing action in the Justice Court of this State. We fully realize that our statutes do not make it mandatory to have the services of an attorney in Justice Court and consequently the field is open for such violations. Your Committee feels that the best way to remedy violations of this type, is to recommend to the Legislature a change in our present statutes which would require a licensed attorney to appear for a litigant in Justice Court. While it may be true that in a few cases such a statute might work a hardship on a person desiring to bring action in a Justice Court, nevertheless, from our experience, we have found that the protection which this would afford to the public as a whole would far out-weigh the detriment that may be caused in a few isolated cases. We also believe that all fields of practice before various tribunals and agencies should be conducted by licensed attorneys and that the Association should use its efforts to see that ap-

propriate statutes are passed to protect the rights of licensed attorneys.

Dated this 11th day of August, 1944.

Respectfully submitted,
ROY A. PLOYAR, Chairman
MILTON K. HIGGINS
H. A. MACKOFF
ALOYS WARTNER
E. T. CONMY

MR. PLOYHAR: I will follow the suggestion of the President and make this brief. I have to add to this report the fact that we have a dissent in a minor way by Mr. Higgins in which he feels that our interpretation of the statutes with reference to unlicensed attorney practicing in Justice Court is erroneous. Mr. Higgins feels that under the statute allowing an attorney to appear and that in itself controls the practice in Justice Court. He feels the matter should be left as it is. He claims that if a person wants to voluntarily appear for a person in Justice Court without making a charge that that should be allowed, and he feels that an amendment to the statute would prevent us from doing that thing. I don't think Mr. Higgins is here. I haven't seen him. If he is here, he will probably explain his viewpoint more fully. Personally I don't quite agree with Mr. Higgins. You can readily see that this cimmittee doesn't want to boomerang this association with any disagreements. We feel that this situation as it comes to us from various parts of the state where various so-called collection agencies are usurping the rights of an attorney and obtaining judgment by fair or foul means without the aid of a licensed attorney, and we feel that should be stopped. We don't think the public would be injured by requiring licensed attorneys to appear in Justice Court. With that, I move the adoption of the report.

Motion seconded. Carried.

MR. HERIGSTAD: There is a report to be made by the American Law Institute. It is filed here. I suggest that somebody move we dispense with reading the report and that it be printed in the bar briefs.

REPORT OF COMMITTEE UPON THE AMERICAN LAW INSTITUTE

For more than twenty years now the American Law Institute has been engaged in the voluminous work of producing a restatement of the law.

During all this period of time William Draper Lewis of Philadelphia has been the director and practically the directing head of the work of the Institute in the great task involved.

It may be said that William Draper Lewis has been the most active man in the restatement of the law and considerably so in the direction of its activities.

The last meeting of the statement of the Institute was held in Philadelphia on May 9-10-11, 1944. The outstanding accomplishment of this meeting at Philadelphia was the approval of the final draft of the revised Uniform Sales Act which has been pending before and under consideration by the Institute for many years as well as by our National Conference of Commissioners on Uniform State Laws.

There will be nineteen volumes which have been produced and issued as books through the work of the American Law Institute. The Revised Sales Act, as now finally approved, has come to this result by a collaboration agreement made with the National Conference of Commissioners on Uniform State Laws and the American Law Institute. It is hoped and expected that this Revised Sales Act will be one of the Chapters of a new modern Commercial Code which will be produced through the joint work of the Conference and the Institute above mentioned. It is said that this Code will take about five years in its production, and then it should be suitable for adoption in all of the states of our union. The expectation is that this will aid greatly in the conduct of the business of the country by providing a set of rules which are uniform, clearly understood when directed to current problems and practices.

George Wharton Pepper, a former United States Senator, is now the president of the American Law Institute.

One of the outstanding volumes resulting from the work of the American Law Institute will be the restatement of the law of Property as well as the work performed on the Code of Evidence with the able assistance of the late John H. Wigmore. The three first units of which have already been published. It may be interesting for the Bar to know that the American Law Institute became established February 23, 1923 with a very generous gift made to it by the Carnegie Corporation which was $175,000. Since that time additional funds have been granted in order that the whole work of the restatement of the law might be accomplished.

William Draper Lewis, above mentioned, was very largely responsible for the donations made by the Carnegie Corporation, and he is entitled to great credit for the major work that the Institute has performed for the Bar of the country in restating the law of our country.

Respectfully submitted,

W. H. HUTCHINSON
G. S. WOOLEDGE
JOHN KNAUF
H. A. BRONSON, Chairman.

Wahpeton, N. D.
August 5, 1944

Mr. H. A. Bronson,
Grand Forks, N. Dak.
Dear Mr. Bronson:

I have your letter of August 2 enclosing your proposed report of the Committee on American Law Institute. The report which you have prepared is entirely satisfactory to me.

I am expecting to attend the Bar Meeting at Minot and I hope that I can stay for the luncheon on the second day.

With kindest personal regards to yourself and Mrs. Bronson, I am

Cordially yours,
WHH:VB WM. H. HUTCHINSON

Jamestown, N. D.
August 3, 1944

Hon. H. A. Bronson
Grand Forks, N. D.
Dear Sir:

I am perfectly agreed with you on the report which is being made upon the American Law Institute. Your report nicely and interestingly covers the subject and I gladly join with you in the report. We are retaining the copy under the belief that you are filing the original and that this copy was meant for our files.

We noticed the excessive heat yesterday also, that being my hardest day, but today we are getting some little rain which should bring relief from the heat.

Yours very truly,
JK:A JOHN KNAUF

Minot, North Dakota
August 4, 1944

Hon. Harrison A. Bronson
Attorney at Law
Grand Forks, North Dakota
Dear Judge Bronson:

I thank you for yours of the 2nd enclosing me copy of our Committee Report.

I approve of this. It is appropriate as showing that the North Dakota Bar is still interested in the continuing service of the American Law Institute.

I certainly trust you will be able to attend our meeting here at Minot on August 24th and 25th.

With personal regards,

Yours sincerely,
GSW:LP G. S. WOOLEDGE

MR. PALDA: I so move.

MR. MCILRAITH: Second the motion. Motion carried.

MR. HERIGSTAD: We will now have the report of Mr. Palda.

MR. PALDA: This report consists of a report as to what the American Bar Association has done with regard to the uniform laws, showing that North Dakota has passed 28 laws; South Dakota a little more; Wisconsin, forty-two; and others on and on, and that they are meeting in Chicago, September 2 where the uniform act on death taxes and a uniform act on the arbitration of death taxes will take place there. There is nothing further to report. I move the adoption of the report and that it be printed.

REPORT OF COMMITTEE ON UNIFORM STATE LAWS

To O. B. HERIGSTAD, President
STATE BAR ASSOCIATION,
MINOT, NORTH DAKOTA

The undersigned committee begs to submit the following report to the State Bar Association.

The next meeting of the National Conference, which is the 54th annual meeting, will be held at the Drake Hotel, Chicago, Ill., commencing September 5, 1944 at 2:00 P. M.

The National Conference of Commissioners on Uniform State Laws was originally sponsored by the American Bar Association approaching now some sixty years ago.

At the present time, the commissioners from North Dakota, duly appointed as such, are Clyde L. Young of Bismarck and Hon. H. A. Bronson of Grand Forks.

Last year the Conference at Chicago issued a life membership in the Conference to H. A. Bronson, as long as he remained and continued a commissioner from North Dakota.

This National Conference, which has met annually during the intervening years, has largely and greatly justified its existence by the many uniform acts which is has promulgated, and in particularly the well known negotiable instruments act which has been adopted in every state in the union, including North Dakota, and which is still in existence in our North Dakota laws. It has also been incorporated in the laws of many foreign countries, including some in Latin America.

The work of the conference throughout the years has been devoted exclusively in the field of commercial acts, and in that field where it is thought desirable to have uniform acts adopted into law by all the states in the United States. In its field something over 600 different and various uniform acts have been adopted and enacted into the law through the years by the various states in United States.

North Dakota has a list of 28 uniform acts which have been enacted into law in North Dakota, the last one being the uniform narcotic drug act as amended and recommended by federal authorities.

Wisconsin has adopted and enacted into law 42 statutes, but our sister state of South Dakota has even exceeded Wisconsin in the list of uniform acts as it has adopted 46 uniform acts, the last one being the Uniform Veterans Guardianship Act as revised and was adopted in South Dakota in 1943.

The members of the National Conference of Commissioners consist of three to five in number who are appointed by the Governor of each state to represent their respective states at each annual meeting of the conference.

The Conference generally precedes the annual meeting of the American Bar Association about one week.

The committee will close its report by stating that the National Conference last year finally adopted two uniform acts, one known as the Uniform Act on Interstate Compromise of Death Taxes, and the other one, Uniform Act on Interstate Arbitration of Death Taxes.

The conference this year will probably be largely concerned with the consideration of a model act on administrative procedure, as the matter has been under investigation and consideration in cooperation with a committee from the offices of the Attorney General of the United States now for a period of more than five years, and it is a subject in which the American Bar Association itself is greatly interested to the end that a proper act be framed to cover administrative procedure before the varied agencies of our government. The Committee acknowledges the valuable assistance of the Hon. H. A. Bronson in the preparation of this report.

Respectfully submitted,

L. P. PALDA, JR., chairman of
Committee on Uniform State Laws
GEORGE S. REGISTER
PAUL E. BOEHM
R. G. MANLY

Motion seconded and carried.

MR. HERIGSTAD: We will have the report of the committee on American Citizenship. I might say that that committee has done some fine work, and I will ask the Hon. James Morris, Chairman, to report.

REPORT OF THE COMMITTEE ON AMERICAN CITIZENSHIP OF THE NORTH DAKOTA BAR ASSOCIATION

Your committee's main activity since the last meeting of the Association was the preparation and distribution through Bar Briefs of an article entitled "Principles of American Citizen-

ship." It was published in the April 1943 number of Bar Briefs. Several hundred extra copies were prepared for distribution. Quantities were supplied to the clerks of courts in the various counties for use in connection with naturalization and citizenship hearings. Some were also distributed to the schools. Approximately 200 copies still are in the hands of the committee for distribution. I might say further that Judge Knauf suggested that we incorporate some elaborate suggestions for the committee that follow us which I didn't incorporate because they weren't received in time to be sent out to the committee. Judge Knauf encourages setting up meetings thru the state and encourages the activities of this association and Americanism, and getting some more credit and publicity for what the lawyers are doing in their every day work in behalf of Americanism. I move the adoption of this report.

Respectfully submitted,

JAMES MORRIS, Chairman
JOSEPH J. FUNKE
PHILIP R. BANGS
EMANUEL SGUTT
P. B. GARBERG
JOHN KNAUF

MR. TRAYNOR: Second the motion. Motion carried.

MR. HERIGSTAD: I might say that the article that appeared in Bar Briefs is an excellent one and is one I would like to have in the hands of everyone in the state. We come to a pleasant part of our meeting. The main duty of our Association is to carry on the war work. The chairman of that Committee is here and he has done a splendid job. I am pleased to call on Hon. O. B. Burtness.

REPORT OF COMMITTEE ON WAR WORK

Following the annual meeting held at Grand Forks in 1942, President O. B. Herigstad appointed a committee who in addition to the chairman consisted of the following members:

MACK V. TRAYNOR	Devils Lake, N. Dak.
NELS JOHNSON	Towner, N. Dak.
H. L. HALVORSON	Minot, N. Dak.
H. G. NILLES	Fargo, N. Dak.
JOHN SAD	Valley City, N. Dak.
WM. G. OWENS	Williston, N. Dak.

When the chairman realized the scope of the work contemplated he asked President Herigstad to appoint three more members, more particularly from the southern part of the state, whereupon the following were added to the committee by President Herigstad:

JOHN KNAUF	Jamestown, N. Dak.
J. P. FLECK	Mandan, N. Dak.
M. L. MCBRIDE	Dickinson, N. Dak.

Mr. Tappan Gregory of Chicago is the chairman of the committee on war work of the American Bar Association, and he and his associates in a general way outlined the work to be done. Naturally such committee contacted the War and Navy Departments with the result that each of these departments established their own legal assistance officers at every fort, camp, training station or other place where there was a group of men in the military service. As soon as War Department Circular No. 74 was published, listing the chairman of the committee of each State Bar Association, it was realized that a real organization had to be perfected in the state if the lawyers of North Dakota were going to do the job expected of them in a prompt and efficient manner.

Your chairman is greatly indebted to the members of the committee hereinbefore named for their assistance in securing a representative in each county. A list of such representatives is hereto attached. It will be noted that in the counties of Cass, Grand Forks and Stutsman where men were training at the State College, the University, and Jamestown College, respectively, two men were selected.

I have had occasion to refer scores of matters to the attorneys so selected and each of them has responded cheerfully and has done a fine job. The matters that have received attention have been most varied. Many of them have dealt with domestic relations and have necessitated the commencement of divorce actions. Quite a number have dealt with rental of homes and apartments, some with automobile conditional sales contracts, others with rental of farm lands, unpaid bills, both receivable and payable, temporary custody of children, a great deal consisting of general assistance with reference to property of various kinds, including preparation of powers of attorney, Wills, etc.

Sometimes your chairman has thought that both the National Committee of the American Bar Association, and the War and Navy Departments, have gone to extremes in demanding and printing up a lot of general information concerning the laws of various states with reference to almost every subject of the law. A lot of paper and expense have probably been wasted in printing up pamphlets and compendiums which will seldom be read, but even so, as compared with the last world war, a service much worth-while has been rendered by the American Bar to the men and women in our military service.

I particularly want to emphasize that it is not only the one or two attorneys named in each county who have rendered fine service in that regard, for I am confident that similar services have been rendered by each and every lawyer in the state. In other words the assistance of our lawyers has probably been obtained directly in far more cases than those which have been handled by our committee or by the lawyers serving for the committee. This is particularly true in connection with help needed by inductees. As these men and women have been select-

ed for service, they have been urged at the various induction centers to get their legal matters into shape before actually entering service, with the result that many of them have gone to some attorney in their own community, in whom they had confidence, for the purpose of preparation of wills, powers of attorney, preparing conveyances for joint ownership of real estate with right of survivorship, etc. I am convinced that in each and every case, the members of the North Dakota Bar have stood ready to render the legal assistance necessary, regardless of whether or not the inductees expected or desired to pay any compensation therefor.

Your chairman has not taken the time of securing a report from the various counties. Detailed figures and statistics were never particularly interesting to him. Possibly some would like to know how many letters have been written, how many wills and powers of attorney have been drawn, how many divorce actions have been started, etc. Your chairman is interested only in the fact that the job has been well done by the individual lawyer whose assistance has been sought.

Possibly some might suggest that sufficient publicity has not been given to this matter. That also is a debatable question. Some months ago at the time that more men with families were being inducted into service, your chairman did give to the Associated Press a statement, most of which was carried in the daily press, and which statement is attached to this report.

In any event our work is by no means completed. A like committee should naturally be continued for the duration.

Respectfully submitted,

O. B. BURTNESS, Chairman

MR. BURTNESS: I move that the entire report be printed in the proceedings.

MR. PALDA: Second the motion. Motion carried.

MR. CAMPBELL: Is that a donated service by the Bar Association?

MR. BURTNESS: As a general rule they are donated. Of course, the intent was to establish a free service altogether. There has been no set rule. I think there are some cases like divorce cases, I think, where servicemen paid modest fees, possibly in some cases. As a general rule, by and large, I think they have been donated, although I am also confident that some of the servicemen have preferred to pay a nominal amount for the services rendered. I think the services rendered to the inductee, whether by men in our county or anywhere else, I think quite generally that it has been done free of charge. At least all general information asked for by the departments, by the legal assistance officers, many letters and inquiries from men in the service that general advice by men in the service has been given free.

MR. HERIGSTAD: We have with us two distinguished gentlemen, one representing the navy and the other the army, who desire to be heard and we are glad to give them that opportunity. We call at this time upon Lieut. C. F. Kinnel, U. S. N. R. of the District Legal Office, Headquarters Ninth Naval District, Great Lakes, Illinois.

LIEUT. KINNEL: Members of the North Dakota Bar. I am here as representative of the Secretary of the Navy to express appreciation for the very fine things the last report covered. There is very little I can add. Up until a year ago there was some legal assistance in some of the navy activities, and in most cases the man himself was named to work out his own problem. On June 6, 1943, there was established by the Navy Department a legal assistance program. This program consisted of establishing at every naval activity, marine activity, and coast guard activity, a legal assistance office to provide legal assistance in the conduct of their personal affairs, to extend these services where they already existed. This was taken in cooperation by the American Bar Association, and the various state bar associations. The greatest contributing factor to the success of this program was the effect of the liason between the officer of the state committee. O. B. Burtness is recognized as having done one of the most outstanding services. As recognition of the work done by the members of this association in the legal assistance service, the Navy Department awards this certificate of appreciation to the State Bar Association in North Dakota for voluntary services effectively performed in the legal assistance program established; and Navy Department in cooperation with the American Bar Association and the State Bar Association contributing to the morale of the naval personnel and the successful prosecution of the war. This is dated the 20th of August 1944, signed by Acting Secretary of the Navy Forrestal and signed by the Assistant Secretary of the Navy. (Presents Certificate.)

MR. HERIGSTAD: We will now hear from Major Ronald N. Davies of the army at Fort Snelling.

MAJOR DAVIES: This is one of the times that the functions of the army and the navy were not too well coordinated. I told Lieutenant Kinnel that we had each been allotted thirty minutes. He said it is entirely too long. I said I am a member of that Association and you should know how long I have been made to stand a dam sight longer before some of the members of that bar who are here. I am so used to taking orders, I went to Mr. Burtness. He said, "You may have thirty minutes, but if you do, I suggest that you take residence elsewhere than in the State of North Dakota."

I want to thank you on behalf of the army for the splendid work you have done in rendering assistance with respect to G. I. Joe and G. I. Jim. The army feels a good work has been done. We have discovered in the army a great deal more people die from worry than from work. It is the thousands of little questions you have answered and the thousands of little worries you have

answered and the thousands of little worries you have relieved that helped those men. That is what makes them good citizens and fighting men. We have done our best in establishing a personal relations bureau in every army camp. The bar in most of our installations serve as legal assistants officers, but they do get into these jams and they have to go back and have the work done. For your work we are grateful, and thru the Seventh Service Command, I have the honor to present this certificate signed by the Hon. Henry L. Stimson. (Presents Certificate.)

MR. HERIGSTAD: Thank you, Major Davies. I am going to ask the chairman of our important committee to accept these splendid awards.

MR. BURTNESS: I am willing to do that, but I think it would be more appropriate for the chairman to present them. Certainly I want to say this to the members and to the members of the armed forces, and to the personal representatives of Secretaries Stimson and Forrestal that naturally the members must appreciate this sort of recognition. Certainly those of us who are old enough to think back to the last war know that the morale of the boys, in so far as legal troubles are concerned, has been far better maintained during the present conflict than was the case at that time. I can tell from the correspondence which has been conducted with many that a great many of these matters have been taken care of by the legal assistance officers established by the legal department of the navy and army themselves. I think a lot of things that have been done never reached the notice of the various bar associations thru the court. If they have done nothing more than that, it must have been very helpful in maintaining morale. If we have assisted in maintaining morale of the service men in our community and more particularly in North Dakota, we are pleased to have that opportunity. I think we understand that the war has changed things. This isn't all over. There are many questions that will arise. Be that as it may, we appreciate the honor you have given us. We will keep on trying to adjust these matters for the boys and girls in the armed forces as best we can.

MR. PALDA: Mr. President, I move that the secretary and treasurer be instructed to have them properly framed and hung in the office of the Supreme Court or Mr. Newton's office and charge the expense to miscellaneous.

MR. OWEN: I would like to suggest a little more too, Judge Palda. I believe that this Association should express its appreciation to the Secretary of the Navy and Secretary of War who have taken the trouble to send these officers to us and acknowledge personally their appreciation of our services. And I add to Judge Palda's motion, with his consent, that the secretary-treasurer be instructed to write letters of appreciation, of thanks and appreciation to the Secretary of the Navy and the Secretary of War, and in each letter mention the name of the officer who is here delegated to present them, and that that be made a permanent record of this Association.

MR. PALDA: I accept the amendment.

MR. BOSARD: I second the motion. Motion carried.

MR. NOSTDAHL: I would like to ask Major Davies if there has been any change in the procedure of drawing wills for service men and women. I have had opportunity to look over some wills that have been sent to me for safekeeping, and I see two clerks names without any addresses. It is simply the name and San Francisco or New York. It is difficult to locate those witnesses. Has there been a change?

MAJOR DAVIES: That must have been the Marine Corps. Our men are instructed to put the address on. Somebody isn't doing a job right.

MR. NOSTDAHL: I have one in my office with Brooklyn, and New York on it.

MAJOR DAVIES: They are instructed to put on the complete address and it will be called to the attention of the army, and I take it, the navy.

MR. NOSTDAHL: You spoke of the messages of appreciation. I was impressed by the Memorial Committee. There is an immense amount of work done by Judge Burr. I think it was done by him. The rest of the members signed their names and some of them weren't there to sign their names. I didn't want to make a motion while he was here. I move that we express to Judge Burr an appreciation, not only of the members of the Memorial Committee, but of this Association for the excellent work done by the committee and to Judge Burr for the work done.

MR. BURTNESS: I seconded the motion. Motion carried.

MR. BURTNESS: I hope I may have unanimous consent to revise my remarks if they are to be printed.

MR. HERIGSTAD: I want to say on behalf of the Association to our distinguished guests, we appreciate your coming here and hope you can be at the banquet.

MR. HERIGSTAD: Next on our program is a talk on the functions of the Red Cross on claims of soldiers and sailors and their dependents by Howard G. Gruschus of the Home Service Department of the American Red Cross:

MR. GRUSCHUS: I probably had better go back into the history a little to establish the Red Cross in claims of veterans. When the charter of the Red Cross was granted by the Congress of the United States in 1905, one of the functions outlined in the charter was that the Red Cross help the exserviceman and his dependents. As a result of that charter obligation, the Red Cross has maintained thru the years more or less of a claim service. This first came into being in importance before the end of hostilities in World War No. 1. At that time Red Cross nurses

were making out claims and aiding active servicemen in filing their claims to the Federal Agency that was responsible for that at the time.

This work continued thru the Red Cross nurses at the time, and thru the chapters of the American Red Cross scattered throughout the United States. The provision was made at that time to enlarge the department and a department of it was contained in the national organization at Washington, D. C. Shortly after the end of the war as this program had got underway, the American Legion was created and the American Legion recognized that the work done by the Red Cross in claim service to the veterans was of great value.

At that time the American Red Cross made an outright financial gift to the American Legion to aid them in establishing their various service officers throughout the United States. Since that time both the American Legion and the American Red Cross have cooperated in that service. They are the two oldest organizations in that particular type of work. Since the beginning and after the St. Louis conference, other service organizations have come into being and are also involved in the same type of work. At the present time when a soldier or sailor or anyone from the armed forces is discharged because of medical reasons, he is required to make out a claim against the government for any physical disability or mental disability that he may have. If he does not elect to make this claim out, he can so state, and it in no way affects his claim at a future time. The American Red Cross is located as are some of the other services existing in the various army and navy sources throughout the United States. They aid these men filling out the claim for any benefits they may have. The claim then is forwarded on with the veterans papers to the regional vicinity of the veterans Administration at the legal residence of the veteran. As the claim goes on, it arrives at the veterans facilities. The American Red Cross takes no further action in that particular claim until the veteran himself contacts the home service worker in the county in which he lives. If the veteran wants the American Red Cross to follow his claim thru the veterans facilities, prosecute the claim and collect the material necessary, he sends a power of attorney to the Red Cross. So far as the claim is concerned, that is done in the community office thru the home service chairman. Some instances have occurred where the veteran hasn't made out the claim. In those instances the home service assists him in making it out and passing it on to the veterans facility. When it arrives at the veterans facility, the Red Cross has a field director properly trained and an assistant. This is recognized by the central body of the Veterans' Administration and can appear before the rating board much the same as you appear before a court. You have to have special permission, special authorization to appear in official capacity before this rating board. The field director in the hospital goes all over these claims that they have power of attorney on and goes over all of the medical data contained in the file, and all other data that may be there. In

some instances service connection would probably be denied for the disability that the veteran has been discharged for if supporting evidence weren't there. In other words, to get that supporting evidence, the Red Cross goes back to the home service chairman in the local county, contacts the veteran thru the home service chairman, finds out where the information can be obtained, gets it and forwards it back to the veteran representative in the veterans facility. Sometimes it is necessary to go all over the United States and some foreign countries to secure this evidence because buddies of this veteran may be from Maine, and he from California and Florida, and the boys that could give affidavits would be in another chapter. Consequently the United States Red Cross chapter with 320 branches and about 6,000 branches has facilities to contact anybody who could give evidence to support this claim. After this is all assembled, it goes to the rating board and the Red Cross field director appears on behalf of the man to argue whatever points there may be or whatever points come up and rating is given or denied. In many instances where the rating is denied, and it looks as though the rating should have been favorable to the veteran, the veteran will want to appeal his case. In that even the American Red Cross has in Washington, D. C., in its national office, people trained in that particular line. Mr. O'Brien is head of the claim services in Washington, D. C. He has a fully trained staff. These claims sent to the central office for appeal are not sent to a group of men or adjudicators in Washington. The Red Cross is also there to go over this case in an expert manner to see and try to get all that is coming to that service man.

The work of the Red Cross field director in the hospital constitutes only about 10% of the work of the Red Cross so far as veterans and claims are concerned. That is mostly taken up in your own county by the home service chairman. Many things come up. Widow's claims is a familiarity and the collection of various marital records. That is all completed in the county office and forwarded to the veterans administration for action. A great deal of that work is that type. The actual claim where there is argument about it, those don't happen very often, and as I say, approximately 90% of the claims work. Home Service Chairman have been trained in all phases of regulations and procedures involving claims. They get a complete list of information that comes out of the national office, carries on this service to the home service chairman. They are advised of all legislation or procedure and changes of policy before the veterans administration as soon as they come out, consequently they have a fund of knowledge and fund of information which they can pass on to the veterans dependents, or veterans and widows in practically all cases.

The Red Cross stands by itself in this particular type of work. I say it stands by itself for this particular reason. We are not going to delegate any of our duties, or any of the responsibilities that have been passed on to us by the Congress of the United States thru their charter to any other organization. We

feel that we as representatives of the people should carry out what the people have expressed their desire for us to do. There will be, and there are, many service organizations. We are not in any way competitive with any of them. Our relationships will be honest, direct, free and cooperative, but as I say, we are going to stand on our own feet and give the services that you as members of the Red Cross have asked us to give the returned veterans.

MR. HERIGSTAD: Thank you, Mr. Gruschus, for that interesting talk. In the past several years it has been customary to have sectional meetings, different problems of law have been discussed. The executive committee felt that perhaps the attendance would not be large enough to justify dividing them into different groups, and that such discussion could be taken up before the assembly as a whole, and we have one of these coming now, which is the question of the status of government claims in estates. Our friend Bill Owens will lead the discussion on that.

MR. OWENS: You judges, I can grant you a recess, I want the attention of the lawyers who weren't in on the discussion yesterday in the discussion for the courts. It is a subject that is particularly interesting to the county courts throughout North Dakota, and accordingly any appeals from the decisions of those courts to the district court, the points will necessarily have to be determined by the courts of North Dakota. This involves the priority of claims of the United States government against estates of the deceased debtors. Naturally it is effective only on estates that are insolvent, that is, probably small estates, and particularly those involving holdings of real estate and estates involving widows and minor children.

PRIORITY OF CLAIMS OF THE UNITED STATES AGAINST THE ESTATE OF DECEASED DEBTORS*

Widow's right of exemption.

The North Dakota statutes which have to do with filing and consideration of claims for debts due from a decedent and allowable against the estate provides that ALL such claims shall be presented within the time fixed by the statute. The time is fixed as six months from the date of first publication of notice to creditors. (8544a9 Supl. 1925)

8544a10 Supl. 1925 reads "All claims arising upon contract, whether the same shall be due or not due, or contingent, must be presented within the time limited in the notice and any claim not so presented is barred forever, provided, etc. etc. (relating to mortgages or liens)

8755 C. L. 1913 fixes the classification and order for payment; i. e.

1 Necessary expense of administration;
2 Expense of last sickness;
3 Family allowance;

4 Debts having preference by the laws of the United states;
5 Liens upon specific property;
6 All other demands.

Our North Dakota statutes make provision for the widow and children of the decedent in language which reads

> "There shall also be set apart absolutely to the surviving wife or husband or minor children all the personal property of the testator or intestate which would be exempt from execution, if he were living, inincluding all property absolutely exempt and other properties selected by the person or persons entitled thereto to the amount in value of fifteen hundred dollars according to the appraisements and such property shall not be liable for any prior debts of the decedent except the necessary charges of his last sickness and funeral and expenses of the administration when there are no other assets available for the payment of such charges." (8725 C. L. 1913)

Further provision for (family allowance) (8727) is made and requires that such allowance for the family is a preferred claim (8728) and must be paid in preference to all other claims except funeral charges and expenses of administration.

It is to be noted that our state statutes provide that "debts having preference by the laws of the United States" shall be in the 4th class in order of payment (87755-supra)

> (Fisher vs. Fisher 53 N. D. 631207 NW 434 (ND). The Supreme Court has ruled "That this section of the code is a part of the exemption laws and the allowance provided by section 8725 is not in the nature of an interest in property but is a preferred claim against the estate of decedent which may or may not be available to claimant according to the circumstances."

FEDERAL STATUTES

Our Federal statues upon which the claim of priorities is predicted for preference of debts due the government is preferred reads;

> "Whenever any persons indebted to the United States is insolvent, or whenever the estate of any decedent debtor, in the hands of the executor or administrator, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by

process of law, as to cases in which an act of bankruptcy is committed."

(R. S. Sec. 3466-Sec. 191, Tit. 31 USCA)
The Act further reads;

"Every executor, administrator or assignee, or other person who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid." (R. S. 3467-Sec. 192 Tit. 31 USCA)

It appears that the plain meaning of The Congress in passing those laws, contemplated that before the priority was, or could be established, it must appear that the estate was insolvent, in any event, estates and the administration thereof under jurisdiction of the County Courts of our State are concerned with the statutes of limitation not only as it applies to collection of debts due the government from a decedent but often the question arises on the question of alloting the widows allowance and the necessary funds to pay the family support during the administration.

The Supreme Court of the United States has stated;

STATUTE OF LIMITATIONS

"It is settled beyond doubt of controversy, upon the foundation of the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudicied by the negligence of the officers or agents to whose care they are confided—that the United States asserting rights vested in it as a sovereign government, it is not bound by any statute of limitations unless Congress has clearly manifested its intention that it should be so bound.—U. S. vs Nashville C. & St. L. Ry. Co., 118 U. S. 120 and cases cited (30 Led. 81)

It appears well settled that state statutes fixing time within which claims must be filed against an estate of a decedent debtor are not applicable to the United States. Justice Hughes in a quite recent case decided

"It is well settled that the United States is not bound by statutes of limitation or subject to the defense of laches in enforcing its rights (cases cited) ***we held that the state statute in this instance, requiring claims to be filed within eight months, cannot deprive the United States of its right to enforce its claim."

United States vs Summerlin-310 U. S. 414 (1940) see U. S. vs Backus Fed. 14-491; U. S. vs Hoar-Fed case 15,373.

U. S. vs Houston 48 Fed. 207.

These authorities are called to your attention in connection with our statute relating to filing of claims. (8544a9—8544a10 supra) for it may hold the closing of the estate until such time as the government releases estates where the government has a claim.

UNITED STATES ***

Out here in North Dakota our County Courts are concerned with innumerable government claims against estates. We have with us today the Farm Security Administration (FSA) established by executive order No. 7027 (April 30, 1935) executive order No. 7530 (Dec. 31, 1936) This is a branch of the Department of Agriculture and has no identity distinct from the Federal Government. It transacts its business in the name of the United States. Emergency Crop and Feed Loan Offices. Prior to the creation of the Farm Credit Administration the Secretary of Agriculture was charged with the responsibility of making these loans and collecting the money. Now the Governor of the FCA is the government agent and operates through E. C. & F. Loan offices. Then the Federal Housing Administration; The Federal Deposit Insurance; Even the government enters into the picture through the Old Age pension operated by and through the State and County Welfare Boards advancing the money. In many instances those old people have hung onto their homestead and pass out leaving such properties as a sole legacy.

Decisions:

Dean Thormodsgard of your committee contributed a great deal of valuable time and research to this work and to his efforts are due most of the citations of law on the subject recited in this report prepared by him.

In U. S. v. Thomas - 107 Fed. (2d) 765.

The Court states "That the Farm Credit Administration is not a commercial venture, but is merely intended to lend aid and assistance to farmers who have no credit and no money with which to purchase feed for their livestock and seeds for their crops."

The Appellee in the case raised the defense of the statute of limitations. The Court held that "Congress had manifested no intention to be bound by such statutes and it is settled beyond controversy that the United States when asserting sovereign or governmental rights is not subject to either state statutes of limitations or to laches." From those cases it seems reasonable to hold that under certain conditions, section 191, Title 31 of USCA applies even though the orders which created the Resettlement Administration or the Farm Security Administration, do not expressly provide for priority.

Priority Based on the Statute.

In Wagner v. McDonald 96 F. (2d) 273 (1938) the Court held a claim of the United States for priority of payment does not stand on any soverign prerogative, but is exclusively founded on the actual provision of their own statutes.

Accord: In re Wilson 23 F. Supp. 236 (1938; State ex. rel.

Rankin v Wibaux County Bank of Wibaux. 281 Pac. 341 (1929).

In Equitable Trust Co. of N. Y. v. Con. Brass Mfg. Corp. 290 F. 712 (1923) it was held that since there is no common law of the United States, the priority given by the common law to all debts due the English sovereign cannot be claimed by the United States, but any claim of priority for payments of debts due must be based on statute.

Interpretation of the Statute.

In U. S. v. Oklahoma 261 U. S. 253. 67 L Ed. 638 (1923) Justice Pierce Butler restated the well-known rule that mere inability of a debtor to meet him obligations does not constitute an insolvency within the meaning of U. S. Rev. Stat. 3446 (Sec. 191 of Title 31 of U.S.C.A.) Insolvency, as used in the statute means legal insolvency. It must be manifested by some overt and notorious act of the debtor. The insolvency which entitled the U. S. to a preference over creditors can only be established, where a debtor, having insufficient property to pay all his debts, makes an assignment of his property or a case in which the estate and effects of an absconding, concealed or absent debtor are attached by process of law, or a case in which an act of bankruptcy is committed.

In Equitable Trust Co. of N. Y. v. Conn. Brass & Mfg. Corporation 290 F 717 1923) the Court held in words to the effect that section 3466 of the U.S.Rev. Stat, 3466 (Sec. 191 of Title 31 of U. S. C. A.) giving priority when any debtor is insolvent, or when the estate of a deceased debtor is insufficient to pay his debts, and extending the priority to cases in which the insolvent debtor makes a voluntary assignment, or the effects of an absconding concealed, or absent debtor are attached, as well as to cases in which an act of bankruptcy is committed, does not give the U. S. the right of priority of payment on a showing merely that a living debtor is insolvent, but it must further be shown that one of the three conditions specified in the statute also exists.

WIDOWS AND CHILDREN — In the Case of Postmaster General V. Robbing Fed. Case No. 11.314 (1829,) the Court held that U. S. have no priority, over the allowance to the widow of a deceased debtor, under the state law.

In the U. S. of America v. Hahn, Admr, 37 Mo Appeal Reports 580 (1889) it was held that under the federal statutes the U. S. has the right to priority of payment over other creditors, out of property of an insolvent estate which is not required for the payment of cost of administration, or of the widow's dower or allowance, and which is not subject to liens.

The two above cases were cited and approved in "In re Stiles" Estate 215 N. Y. 134 (1926). In "In re Stiles" Estate held that decedent's funeral expenses have priority over his debts due U. S. for income taxes, notwithstanding Sec. 191 Title 31 U.S.C.A.; such expenses not being debts of estate or of decedent but a charge against estate similar to administration.

Family allowances, exemptions and Homestead are not debts of the decedent but are charges against the estate in accordance with the N. D. Constitution, Sec. 208, Sec. 5608 and Sec. 8725 of the C.L.N.D. and subsequent amendments.

In Allan v. Clark 126 Fed. 738 (1903) the Court held that in absence of a specific statute, this section, 31 U.S.C.A. Sec 191, does not give U. S. authority to satisfy a judgment from the defendant's homestead in Va.

There are two cases that seem to be contrary to the above views. The recent case is that of the Federal Reserve Bank of Dallis v. Smylie 134 S. W. (2d) 838 (1939 Tex.) - which held that the widow's claim for widow's allowance, was not superior to claims of U. S. based on crop loans made to the deceased. The Court of Civil Appeals of Texas gives no reasons for its holding nor cite authority for its views.

More damaging is the case of U. S. v. Howell, 9 Fed. 674 (188). The following view was expressed: "Where an execution for a debt due the government there was a return of no property found in excess of the homestead and personal property exemptions allowed by the Constitution and laws of North Caroline, on motion by the U. S. district attorney for an alias execution to be issued to the Marshal, and for an order of Court directing him to make a levy and sale of the property without regarding such exemptions, it was held, that he was entitled to the order asked. State exemptions laws are inapplicable to debts due from a citizen to the U. S. Sheppard's Federal Reporter citations for 1938, shows that this case has never been cited. The case is 63 years old and never has been approved by other courts.

I have checked the American Digest Systems from 1658 to July 1, 1943; the Federal Digest, and the United States Supreme Court Digest. Notes in 29 LRA 226 - 249; 1 LRA U. S. 255; 46 LRA U. S. 260; LRA 1918 A 398 are of interest.

It does not seem reasonable to claim that the specific federal statute supersedes all state laws upon the subject of distribution. The statute only gives a preference to the U. S. over all other creditors. The case of U. S. v. Hahn, 37 Mo. Apepal R. 580, which recognizes the widow's dower and allowance has merits.

Recently, the Regional Manager of the Emergency Crop and Feed Loan office contributed to the subject of "Priority of Claims of the United States as against Estates." Such contribution particularly relate to debts based on seed, crop or feed loans granted.

From his letter (No. 783 - Sept. 24, 1943) we take the liberty of quoting parts as follows:

In probate cases, it is the position of the Government that its priority supersedes all debts and claims except necessary administration costs, reasonable funeral expenses, statutory allowances to widows and children, taxes which became a lien upon specific property prior to the date of death, and valid encumbrances standing against specific property prior to the date of death.

There appears to be no doubt but what the necessary expenses of administration and the funeral charges properly have priority over the claim of the United States. Being charges against the estate rather than against the decedent they are given preference in payment out of the assets over all debts of the decedent including debts due the United States. See Elton v. Lamb, 157 N. W. 288 and cases cited in notes to 24 C. J. 423 (Par. 1160.)

The principle recognized in this country that debts due the United States have priority over all claims for the expenses of the last sickness or illness, regardless of state statute, is concisely set forth at 24 C. J. 424 (Par. 1162,) reading as follows:

> "By virtue of Acts of Congress debts due the United States must be paid over all other debts of decedent. The statutes giving, this priority supersede and control all state laws so far as priority of claims are concerned, so that the absences of a similar provision in a state statute is immaterial."

and at 24 C. J. 425 (Par. 1167):

> "In the absence of statute the expenses of last sickness have no preference but in many jurisdictions statutes have been enacted giving a preference to such expenses, including the charges of physician, bills for medicine, et cetera, all claims for such expenses being of equal degree. Such a claim has been held entitled to preference over a judgment but is subsequent to the expenses of administration and debts due to the United States.

It is rather well settled that expenses of last illness are debts of the decedent and are not prior to the claims of the United States. The decisions including United States v. Eggleston, 25 Fed. Cases No. 150-27 and Postmaster General v. Robbins, 19 Fed. Cases 11314, seem to create a distinction between charges against the estate and debts of the decedent.

As early as 1835 the Supreme Court of the United States, in the case of Field v. United States, 34 U. S. 182, 9 L. Ed. 94, laid down the rule that local laws of states cannot create priority in favor of other creditors and so defeat the priority of the United States. Since that time the rule has been followed in an

unbroken line af authorities. Particular reference is made to the case of United States v. Backus, 24 Fed. Cas. No. 14,491:

> "The exclusive jurisdiction given to the probate court in the settlement of decedent's estates cannot affect the claims of the Government, however it may bear on private claims. The mode of proceedings in the probate court and the time given for the settlement of accounts cannot regulate the claim of the Government nor affect the remedies given to it under its own laws *** Such a rule of procedure would subject the Action of the Federal Government to the regulation of a state government."

See also United States v. Fidelity Trust Co., 121 Fed. 766; United States v. Hoar, 26 Fed. Cas. No. 15,373; Pond v. Dougherty, 92 Pac. 1935

On the general proposition that state statutes of limitation are not applicable to the United States, see United States v. Thompson, 98 U. S. 486, where the Minnesota statute of limitation was held not to apply to the United States. See also Phillip v. Commissioner, 283 U. S. 589; United States v. Nashville, etc., Railway Co., 118 U. S. 120; and many others.

CONCLUSIONS

From the rulings in the foregoing decisions it is our conclusions

1 There is no limitation as to time for filing or enforcing claims due to the government from an estate;

2 That government priority supersedes all debts and claims against an estate excepting expenses of administration, funeral expenses, allowances to widows and minor children, taxes which are liens on specific properties prior to date of death, and mortgages;

3 Expenses of last sickness is subject to priority of government claims. Such expense is payable by the widow from her allowance (8727.)

Respectfully submitted,

WM. G. OWENS,
County Judge
O. N. THORMODSGARD,
Dean N. D. Law College
J. H. HUTCHINSON,
District Judge
Committee

Re-read and Edited on Sept. 8, 1944

WM. G. OWENS

MR. HERIGSTAD: I think it might be well to have Bill answer questions that might come up. It is an extremely

interesting subject. If you will throw the meeting open for questions.

MR. MCBRIDE: Couldn't the estate take bankruptcy and secure the allowance under the bankruptcy law and the claims be knocked out.

MR. OWENS: Judge Vogel has ruled that the bankruptcy must either be dismissed or the court must grant to the administrator authority to personally represent—I was concerned how I was going to represent anybody, to represent a dead man, but finally in order to have the estate proceed regularly in bankruptcy court and where it had already been (interrupted).

MR. MCBRIDE: Supposing it hasn't already been, and you have a situation like this, couldn't the heirs thru their administrator petition in bankruptcy?

MR. OWENS: I don't know anything about bankruptcy.

JUDGE HUTCHINSON: I was going to ask whether you found out in your research whether you believe that a special administrator is any different in position than a private administrator would be.

MR. OWENS: I don't think so. We found that the situation with reference to these estates is uniform and treated the same by the United States authorities throughout the whole country, the whole United States, whether special or private.

JUDGE HUTCHINSON: A special administrator is an officer of the state. He is in a different position than a private administrator. I wondered whether he would be treated differently.

MR. OWENS: We haven't gone very far other than to determine that a special administrator is an administrator, and he has a bond subject for any estate in his control. We think a special administrator would be as liable as a private—after all, he handles estates under the jurisdiction of the county court.

MR. CAMPBELL: Has there been any definite square holding here by the Supreme Court or the Circuit Court of appeals or a lower federal court that the law in North Dakota with reference to probates and property controlled by the local law is to be overriden by these contentions of the federal law? Has there been any definite distinct holding of that character?

MR. OWENS: We cite a line of cases where the Federal United States Court, two federal court cases, which definitely held that the statute of limitations of states does not apply to government claims in that particular instance, and that would control the filing and operation of claims against the estates. Then we have other decisions with reference to the different classifications of makers and their status and they say the state statutes do not control or have anything to do with it. They must be operated under the federal court.

NELS G. JOHNSON: We haven't taken any action because we haven't had any authority from the Association or the Judicial Council. So far as the county is concerned we haven't sent our report anywhere, except to the Judicial Council.

MR. BURTNESS: What do you recommend?

MR. OWENS: We recommend that we send to our delegation in Congress a proposed amendment or act which would fix a limitation on claims against estates. We are not so interested in making a regular federal statute as we are in cleaning up the situation existing in North Dakota.

MR. BURTNESS: Your real purpose is to put it in a real class so that it isn't where it is now. Get it into a general debt or immediately above the general debts.

MR. OWENS: We would be quite satisfied if the government would be controlled by our state statute the same as any other debtor. We think the government should be entitled to a preferred claim, but they say they are not in any class. Our statute says government claims come in No. 4.

MR. BURTNESS: It seems it would be fair enough if they simply came in as general creditors, shared the general creditors.

MR. OWENS: You have a great many attorneys who are of the same opinion.

MR. CAMPBELL: It seems to me that if this question has been settled against the state, that it would be well to have Congress provide that the handling, distribution of estates under state law by the courts so that state should be controlled — not a question of limitations, but a question of the effect of that law if it isn't filed within the time provided by our law.

A. BENSON: I believe one of the cases you referred to and from which you quoted was the Georgia case. I believe that case held that the federal government wasn't bound by any state, statute, or statute of limitations, and that the case held that the administrator should be personally liable. It looks to me reasonable that if this Association would go on record to repeal the old statute which gave the government priority which was passed before the government went into business, and it did not contemplate the business carried on by the government now, I think that would cure the whole thing. I don't think we could get Congress to go so far as to say that our probate law should apply to the government of the United States, but I think we could get them to repeal that law.

MR. OWENS: So far as the government is concerned, if the government would place a limitation as to such claims, that would eliminate the whole thing.

MR. BURDICK : I would like to add for the benefit of those who do not know the facts of the cases that were talked about, the government claims were secured by the chattel mortgage

and the government officials had neglected to renew the chattel mortgage, and it wasn't renewed of record at the time the administrator booked for claims against the estate, and yet he was bound to pay it.

MR. OWENS: To the government?

MR. BURDICK: That is right.

MR. HERIGSTAD: Do you have a special recommendation?

MR. OWENS: We will add the recommendation to the report. I will make a motion that the report of the committee be accepted and filed and be made a part of the record of the Association, and that the Association be authorized to contact the congressional representation of North Dakota having in mind the recommendation that the statute of limitations be placed in the federal statutes with regard to claims against estates.

NELS G. JOHNSON: Second the motion.

MR. NOSTDAHL: Our delegation in Congress should be requested to propose an amendment to the law to remove the status of the (interrupted)

MR. HERIGSTAD: I understand that is the gist of the motion.

MR. OWENS: We didn't have that suggestion ourselves. The Supreme Court of the United States has said that is the only remedy.

Motion carried.

MR. HERIGSTAD: Governor Moses will now address us on North Dakota's Water Problems and Their Solution.

GOVERNOR JOHN MOSES: Mr. President, I come here for the purpose of making more of a report on the present status of the Missouri River Diversion than anything else. I am not going to take too much of your time. I thought it might be of interest to give what I might say, is the position of the moment on our water problems and on the Missouri River legislation.

I think you are all familiar with the two plans that have been before the country, the Pick plan, the plan of the army engineers. The plan that was so widely discussed here in North Dakota and other states a year ago. A plan which suggests as Col. Pick said is a comprehensive development of the Missouri River Basin. We have also the plan of the Bureau of Reclamation. Now, in Washington we find we have three pieces of legislation to contend with. The House had under consideration last February the flood control bill. The flood control bill had included as a part of it, the so-called Pick plan. The Pick Plan is essentially a flood control plan by the Bureau of Army Engineers proposed.

They tack on to that a series of multiple purpose flood control dams, not only flood control, but navigation and power.

There was also before the House in February the Rivers and Harbors Omnibus Bill that contained a total authorization of some $480,000,000 worth of work and included in that was some two or three million dollars for deepening the channel of the Missouri River between St. Louis and Omaha, making it a nine-foot channel instead of a six foot channel. The Bureau of Reclamation had its report in finally, and that is before Congress.

We went to Washington, Governor Ford of Montana and myself, and a couple of people from the various states for the purpose of trying to impress upon the members of the committee the necessity for a uniform approach to the Missouri River problems. We were not successful. The flood control bill passed the house with an authorization of several million dollars for the Pick plan. The River and Harbors Bill passed the house. We endeavored to get safety provisions on the bill to protect the water that passes from Montana and Wyoming and finds its way into the lower regions of the River. We wanted to safeguard that for the use of the people up state. That amendment failed. We tried again, before the commerce committee of the Senate Committee at a hearing of the River and Harbors Bill at a further hearing in June. We went again. The committees before which we appeared are committees staffed very heavily by House members in the House and Senate members in the Senate who are navigation minded and come from the navigation area.

The condition is as follows. The flood control bill has been reported out of the commerce committee of the Senate. The River and Harbors Bill has been voted out by that committee without safeguarding amendments. If these bills pass as they are now before the Senate, there will be nothing to protect us. If by chance the river and harbors bill passes, it will carry with it enough water to take care of a nine foot channel from St. Louis down, and we haven't enough water for irrigation purposes in the upper channel, that is too bad. Worse than that, the Commerce Committee takes on the Clark Amendment. The Clark Amendment is a whole bill in itself. It is a Missouri River Valley Bill tacked on to the flood control bill thru this amendment. That amendment proposes to establish the Bureau of Army Engineers as the Missouri River Valley authority. It proposes to create a Missouri River Valley Authority merged in the army engineers and give the army engineers full control of the uses of the water in the Missouri River. The Bureau of Reclamation bill is before the irrigation committee of the Senate, and a companion bill before the committee of the House. In order to get these legislative situations clear, these are not appropriation bills, but seek an authorization for construction, authorization bills which are necessary to enable Congress later on to pass such appropriation as it may desire in postwar years for the work, or all of the work proposed in these two bills.

There is a potent group, twenty-two senators, which united in an effort to tack on a protective amendment to these bills. We

have the O'Mahoney amendment named after Wyoming Senator O'Mahoney who has been active in fighting for our amendments that proposes to set up the principle that the primary, the most important right to the use of water is for domestic irrigation, reclamation, industrial and mining purposes. If that amendment passes, our rights are safeguarded. It is a negative amendment. It is negative in this sense that it prevents the other fellow from taking our water. It doesn't give us the authorization we need for construction of the necessary work for the irrigation and reclamation of our upper basin states.

I returned two weeks ago from a conference at Omaha called by the committee of the Missouri River states consisting of two men from the eight Missouri River states, now nine with Colorado added appointed the representative governors of the states, but with the committee met the eight governors, and the governor of Iowa wasn't there. And he has stated, and I think that is correct, that the interests of Iowa in Missouri River development are negative, and I think he is right. They are not interested in flood control or navigation. What they have in navigation are small.

In this conference in Omaha I attempted to get an expression from the governors and from the committee members of the Missouri River States, I proposed an eight point resolution. The resolution was adopted after a number of changes and the essential of the resolution is this:

We recognize that we are dealing not with a series of problems, but we are dealing with one problem caused by the one river. It is one river which services this basin with its tributaries. To develop the basin by the use of the water created by that river and its tributaries constitutes one problem. The resolution goes on to ask the Congress, and particularly the Senate before which these bills are now pending, to recognize the principle that we are dealing with as the one enormous problem, and the problem is how to best legislate to serve the interests of all the states and the seven million people in the Missouri River Basin without doing material damage to anyone of the seven states. Our interests are different. Montana, North Dakota, and Wyoming are interested in reclamation and irrigation in the domestic use of the water for the purpose of growing food; for the purpose of developing our industries; for the purpose of creating cheap power to be created from the various dams created for flood control and other purposes.

South Dakota is interested in irrigation. They have a most peculiar development in South Dakota, and that is because of Governor Sharp's attitude who is blindly following the recommendation of the army engineers, and who refuses to recognize his state's interest in irrigation. We have two states flood control minded, Nebraska and Missouri. Two states who have flood problems. I don't need to remind you of the millions of dollars damage suffered by the Omaha area, and we have the states interested in sanitation problems and flood control. We in

North Dakota, so far as our water interests are concerned, are pretty interested in two things, the aim and object of these people for twenty-five or thirty years seeking a diversion of the water from the Missouri River to Devils Lake for the purpose of restoration, Devils Lake and Stump Lake to something like the former status. We are interested in seeing the development of the center of the state to bring a small portion of the water in the Missouri River to the James and Sheyenne restoring their former level, holding water for domestic consumption. The ground water has completely disappeared. We are interested in developing the James River in our State and South Dakota.

The people of the eastern part of the state are finally interested in a sufficient flow of water in the James River to establish a more even flow of water in Sheyenne. It is proposed to dig a canal thru Fargo into West Fargo to bring the water to the Sheyenne into Fargo and service that city. I don't need to go into the sanitation and pollution problems bothering the people of Grand Forks. All of these things can and should be taken care of thru a proper diversion. We are also interested, and perhaps I should say primarily interested in developing irrigation needs in the western half of the state.

We have these two plans, the Pick plan, a flood control plan which proposes to establish a number of main stem reservoirs in the Missouri River, the lower one at Gainz Point in South Dakota; one at Fort Randall, South Dakota, another one at Ohoe which is near Pierre, and another one immediately below the North Dakota-South Dakota border, and the most important one at Garrison, supposed to contain 23 million acre feet of water. By comparison, Fort Randall, Ohoe, and Fort Creek will provide for 6 million acre feet. You can readily see the important part the Garrison Dam plays in the plans of the army engineers. The army engineers propose two dams up in the upper regions of the Missouri, one at Livingston, Montana, and another at Boysen, Wyoming. These will contain between 3 and 4 million acre feet.

The sum and substance of the army engineers plan is to store all of the available run-off water on the Missouri River behind these dams. They propose the Garrison dam also as a siltage dam so that the silt that comes at Garrison will remain there, and not create further problems below the dams at Garrison. The army engineers contend that the Garrison dam is the keystone to their arch. They contend it is the one important part of their plan. The army engineers recognize the diversion part of the program. They make provision to bring the water over to the upper reaches of the James and Sheyenne Rivers and Devils Lake. So far as central North Dakota is concerned, the army engineers report is all that anybody can ask for. They pointed out in strong and convincing language the necessity for bringing water into the Devils Lake basin, and the James River Valley.

The principal difference between the two, so far as we are concerned, is that the Bureau of Reclamation does not include the Garrison Dam. It does include the Missouri-Souris diversion project. It is proposed to take water from a dam to be built below the Fort Peck, below the confluence of the Missouri River, carry it to the Medicine Lake and fill it up and lift the water 100 feet at a point near Garrison and carry it on thru the lower part of Divide County thru the Des Lacs Basin and thru Minot and at a point at Verendrye to take the water in the low point over to the upper reaches of the James and Sheyenne and then into Devils Lake. The army engineers take the position that if Garrison Dam is built so that the big dependable storage reservoir at Fort Peck now in a sense will be replaced by the reservoir at Garrison, that ultimately the army is willing to release Fort Peck for irrigation purposes. Everything hinges on the word "eventually." It is to be remembered that everyone of these authorized bills deal in terms of the postwar period. It is entirely in terms of postwar period to be initiated six months after peace, and that I take it means peace on every fighting front. It may take twenty or thirty or forty years before the army engineers, as things now stand, will be ready to do what they say they will do today, that is, release Fort Peck water.

At a governors conference at Omaha, we found a considerable amount of objection to the Missouri-Souris project. The opposition is based upon a fact which technically is true. That is, to say when you take water from the Missouri River and take it into the Souris Basin—these people all speak of the Mouse River as the Souris—they pronounce the word "Souris" many, many different ways. That is neither here nor there. The Mouse River, the Souris, drains into Canada; the Missouri River drains into the Gulf of Mexico. The objection is vicious. At one of the hearings Senator Clark says that the irrigationists propose to irrigate two or three million acres in Canada using United States water to do it. There is no such proposal anywhere. The fact remains that you cannot build the Missouri-Souris River project without a certain run-off into Canada. It is small but it is there. The Governor of Missouri was vehement in his objection to that part of the plan of the army engineers.

We succeeded getting thru the resolution calling upon the Congress to assure directives to the various federal agencies to bring their plans into entire coordination so that Congress, instead of dealing piecemeal, could deal with one problem and to speak of it at this time. This is the danger. If this isn't done we have three horses, the reclamation-irrigation horse; rivers and harbors horse; and the flood control horse. The flood control horse and the navigation horse are way down the stretch. Their bills are thru the house and thru the commerce committee, and they are ready to go in, and the last one hasn't even past. We are asking that these horses be given an even chance so that Congress will deal with the whole situation at one time, so that we will be done with the piecemeal dealing. A conference

has been called for the 6th and 7th of December for the Missouri River states who are interested in preserving our interests for the preservation of water for our purpose.

We will, of course, send representatives. By a queer freak, we are getting support from a group of New England states. The reason for it is not because the New England people are interested in irrigation. Far from it. They are faced with flood control problem. It has developed a most violent opposition to flood control projects as interfering with the right of the individual states to dispose of the water as they see fit. They recognize here a principle. They are opposed to the federal government assuming control of the water and legislating as to the dispersal of the water without safeguarding amendments. We are getting support from some of the North Atlantic states. We are facing unanimous opposition of all the states in the Mississippi Valley, the navigation states. The conference will chiefly be concerned with drafting amendments which may accomplish our purpose and at the same time be less cumbersome than the O'Mahoney amendment at the present time, and be less objectionable to some of the states which have dual interests in water problems, for instance, an interest caused by navigation, and one caused by irrigation. We attempted to get the principle that the highest and most important need of water is for irrigation and reclamation purposes thru this conference of governors. Much to our dissappointment the governor of South Dakota disapproved it, because he said the army engineers hadn't approved. We got an irrigation resolution reading like this; that nothing be done in the interest of navigation or flood control shall do harm to reclamation and irrigation. That was opposed by the Governor of Missouri. There is another quirk. That is the number of authority bills. The first is the Senator Clark bill proposed to establish a Missouri River authority and leaves it in the hands of the army engineers. In other words, turn the river to the army engineers and tell them to use their best judgment, and Senator Murray of Montana has introduced a bill, 2089, worthy of careful study, proposing a new authority recognizing flood control. There can't be a quarrel about flood control along the Missouri River and its tributaries. We are interested in the flood control. The City of Mandan suffered what may nearly be a million dollar damage when the sinking of the buildings is finished, by the flood of 1943. We want flood control in the tributaries. The basin states are in absolute accord about the need for control. Senator Murray makes irrigation second.

A third one has been proposed by a Senator from Iowa. This proposes to deal with the problems on the river, but in setting it up, he puts navigation first. What the outcome is going to be, I don't know. The prospects are that the two house bills, the flood control omnibus bill and the river and harbors omnibus bill, will come before the house in September. The probabilities are that no action will be taken until after the election. In the meantime the forces that are seeking to protect our rights to a reasonable economic development by the bringing of water on

to land are trying to protect that right thru these amendments, but the amendments are negative, gentlemen. The amendments do not solve any problem. They are protection but not construction. The amendments won't bring the Missouri River Valley development into being. It is necessary to go further than protective amendments, important as those amendments are. Some newspapers—and important newspapers have advocated the application of the T. V. A. policy to the Missouri River Valley. I am, frankly speaking, almost skeptical about the possibility of applying the principle upon which the T. V. A. was created, dealing as they did with a small area compared to ours, dealing with fairly unified problems as compared to the tremendous divergent problems which face us. I am almost skeptical about applying T. V. A. principles to the Missouri River, even if we were anxious to superimpose an entire federal agency upon the economic life of the Valley. I am very skeptical of that. At Omaha I proposed a resolution recommending a Missouri River Valley commission as the second step leading towards the unification of these plans, leading toward consummation of the plans. That resolution lost.

I proposed a Missouri River Valley Commission composed of a representative of the army engineers, a representative of the Department of Interior which in turn would be the Bureau of Reclamation. A recommendation of the third federal department having a vital interest in the development of the Valley, that probably is the Department of Agriculture, with two representatives chosen, one from the part that lies above Sioux City and one from down, having in mind that if we can solve these problems by leaving it to these various agencies to get together, may be it will not be necessary for Congress to bring them together by bringing these departments and agencies into one group working with representatives of the people in the Valley in an effort to create an overall development.

I am not going to take any more of your time. I have tried to give you a thumb nail sketch of the situation as it faces us today. Without a doubt the solution is many years in the future. The entire problem proposed by the Bureau of Reclamation is a one billion 250 million dollar project that takes in all of them. The flood control project of the army engineers themselves is half a million. The biggest, the Garrison Dam, will cost some 130 million dollars according to their estimate. Then we have the power development included, but not in the army plans. Porbably we could get together a little easier if we were sure there was enough water for all purposes. The Bureau of Reclamation proposes to irrigate 4 million 670 thousand additional acres, about one-third in North Dakota. That is a tremendous program that needs a tremendous amount of water. We have the Devils Lake diversion which will take more water. The army engineers say there is water for all purposes. The Bureau of Reclamation says they are afraid there isn't. We are asking those who say there is enough water for all purposes to accept our amendment saying that if there isn't enough, irrigation

comes first. They say there is enough, but they are not willing to accept our amendment. That makes us skeptical as to how firmly they believe in their thesis that there is enough water for all purposes. I think, Mr. President, this concludes my statement of the problem.

MR. HERIGSTAD: Thank you, Governor Moses, for honoring us with your presence. We have the motion that was up for the adoption of the report on legal education. Would you like to dispose of that at this time?

DEAN THORMODSGARD: I may say, gentlemen, it was not the intention of me as chairman, and I think I can speak for the other members, to give a judicial interpretation of the meaning of Chapter 90 of the Laws of 1931, so I will move that we omit on the last page that phrase "there is no need for us in North Dakota to amend Chapter 90 of the Laws of 1931 which deal with the qualifications for admission to the practice of law." You can just omit that, delet that, and the following sentence add this: Strike out the word "both" so it will read "The University" Strike out "and the state bar board" so it will read "The University of North Dakota School of Law has the opportunity to maintain its additional policies and standards in conformity with the recommendations of the American Bar Association, and in line with the standards as adopted by nearly all of the states." That is forty-three states. We will even omit what the state bar should do. I know it is the policy of the University. We are going to follow the standards of the American Bar Association. If the legislature and the State Bar Association want to go below that standard, that is not our specific problem so far as the University is concerned. As I reported it, the University maintained those standards since 1905 continuously, and when four years of high school was required, we added that. When they adopted one year of college, we adopted that, and when two years of college were required in 1918, we adopted that. In other words, seventeen years before the state adopted the two year plan that was adopted in 1931 to be effective in 1935. So that with those deletions and amendments, does that satisfy your suggestion, Chief Justice Morris? We don't want to make an issue of it.

MR. SHAFER: I think it would largely be so far as the State Bar Board is concerned. I had in mind offering this suggestion not in the form of a motion, not unless your committee is agreeable to it, that is, that the report be filed with such expression of approval as seems to be in order in view of your deletion, and that your committee on legal education be requested to cooperate with the bar board and the supreme court in formulating a policy in regard to pre-legel requirements for war veterans of a character that would meet the special needs of special war veterans, and to determine whether any amendatory legislation is needed, and if so, to recommend appropriate legislation to the legislature. Something of that character I had in mind to the end that this problem which is one I think we can solve with a

little cooperation with each other, that each will have a mind to cooperate with the other authorities for the purpose of working it out. I move, Mr. Chairman, that with these deletions and amendment and corrections that the report be accepted and filed and printed, and I will conform as to corrections and deletions.

Motion seconded.

MR. TRAYNOR: Then his former motion should be withdrawn. The former motion asked for an approval of the report.

MR. HERIGSTAD: You withdraw your motion?

DEAN THORMODSGARD: Yes.

MR. CAMPBELL: I was wondering, I don't grasp the import of this procedure. I would like to know, all I care to talk about is against the adoption of that resolution without further study and consideration by the members of the Association here present. If our adoption of that resolution is not before this body, I will sit down. I have nothing to say.

MR. TRAYNOR: It isn't before the body as the motion stands now.

MR. HERIGSTAD: The motion is now for the receiving and filing of this report.

MR. TRAYNOR: That is correct.

MR. CAMPBELL: When the matter of adopting that resolution is up I want to speak. If it isn't here, I don't care to speak.

Motion carried.

MR. SHAFER: Has the motion been adopted to accept the report?

MR. HERIGSTAD: Yes.

MR. SHAFER: I move that the committee on legal education be requested to cooperate with the state bar board and the supreme court in so modifying the state's policy in regard to pre-legal requirements for war veterans as to fairly meet the needs of war veterans and to determine whether any amendatory legislation is required in regards to Chapter 90 of the Laws of 1931 and if possible to recommend any such appropriate legislation to the next legislature.

MR. TRAYNOR: Second the motion.

MR. BURDICK: I would like to suggest a possible amendment to Mr. Shafer's motion to the effect that any policy that the committee may adopt be in conformity with the main standards of the American Bar Association.

MR. SHAFER: That would be in opposition to the resolution of the American Bar Association.

MR. BURTNESS: I thought he meant that it be in harmony with the resolution adopted by the American Bar Association. I think it is very essential that it be adopted. If we don't want to lower our standards.

MR. CAMPBELL: We have come to the proposition I want to speak on. I think enough of the individual opportunities that are open to young Americans are gradually being taken away from them. I am going to say this. I was admitted thirty-six years ago. I have practiced in this state during that length of time. During that period of time I have seen resolution after resolution, suggestion after suggestion, legislative amendment after legislative amendment put on to where today my child couldn't get into the legal profession if he had to do it the same way I had to do it. In other words, I had to educate myself, and in considering these things that are constantly coming on with the matter of changing the standards of legal education, I am not wanting to lower the standards in any sense. At the same time, I am not wanting to deprive in America any young man of an opportunity to work himself into the legal profession the way I had to do, and the way I did without requirement of having to attend either a university or a college, or even a high school.

MR. HERIGSTAD: Pardon me. As I understand it, you are talking on Mr. Shafer's motion?

MR. CAMPBELL: I am.

MR. HERIGSTAD: I understand the import is that this legislative committee is to give further study and they are making a recommendation.

MR. SHAFER: Yes.

MR. CAMPBELL: I thought it was to delegate an authority to those individuals to take action for this body. I don't want it delegated. I want it back here to this body. I am sorry Mr. Divet isn't here to stand for this profession. I think we as the leaders of society must watch at every step to see that these rights are protected so that these things that come in from other sources, so that when we get thru we haven't got something we didn't want, at least from the standpoint of those who are seeking to develop themselves along some lines in this country.

JUDGE MORRIS: I wonder if the proposed amendment might tie the hands of the committee. This whole problem is in a considerable state of flux. I am not sure that the resolution passed by the American Bar Association is the final action on the part of that body. Just to show you that the matter is still a matter open for discussion, the secretary of the national bar examiners submitted a resolution to the various members of that Association, and from the secretary of the state bar board of Illinois received a letter in which the secretary said, "I in general approve of all five paragraphs. However, I believe I would get further to permit credits to be established by Paragraph 3. I think applicants might be allowed more than a year

for study or intelligent growth. I think all universities and colleges will have to set up a testing program, and I think a lot of schools might well set up testing standards. The thing isn't settled." I wouldn't like to see it tied down. There might be more development within the various boards of bar examiners and we might have an opportunity to conform to what is termed proper standards to extend further favors to the people returning from service. If we have an opportunity to do this, I doubt if this body wants to tie the hands of any committee. I would prefer to have this resolution of Mr. Shafer's stand as it is.

MR. HERIGSTAD: Mr. Burdick, as I understand it, you made that a suggestion, not a motion.

MR. BURDICK: Just a suggestion, not a motion.

MR. HERIGSTAD: The motion of Mr. Shafer is before the house. Motion carried.

MR. PALDA: I move we take a recess until nine o'clock tomorrow morning.

FRIDAY, AUGUST 25

MR. HERIGSTAD: The meeting will come to order. We will have the invocation by the Rev. John Hogan.

FATHER HOGAN: Almighty God, Father of Nations, Ruler of the Destiny of Men, we call down Thy blessing upon us here assembled. We ask Thy Divine Grace and Guidance in our deliberations, in the making of our decisions. Man left to himself is weak. He needs divine grace and assistance to help him. We ask that divine assistance be given to us individually and collectivley. As children we approach you with all of the simplicity and humility of that child. We ask you to give grace and understanding to our hearts in order that we might be in some humble way an instrument in bringing grace and peace to our troubled world. In all of the simplicity of a child we say: "Our Father who art in Heaven, hallowed be Thy Name. Thy Kingdom come; Thy Will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation, but deliver us from evil. Amen.

MR. HERIGSTAD: It appears as though some of our attorneys have not recovered from the oratory and wit of last night, but I am sure they will be here soon. We have so much on our program this morning that I thought it would be advisable to get underway. I think I will change the order of the program a little and at this time we will ask for the talk on the Post War Road Building by George Dixon. Mr. Dixon, if you will come forward.

MR. DIXON: As I understand it, your program is quite crowded and you want a man to step along. I am very happy to be here this morning, and if I can do half as good a job of explaining to you concerning our post-war highway improve-

ment association program, and the Association, and impressing upon you the benefit which we will be to a community as Bud Taylor impressed me with the greatness of the lawyers last night, I will have done a very good job.

The postwar highway improvement association in North Dakota came into being in June of this year. It has been under discussion for several months, and a number of meetings had been held. The Association feels there is great need in North Dakota of highway improvement. We are positive that when the North Dakota men start returning from the wars, and the men and women start returning from the war in this country that there will be need of employment in North Dakota. We also feel that the State of North Dakota should start making arrangements and getting themselves ready to improve this much distressed road system which we have and is in such great need of improvement. So we have in our plan the road system needs, the improvement—we feel that there will be need of employment, and we feel this state should be ready.

Now, the point is how to start in. The Association feels, first, money is needed, and how this money is to be arranged. We have brought before the people petitions, and they have been filed with the secretary of state and we are initiating a measure which will be balloted upon in November wherein the state of North Dakota will be asked to provide 12 million 360 thousand dollars in highway anticipation revenue certificates, the money to be used to secure grants and aids from the federal government in the construction and reconstruction of our highways, and primary system and feeder farm to market roads all included.

This bill which we are asking the people to vote favorably upon allows these certificates to be sold by our highway department. They must be sold on a bid basis. They cannot draw interest greater than 3%. They become legal investments for all state banks, state bureaus, and state departments. They are nontaxable. The maximum is $1,360,000. There is no minimum and to be issued as needed as the work progresses. These certificates must be repaid and there are ample taxes now imposed upon the people of North Dakota to repay them. I refer to the 1c gasoline tax which we have paid since 1939, and we enact in our bill for the life of the certificates. When this money is available, we will then be able to match up with federal monies now available and monies now proposed under the bills of Congress, and they are far enough along now that we know there will be approximately 20 million coming from that source. When you put it all together we have a prospective road program of 35 million. Of the 35 million dollars, 9 million dollars will be on the public payroll. 9 million dollars on the public payroll will go a long way into aiding men back into civilian life that are going to be returning from the war. We have a program of 35 millions which will go a long way in the improvement of our highway, not all of the way, our department says it takes 160 million. We will go a long way with 35 million dollars and 9

million dollars we will aid to push back into civilian life these fellows.

What has happened to our highway department in North Dakota? What is the history? I think you men could be interested in bringing some of these back to your memory. It was begun in 1917. In that time our department has spent 108 million dollars up to 1943; that broke down with various sources of income. There was the state, county and government bringing in the money. In the construction of highways ourselves, the state has spent a sum slightly under 7 million dollars. That is nearly $600,000.00 a year under that period. The federal government has provided 52 million dollars during those years, 26 million dollars went into maintenance. Now, coming thru the management of our department. We start out with a five-man commission. We went to three and in 1933 we went to a one-man commission. It has taken a long period of years to make our people feel that it is a well-organized and well-operated department of government. We feel our department is well-received throughout the length and breath of the state. From 1933 we had a drought and depression. Things were in bad shape. The federal government itself came into North Dakota and provided it with money. From 1933 to '38 the government put in 26 million dollars. We, during that time, spent a million and a half dollars on construction. That was our largest compact group of years in the building of state roads here with practically 27 million dollars being expanded. In 1938 the government said to us, "Now, Gentlemen, in North Dakota, beginning the first of 1937, you fellows have got to be prepared to match us on a 50-50 basis. The officials became interested and began looking for this amount of money to match the federal money. There was no source of money anywhere, so it was enacted in the 1939 legislature, the 1c gasoline tax which went into new construction only, and since that time, it has provided the money for the new construction in North Dakota, and for the fund which we provide will retire the issue of 12 million dollars and we are positive it can be done in approximately ten or twelve years. In 1941 this fund created a total of 963,000 of income. Now as roads are improved, the use of those highways grow. From 1938 to '42 our road use in North Dakota increased from a billion miles a year to a billion, 650 million miles. That was an increase of 65%. That is the history of all states of the Union, as well as in our state.

We feel as our program develops in the postwar years that the increase of the use of the highway will be, we feel, even greater than in the prewar years, and the income will run along substantially level on the plane with the increased use. As the roads increase to the benefit of the people, so the people pay back to the benefit of the state. Now, these roads we have cut here, you men know, it is necessary for me to tell you, the great use they are placed to. They are the arteries of our trade. We go to church over them, on our errands of mercy, and with our produce and products, we pursue pleasure and business over these

roads. People want them. We are willing to pay for them. We will pay for them and we are paying plentifully thru the excise tax to the state and federal governments. Part of the money they receive from the excise tax should be returning to the state. There is considerable chiselling on us and we don't get it all back. That is where the funds are created for the matching of federal aid.

If our bill is adopted by the voters of North Dakota, we will bring into being thus employment and improvements. We will do it without any increased taxation, and we are certain that we are not premature at all as we have been accused of being with our program.

Some thirty-two or thirty-three months ago, you fellows read "too little too late." You know what that meant. You know the worth of too little and too late. Our program may be too little, but it is, gentlemen, on time. We will have a hard proposition in selling this to the people. It isn't hard for me to sell it to a man or a woman if they understand, but people are reluctant to place themselves or the state in debt. That is the cry against it. We need all the help we can get. We need men to go out to address groups in their communities. You gentlemen are leaders in your communities. I ask you if you feel that this is a good deal, that as the months pass by and the weeks and this program comes up close to November 7, if you are willing and interested to make a few talks in your community. We will be glad to provide the basic material on which to base your remarks. I think that is complete. I think I have stayed within the time and our Association thank you very kindly for allowing me to appear before you.

MR. HERIGSTAD: Thank you, Mr. Dixon. It may occur to some of you lawyers that a discussion of this kind should not come before a Bar Association. As long as we lawyers are going to assume leadership in public affairs, it is well that we be informed of the vital issues that are coming up in the near future. We appreciate this talk. We have an important committee which was left off the program. Nevertheless they did efficient work in the last legislature. I am going to call on the chairman of the legislative committee, George Shafer, to make a brief report.

MR. SHAFER: The only merit this report has is its brevity. Whether the subject matter which the committee dealt with in the last session of the legislature was important, depends entirely upon the viewpoint, and I will leave it to you to decide its importance after you have noted the subject matter that the committee concerned itself with.

REPORT OF LEGISLATIVE COMMITTEE OF STATE BAR ASSOCIATION

The Legislative Committee, begs leave to submit the following report:

The principal subject of interest to the members of the State Bar Association considered by the 1943 Legislative Assembly was

the report of the Code Revision Commission and various bills sponsored by the Commission relating to the proposed new code.

In view of this situation and the further fact that the Association did not make any additional legislative recommendations, at its last meeting, the Legislative Committee did not concern itself with any new legislation, except certain measures relating to the salaries and judicial retirement pensions for judges. In that connection, it should be noted that H. B. 188—Chapter 203 S. L. 1943—providing for an increase in the salary of District Judges, was adopted. H. B. 114, providing for an additional expense allowance for District and Supreme Court Judges, failed of passage, as did H. B. 151, providing for judicial retirement pensions. The special session of the legislature held in March, adopted an Act—Chapter 33 of the Special Session Laws of 1944—providing for an increase in the salary of Supreme Court Judges, effective January 1, 1945.

For the success of this legislation, Representative A. R. Bergesen—a member of this Committee—deserves most of the credit, since he prepared and sponsored the bills relating to these subjects before the Legislative Assembly.

Respectfully submitted,

LEGISLATIVE COMMITTEE

By GEO. F. SHAFER, Chairman

Dated August 12, 1944.

MR. SHAFER: I move its reception.

MR. BENSON: I move its adoption and that it be printed in the proceedings.

MR. PALDA: Second.

MR. GRAHAM: I had the pleasure of serving in the last session of the legislature. After being there and hearing the comment of various members of the legislature, I know our bar association is not in the best of standing with a great many members of the legislature. I sometimes wonder if we are not somewhat to blame ourselves, if we sometimes do not fail in trying to have more measures introduced and taking the lead. One thing that came up was in regard to giving a surviving husband or wife the right to take under the laws of the will, or under the law of descent. I suppose you are familiar with the fact that South Dakota and North Dakota are the only two states that do not have the right. It passed in the House and was killed in the Senate. It seems to me it should be brought up again. And then there is the fact that the conditional sales law permits persons to go out and seize when there is a default in the payments, and North Dakota is practically the only state that does not provide for the foreclosure like an ordinary chattel mortgage. In South Dakota you have to foreclose and give the party an opportunity to redeem. If something like this was done, it would put us in better standing. There are many things coming up, it seems to me, that the Bar Association should take and

bring them to the legislature. If the legislature committee were given the authority on what you thought should be brought up before the legislature, it would be a step in the right direction.

MR. HERIGSTAD: I believe those are fine suggestions to the incoming legislative committee.

Motion carried.

MR. HERIGSTAD: In looking into the future, it occurred to me that it would be a good idea for me to establish a custom, if it isn't already the custom, that is to introduce to the convention all of the past presidents. I am going to call on those who are here to stand and remain standing until I call on all of them and you can give them applause. John Knauf, L. R. Nostdahl, Fred J. Traynor, Charlie Foster, Hon. L. J. Palda, Jr., Clyde Duffy, Hon. W. H. Hutchinson. I am sure the Association is always pleased to have the past presidents here. Their advice is always timely and appreciated.

MR. SHAFER: We have a prospective past president.

MR. HERIGSTAD: I was thinking of him. We have an interesting matter coming up for discussion. That is the matter of the pretrial procedure. Judge Grimson and Judge Palda are handling it. You may present it in any manner you see fit. I might say this subject was presented at the Grand Forks convention. At that time we had sectional meetings and only a small group had the opportunity of hearing it, and we thought it would be worthwhile to present it to the group as a whole, because I am sure there are a number of attorneys who did not hear it at that time.

JUDGE GRIMSON: I was very much impressed last night with the eulogy on law and lawyers Mr. Taylor gave us. I think that should be embodied in the minutes of the meeting, but in spite of the eulogy which we all admit is true, our profession has been subject to much criticism. We are accused of employing dilatory tactics.

October 3, 1944

Mr. M. L. McBride,
Secretary-Treasurer, North Dakota Bar Association,
Dickinson, North Dakota.

Dear Mr. McBride:

I enclose a revised copy of my address to the Bar Association at Minot on pre-trial. This is just as I delivered it at that time. Originally I had some three pages of my experience with pre-trial, but because of the time I omitted those. Instead I gave a brief account of them orally after Judge Palda had spoken.

Now if I could get the copy of those remarks and revise them that would cover my experience. If, instead,

you would rather have them in this main article as originally written send this back and I will include it and return it to you.

With kindest personal regards.

Sincerely yours,
G. GRIMSON

GG-MJH
Enc.

October 12, 1944

Mr. M. L. McBride,
Secretary-Treasurer, North Dakota Bar Association,
Dickinson, North Dakota.

My Dear Mr. McBride:

I have your letter of October 5th. Some of that address of mine was included in the sectional briefs, but I changed it considerably and brought the subject down to date.

This subject of pre-trial seems to me quite important now. A pre-trial clinic was put on one whole forenoon at the American Bar Association and largely attended. Pre-trial procedure was emphasized in many of the meetings. I know of no other place than my address where the attorneys can get the history and explanation of procedure without considerable research. I spent considerable time in research and study. This seems to be a coming innovation in our practice. The attorneys, if you remember, who heard the address, seemed very much interested.

I doubt if the sectional briefs are generally circulated or retained by the attorneys over the state. To me, it would seem of value to the profession to have this article in the briefs.

However, it is a matter entirely for you and the officers to decide.

With best regards.

Sincerely,
G. GRIMSON

GG-HH

THE PRE-TRIAL CONFERENCE

By Gudmundur Grimson, Judge, Second Judicial District
Rugby, North Dakota

Mr. President, Members of the Association, and Friends:

The legal profession which we, who are in it, know can be made one of the most noble of professions and the most

efficient in the administration of justice has, however, been subject to much public criticism. We are accused of employing dilatory tactics. We are criticized for technicalities. The layman says that the results are too uncertain. From forty years experience as lawyer and judge, I do not believe those criticisms are justified.

Nevertheless, there is no doubt that the legal profession has been ousted from many of its former activities. It has been suggested that this has been because our procedure was too much bound to the formalities of the past and has not adjusted itself to the speedier tempo of present progress. For some reason a part of the proper business of the courts has passed out of the hands of the profession to administrative bodies. Perhaps this has given speedier decisions, but that they have been more just no one can claim. To suggest that an administrative body can be both prosecutor and judge and arrive at a just verdict is contrary to human nature and experience.

However, it behooves us, as a profession, to take stock of our procedure to determine what steps, if any, are outmoded and what means and what substitutes should be employed to over-come some of the legitimate criticisms and yet retain the essential features of our judicial system.

It seems that was what our legislature must have had in mind when it created the Code Commission to "revise" the laws but to "prepare" a set of rules of procedure, Chapter 110 S. D. 1939. It did not limit the rules to revision but gave the commission authority to make such rules as would best obtain justice under present conditions. See also Chapter 238-S. L. 1941.

In accordance with the provisions of the Code Revision Act a committee from the Bar Association and the Judicial Council was designated by the Court and the Commission, to make recommendations on the rules of practice in all courts of the state. This committee was composed of E. T. Conmy, John J. Kehoe, Nels G. Johnson, and late A. M. Kvello and myself as chairman. The committee spent many an hour, individually and in joint session, considering our codes of civil and criminal procedure, comparing them with the codes and rules of other states and with the new Federal District Court rules.

PRE-TRIAL PROCEDURE

In our research we made a study of the so called pre-trial procedure. Judge L. J. Palda, Jr., was the first in this state to give it serious consideration. He brought it before this Association in his presidential address of 1938. He and I have now been asked to explain that procedure and its development and to show you why we think that procedure will fit into our present conditions and why we think it will tend to overcome some of the criticisms of the past.

The word "Pre-Trial" by which this procedure has become known to the profession is really amisnomer. It does not con-

template a duplication of any part of the real trial. "Pre-view" would be a much more correct designation. It is only a conference between counsel and court over the mechanics by which the trial will be carried on and a pre-view of the cause itself only to the extent of limination of undisputed issues and the settlement of preliminary motions. To that extent it becomes a part of the actual trial.

PAST METHODS OF FORMING THE ISSUES

The theory in the past seems to have been that the parties to a litigation, or rather their attorneys, should entirely and unaided by the court, determine the issues up to the actual trial. The complaint is prepared upon the one-sided statement of the plaintiff, often exaggerated. Counsel usually has to prepare the complaint in a hurry and has no time to verify the statements of his client. So the answer is prepared in a similar manner by the attorney for the defendant. Consequently the issues as presented in the pleadings are often found, upon actual trial, to be without foundation, in many respects. For that reason this method has been the cause of much useless expense, trouble and delay. There have been cases in this state that have gone to the supreme court on demurrer to the complaint or the answer where the facts, upon final trial, have not been at all those alleged in that complaint or answer.

No such haze exists at the commencement of criminal procedure. Before issue is joined there is judicial investigation by either a grand jury or a committing magistrate to determine the issues.

HISTORY OF PROCEDURAL DEVELOPMENT BEFORE TRIAL

Attempts have heretofore been made to remedy the situation by examination of the parties before trial, by taking depositions and, in some cases, by procedure for discovery. These, however, have always been at the instance of counsel and have not been very widely used.

To further avoid the waste caused by that theory of procedure attempts have been made, at various times in the past, to give the Court more control of the case before actual trial.

The first attempt to that end seems to have been made on a limited scale in England in 1831. A statute was passed providing that when a defendant was sued for property to which a third person also made claim, the court might order the third party claimant to appear and state the nature and particulars of his claim and that the court should then hear the allegations of the rival claimants and frame the issues between them and proceed to the trial of the same.

In 1868 Parliament revised the practice of the Court of Sessions of Scotland and provided that in every case after the pleadings were in there should be a hearing before the judge at which the pleadings should be adjusted. At that time

the judge was to require the parties to state what proof could be stipulated and to determine the issue, or issues, that were to be tried.

The Scottish practice led to the introduction of what was called "Summons for Directions" into the English procedure in 1883. This called for a pre-trial investigation, and was designed to supplement the pleadings by providing the parties and the court with additional information regarding the nature of the controversy. It was discretionary with the parties. In 1893 this procedure was made obligatory on the plaintiff. In 1902 and again in 1932 these provisions were greatly extended and required that the hearing be conducted by one of the judges. Under that the judge may give orders regarding pleadings, particulars, admissions, discovery, inspections of documents, or of real or personal property, commissions, examinations of witnesses, place and mode of trial, etc.

In 1934 a Royal Commission was appointed in Great Britain to consider "The Dispatch of Business at Common Law." Pre-trial procedure formed an important part of the subject matter of its investigation and its conclusions present an unqualified endorsement of the pre-trial hearing and a strong recommendation for widening its scope.

Reform along this line in the United States began with the Field Code in the middle of the last century. The theory there, however, was that the ineffectiveness of pleadings was due to technicalities rather than inherent weakness of the ex parte procedure, under which they were framed. It was thought that by simplified factual pleading this could be cured.

No further progress seems to have been made until 1912 when New Jersey adopted an optional rule similar to the English "Summons for Directions." This does not seem, however, to have been used to any large extent.

In 1927 during the great building boom in Detroit a plan was adopted in the Wayne County Circuit Court of Michigan, in which Detroit, is situated, that in all mechanics lien cases immediately after the filing of the pleadings, a preliminary hearing was held to simplify the issues among the various claimants, before taking the proofs. The judges found this system to work so well for the speeding of the disposition of such cases that in 1929 the method was applied to all Chancery cases. Finally the pre-trial conference was applied in law cases also.

This system was adopted in Boston in 1935, in Los Angeles in 1937, in Cleveland in 1939 in Pittsburgh in 1941. Everywhere great success was reported and much saving in time and expense.

The system has also been tried in one judge courts. In Essex County, Massachusetts, the court, at the beginning of a seven week term devoted one week to a pre-trial call. Of 399 cases listed, 93 cases were disposed of at that conference. Sev-

eral of the jury cases were grouped. After the conference 89 cases were disposed of in 26 days of actual trial.

Naturally with these favorable results in economy of both time and money the pre-trial system has spread widely throughout the United States. The Federal Rules of Civil Procedure for District Courts adopted in 1938 included a pre-trial rule. At least a dozen states have since adopted such a rule for the courts of record.

Some of the rules are optional with the court or with counsel. Some are mandatory. Some are simple and flexible. Some are elaborate. All provide for the disposition of preliminary motions and the simplification of the issues.

THE PROCEDURE UNDER THE RULES

The actual procedure, as far as it is disclosed in the reports, is similar under all the rules. A notice is given to counsel to appear before the court for this conference, usually in chambers, and some ten days or two weeks before the trial. It is entirely informal. The court has counsel state their position; asks if the pleadings are satisfactory; if any facts can be stipulated; if the foundation for the introduction of documents can be waived; if there is any prospect of settlement, etc. The atmosphere being informal there is much more likelihood of getting to an agreement on many of these matters at such a conference than is possible at an actual trial before an audience. The combativeness engendered by a trial is not present. The necessity of maintaining a position taken to save face with clients or the public is absent. The conciliatory influence of the court prevails. Often counsel find that there is not so much to their lawsuit as they had been led to believe. They also find that perhaps only one or two items in the whole controversy are in dispute. On such items they are not required to disclose their evidence or the details of their proof, but everything except such items is settled in the conference, and the judge makes his order to that effect which will then control the trial.

The whole object of these pre-trial conferences is the simplification of the issues and the elimination of unecessary technical proof of facts and documents. There is implied only that it shall be required that counsel appear before the judge and answer his reasonable questions and the judge will employ his powers to exclude extraneous issues. This is not only the court's right but the court's duty to litigants as well as to itself. This is what the court does now upon the trial. This procedure only advances the time at which the court assumes some control of the litigation and advances the court's opportunity to save time and expense.

MATTERS THAT HAVE BEEN DETERMINED

Among the many matters that have been disposed of on such a pre-trial conference are the following:

In personal injury cases, involving automobile accidents: Ownership of the automobile; Identity of the driver, charts and photographs of the place and vehicles; hospital records; place of collision, weather bureau reports; whether a physical examination of the plaintiff is necessary, and if so, arrangements for it.

In contract cases: The nature of the obligation, oral, written, expressed or implied; credits to be applied if any; agreements, expressed or implied; credits to be applied if any; agreements on facts to determine whether the statute of frauds or the statute of limitation applies; the authority of a person to sign an instrument to bind his superior; the actual production of instruments; documents correspondence, etc., without requiring notice under the statute or summons; all matters of public record.

In note cases: The genuineness of signature of maker or endorser the execution of notes and delivery; credits if any on account of principal and interest.

These are just a few of the instances cited by Judge George C. Sweeney of the United States District Court in Massachusetts out of his own experiences. See Journal of the American Judicature Society Vol. 23 P. 11, June 1939.

SETTLEMENTS

The matter of settlement is only an incident of these pre-trial hearings. It is not proposed that the judge should urge settlement or use duress in any way. We all know that settlements are frequently made when a case is reached for trial but that involves the necessity of having the witnesses ready and all preparation for trial made. It also often results in disarranging the trial calendar so that a jury may be idle for hours at a time and cause the court, counsel and other litigants inconvenience. Instead the court may find upon inquiry at a pre-trial conference that a settlement may be pending, or said inquiry may give the counsel on either side an opportunity to discuss settlement without indicating a weakness in his case, so that a settlement may be considered impartially and in a conciliatory atmosphere. In Detroit claims involving as much as $20,000.00 have been settled. The reports also show that it often appears on these pre-trial conferences that while there is, perhaps, no defense and the defendant admits he owes the obligation, the circumstances are such that he can not pay the full amount at once. In such cases, agreements have been made for partial payments as specified intervals. The case is often continued on the pre-trial calendar as long as the defendant lives up to these agreements. This would eliminate the ruthlessness necessary upon execution to close a business and sell a defendant out. Instead he is given a chance to work out his salvation, if possible.

NO RECORD EXCEPT THE COURT MEMORANDA

No record is kept of the informal discussions. That leaves all parties more free to express themselves. When, however,

final agreements are made they are dictated into the record and made a part of the memoranda of the judge, which is then used upon the trial or final disposition of the case.

THE COURTS AUTHORITY

In all the cases that are reported, whether initiated in the discretion of the court or by a mandatory rule, the judge presiding at the pre-trial conference has the same authority to pass upon motions, to grant dismissals or re-instatements or to do anything that comes within the pre-trial conference rule as he would have to do those same things upon the actual trial.

THE OBJECTIONS RAISED ANSWERED

There have been some objections made by the bar to this pre-trial system. A Washington lawyer filed a memorandum with the House Committee on the Judiciary while it was considering the Federal rules. His first objection was that this system would result in an exparte discussion between counsel on one side and the judge at the initiation of the proceeding under the Federal rule and that the judge would thereby become prejudiced. That is obviated by a rule requiring the presence of both sides at any discussion before the judge. His next objection was that it would become an unnecessary burden on the judge. The statistics show that such it not the case. Saving of so many trials, the elimination of sham or unnecessary issues means a saving for the judge of time and effort. He also suggests that if fairly and impartially administered without any coercion the procedure would be futile in actual practice. The reports from all the courts show quite the contrary. He argued that this would increase rather than diminish the expense of trial. This is not borne out in actual practice. This is in no way a duplication of trials. He objects to informal conferences and all discussions, but, after all, they take place in every trial and it would seem better that they be had in chambers before rather than during the heat of a trial. He argues that the unapproachability of a judge is essential for proper administration of justice; that any informality would interfere therewith. This is rather a reflection on our judges. I do not believe our judges are so easily influenced that any informal discussion of the mechanics and procedure of the case will in any way affect decision upon the merits.

What this procedure does accomplish, from a lawyer's standpoint, is the elimination of technicalities and of dilatory tactics. It strips his lawsuit down to the essentials. It saves him time and his client expense in preparing to meet issues that are not disputed; it allows him to concentrate his time and research upon those issues that are in honest dispute between parties: It enables him to give better service to his client than if he had to prepare on all features of the case. It eliminates surprise and consequent injustice or delay. It will, as some attorneys have complained take some of the drama out of a trial. The object of trials, however, is not to entertain but to arrive at a just

solution of disputes. The trial becomes now more a search for justice than a contest of wits. All the rights of litigants are still preserved. Such a conference is now often voluntarily arranged between the opposing attorneys in a case.

WHAT EFFECT ON LAWYER'S INCOME

A very pertinent question may occur to you. Will this procedure decrease a lawyer's income? A similar question has always been raised in connection with any time and labor saving device. In actual practice it has always been answered in the negative. New work and increased usefulness of the service involved has always increased rather than diminished the income.

There seems good reason to believe the same will be the result here. Many wrongs are now allowed to go unsolved because of the delay and uncertainty of legal procedure. In some cases arbitration or administrative decisions have been substituted, with less cost in time and money. Many matters now considered of too small importance to warrant legal procedure will be brought into Court. Business is always willing to pay well for prompt and efficient service. That is what this procedure aims to provide. There is every reason to believe that it will be a financial benefit to the profession.

In two murder cases tried before me the same special counsel was employed for the State. In one a trial of ten days resulted in a verdict of guilty. In the other a half day's presentation of the State's evidence resulted in a plea of guilty. The same fee was paid that attorney in both cases. The prompt disposal of the second resulted in so many other savings the Commissioners would have been willing to pay even a larger attorney fee in that one. They were better satisfied. That is a typical illustration. A lawyer's final income will always be measured by the satisfactory services rendered his clients. Prompt and efficient service increases that satisfaction. This procedure gives an attorney better opportunity to render that kind of service.

No actual statistics on the effect on a lawyer's income have been found, but an inquiry brought the following replies:

Charles F. C. Arensberg, President The Allegheny County Bar Association, Pittsburg, Pennsylvania writes:

> "The effect on the income of the bar is problematical. From the point of view of my own practice, I do not see that it has materially affected my earnings one way or another. If there is any effect, I should say that it hastens the collection of fees by disposing of the cases at pre-trial."

Lowell S. Nicholson, Executive Secretary of the Bar Association of the City of Boston writes:

"The pre-trial procedure as we have it in Boston, and in some the other counties of this Commonwealth, is considered to be very much a success. Almost without exception the attorneys are very favorably disposed toward it. I do not believe it has very much effect upon the income of trial attorneys. In a few cases it may be that the pre-trial procedure bring about a settlement without trial, and in some of such cases the attorney's fee may be less than if he had won a verdict after trial. On the other hand, a great many cases which would inevitably be settled before trial now go through the pre-trial hearing; a settlement is then agreed upon, and in such cases the attorney can add a small additional charge to his fee because of there having been some sort of a hearing. On the whole, however, I would say that the entire procedure has little effect on the income of trial attorneys."

Ellis R. Diehm, Chairman of the pre-trial committee of the Cleveland Bar Association writes:

"We have used pre-trial since September of 1939 with success. * * * The cost of the administration of the court has been greatly reduced. With reference to the lessening of the income of lawyers * * * the lawyer really benefits, not only in the preparation, but in handling of the cases and in income by the expeditious use of pre-trial."

Honorable Joseph A. Moynihan, Judge of the Circuit Court Detroit, Michigan, who has perhaps had more experience with pre-trial procedure in this country than anyone else writes:

"From my experience with this particular practice and from what lawyers have told me, I find that it in no wise decreases their income, but on the contrary, the time saved in actual court trial has aided them in disposition of other matters which were challenging their attention."

PRE-TRIAL CONFERENCE SUSTAINED

The system of pre-trial conferences has been established under the inherent rule making power of the courts. Very few appeals involving pre-trial rules have been made, but, in all cases that have come before the Appellate Courts, the rules have been sustained. In the case of Konstantine vs City of Dearborn, 280 Mich 310, 273 N. W. 480, upon a pre-trial conference, counsel agreed that the pleadings were in order, but, upon reaching the case for trial, defendant moved to amend his answer. The court refused to allow the amendment. The Michigan Supreme Court affirmed the holding, saying:

"Obviously the local practice followed in Wayne County, whereby provision is made for pre-trial hearings gives a fair and reasonable opportunity for counsel

> to check their pleadings in advance of trial. By so doing, the inconvenience, a delay and expense usually attendant upon amendment of pleadings after a case been set for trial, with the parties, witnesses and possibly jurors in attendance, is avoided."

In Fanciullo vs B. G. & S. Theatre Corp. 8 N. E. (2nd) 174 (Mass. 1937) the question on appeal was the binding effect of the pre-trial report, saying:

> "The promulgation of the order was within the power of the judge having charge of the jury list. * * * Inherently it has wide power to do justice and to adopt procedure to that end."

A series of late Massachusetts cases have confirmed the binding effect of the report of the pre-trial judge, as well as the authority of the court to institute pre-trial hearings.

Curman vs Stowe-Woodward, Inc., 19 N. E. (2nd) 717: Capana vs. Melchionno, 7 N. E. (2nd) 593; R. Dunker, Inc. vs. V. Barletta Co. 18 N. E. (2nd) 27; Silver vs. Cushner, 16 N. E. (2nd) 27; Ecksten vs. Scuppi, 13 N. E. (2nd) 436; Finnegan vs. Providential Ins. Co. 14 N. E. (2nd) 172.

Examination of the Reports of the Federal Courts shows that the pre-trial rule has been used in many cases and in a variety of circumstances. In every case reported the Courts have commented favorably on the rule and seem to have enlarged its scope.

LaCanin v. Automobile Ins. Co. of Hartford, et al. 41 F. Supp. 1021; Calvin v. West Coast Power Co. et al. 2 F. R. D. 2480; Glaspell v. Davis et al., 2 F. R. D. 301; Brown v. Christman 126 F. 2d 625; Vann-Severin Machine Co. vs. John Kiss Sons Textile Mills, Inc, 2 F. R. D. 4; Mott v. City of Flora et al. 3 F. R. D. 233; DeLoach et al vs. Crowley's Inc., 126 F. 2d. 378; Mayfield v. First Nat. Bank of Chattanooga, Tenn. 137 F. 2d. 1113. In Hillsborough County vs. Sutton 8 So. 2d 401 the Supreme Court of Florida approved a judgment based on a pre-trial hearing progressing to the point of eliminating all questions of fact.

THE NORTH DAKOTA RULE

As a result of the work of this committee on rules and on the recommendation of the Code Commission and the Interim Legislative Committee, the legislature enacted Chapter 216 of the 1943 S. L. This provides for a pre-trial conference in district court and County court with increased jurisdiction at the discretion of the judge or upon petition of a party to consider:

"(a) The simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary foundation proof and the expense and trouble of securing the same;

(d) In personal injury cases, the arrangement for physical examination of either the plaintiff or defendant if required, a stipulation of maps or charts of the location involved and such other facts as measurements, widths of streets, distances, dates, time and weather conditions;

(e) The limitation of the number of expert and character witnesses known to or contemplated by the litigants at the time of the conference;

(d) The disposal of all preliminary motions including that for continuance."

At the conclusion the judge makes order reciting the action taken which controls throughout the trial "unless the ends of justice require the modification." The Judge shall have the authority to:

"(a) To hear and decide any objections or motions regarding the pleadings;

(b) Upon motion of either party, to render judgment on the stipulation of the parties, or on the pleadings if the complaint does not state a cause of action or if the defense is sham or not sustainable;

(c) Upon failure of the counsel for the plaintiff to appear, to grant a dismissal or non-suit on motion of counsel for the defendant;

(d) Upon failure of the counsel for the defendant to appear, to proceed with the conference within the limitations specified in section one of this act."

This rule is perhaps not quite as broad as the Federal rule, nor as elaborate as the rule in some other states. It, however, serves well for the initiation of this practice and most of the matters heretofore mentioned can be considered under it, if the judge and attorneys cooperate to that end.

This rule has been before our Supreme Court in the case of LaPlant vs. Implement Dealers Mutual Insurance Company 12 N. W. (2nd) 630. It is there held that a pre-trial conference is not a special proceeding but merely an episode in the course of a proceeding. It emphasizes the need of cooperative action between counsel and court to secure the best results and leaves all conclusions of the conference subject to the final determination of the trial court, as the ends of justice may require.

In accordance with this reasoning the Court held an order of the pre-trial court not appealable. That also was the holding

of the Wisconsin Supreme Court in Klitske vs. Herm 8 N. W. (2nd) 400, where similar argument for the rule is employed.

I think this decision of our court is fully in accord with the purpose of the rule. It is aimed to expedite justice. To allow an appeal from a pre-trial order would make for more delay. To allow an order based on such informal proceedings to stand if shown at the trial to be clearly unjust would not be right and control thereof should be in the trial court. Usually, under our present system, the same judge is likely to preside. If not, it would only be in a clearly unjust result that the trial judge would change a ruling of the pre-trial judge. I know that in our district if one judge has made a ruling in a case that it becomes the law of the case and is seldom, if ever, overruled by the other judges. Then we have the decision in the Konstantine (Mich) case and in the Fanciullo (Mass)) case, heretofore cited, affirming the rulings of the pre-trial court when allowed by the trial court to stand. A whole line of Massachusetts cases affirm judgments based partly on the pre-trial reports. And finally the Florida court affirms a judgment based entirely on a pre-trial report.

The pre-trial judge has the authority to direct the attorneys to appear before him for the conference. (Sec. 1). A violation of that would make an attorney liable for contempt besides subjecting his suit to dismissal or a conference without him. (Sec. 4). When the attorneys appear they are not likely to antagonize the court by a hostile attitude. When cooperation is once secured much can be accomplished to expedite any lawsuit. Just what authority the pre-trial court has, outside of passing on motions, to make orders without the stipulations of parties may be a question but it would seem that a stipulation as to all matters not actually in dispute could usually be obtained.

Much good would also result if at such conferences each side furnished the court with an outline brief as to the facts and the law as claimed by it. That would clarify the case to the court and avoid many snap rulings.

Under our statute as interpreted in the LaPlant case, the Court has the power to order a conference. It can pass upon the pleadings and motions, maps and pictures inspected and stipulated without technical foundation if found correct; expert witnesses or physical examination and depositions arranged for. Preparation need then be only for the disputed matters left. To give time for that the pre-trial conference should be held ten days or two weeks before the actual trial.

The wording of the statute does not limit its application to civil procedure only and I believe it should be used in criminal procedure as well. There again the pleadings could be passed on, bills of particulars ordered if necessary, arrangements for an examination had as to present sanity of the defendant, if questioned, pleas received, undisputed facts admitted and the

issues generally cleared and narrowed. So if the defense disclosed that an alibi is claimed, as is required by the new Federal Rules of Criminal Procedure, the State would have time to investigate.

SUMMARY

To summarize: Pre-trial procedure is not new. It has been used to some extent in England for more than half a century and in the United States more than thirty years. It does not duplicate any part of the actual trial. It is only an informal conference between court and counsel for the purpose of expediting the actual trial by the disposition before trial of the legal preliminaries and of all matters except those actually in dispute. It provides the preliminary examination of the cause. It has simplified the issues. It has saved time and money for all concerned. It has speeded up litigation and cleared calendars. It has proven very successful wherever tried with the cooperation of court and counsel. It has been approved by the appellate courts. It has been endorsed generally by the profession.

Prof. Edson R. Sunderland of the University of Michigan says of the pre-trial conference: "It substitutes an open business-like and efficient presentation of real issues for the traditional strategy of concealment and disguise. The general adoption and use might do much to restore the confidence of the public in litigation as a desirable method of settling disputes."

CONCLUSION

At any rate we have now available this innovation in our trial procedure. It is entirely up to us how much we avail ourselves of it and how successful we make it. We must keep alive to any improvements in our way of work. Let us cooperate in good faith to expedite our proceduce to the end that justice be best served.

MR. JUDGE PALDA: Mr. President, Ladies and Gentlemen: Judge Grimson has given you such a wonderful outline and commentary on pre-trial procedure that there is very little I can add, except, perhaps, to give you one or two or three illustrations. With us in Minot pre-trial procedure is nothing new. That is to those who practiced here in 1905, '06, and '07 and '08 along during the time when the lovable Scotchman, Judge Murray was police magistrate. He had a wonderful way of calling pre-trial conferences. He had a little office in which he had an ice-box with provisions worthwhile. When the attorneys came there, and there was a great deal of small litigation over wages and notes and accounts and so on, and the Judge would say, "Well, boys, this is no place to have a fight. You attorneys go in the backroom, open the icebox and talk it over." And about 90% of the litigation was settled in the back room. That was the beginning of pre-trial procedure in the City of Minot. Of course, I don't recommend that Judges should have iceboxes with

provisions, but it might facilitate the final conclusion and disposition of litigated matter.

Well, gentlemen, pre-trial procedure has been kind of an obsession with me for ten or fifteen years. When a young man, when I first started to practice law, a lawyer wasn't a lawyer unless he got up and made a lot of noise and plenty of objections and instilled the idea in his client and the people in the courtroom that he was a fighting son of a gun. Once in a while that got away with a lawsuit you weren't entitled to win. You never felt proud of the result, except to feel it would further your reputation a little bit, but as years passed and we are getting older, you and I realize that the practice of law is not a question of faking and slipping over that you do once in a while. In the long run it doesn't make you anything, or your client anything. It may that one time, but I mean your clientele.

I had one experience in pre-trial procedure which opened my eyes. It was in the Los Angeles Court. We had a matter we figured would take about ten days to try before a jury. We had a pre-trial conference, about it, two of them in fact. When we finally wound up, we wound up with one proposition to submit to a jury and that is whether a postal card giving certain notice was mailed or not. Instead of ten days, we spent thirty minutes with a court fully advised as to what the issues were.

Let's take a suit on a promissory note. Perhaps sometimes you want to get time for your client to adjust his financial matters and put in a general denial. But let's take a promissory note for an illustration. I sue on a promissory note. Your defense is that certain payments were made that are not credited on the note. We have a pre-trial conference and Judge Grimson says, "What are the issues?" A dispute on the note or the consideration?" "Not a bit." "Any dispute about its being owned by the plaintiff?" "Not a bit." What is the dispute? The party on the other side insists that he went to work and helped stack so many stacks of hay and plowed so much ground, and he is entitled to so much work, and it should be credited on the note. "Any dispute about the work being done?" "No." "Any dispute about the stacking being done?" "No." Then the only dispute is what is the value of the services that should have been credited on the note. And the lawyers get together on the value and the credit is probably $4.50 and the other thing is that the matter wanted about three or four minutes in which to adjust. It is all settled. The Judge says I will grant you a judgment but I will order no judgment entered for three or four months to give this man a chance to adjust himself. Everybody is satisfied.

Take a negative case. You have an intersection collision. Plaintiff brings suit for a hundred thousand dollars, ten thousand, a thousand whatever it may be. Judge calls a pre-trial hearing. The plat of the intersection, dimensions, conditions of the weather, the non-intoxication of the parties

is all agreed on. You have the measurements of the distances. You have the condition of the weather and temperature all agreed on. You have the garageman's estimates as to the costs of the repairs on both cars. Nobody was injured, say. What have you got left? The question as to who entered the intersection first. Perhaps all agree the man was driving beyond the speed limit. He had his lights on. One or two questions instead of spending a day and a half or a day, to find out the measurements there on the intersection, condition of weather, the condition of the driver and so on and so forth. You have got just one or two little questions for the jury to decide. Of course, you wouldn't have any chance for a great big long argument as to what they might guess at, but the charge says what the issue is. The instructions to the jury are ten times as good as they would be if they were done on the spur of the minute, or if there were a lot of incidentals to be injected in the charge. The lawsuit is disposed of in a half day or a day instead of three or four days. If there is a personal injury involved, the lawyers can agree whether a doctor is qualified, or what he will testify to instead of finding out what school he attended, and whether or not he is entitled to practice in the State of North Dakota, and how many cases he has had and up and down the line. In one question you have solved the competency and laid the foundation for the injuries he found and what his qualifications are, and what his conclusions are as to future recovery.

Gentlemen, as the Judge says, you lose no money in having your pre-trial hearing, and can charge for that, but here is the result, and here is why some of the lawyers object to pre-trial procedure. You can't get into court and fake along, and you can't get into court unprepared. If you have a pre-trial hearing, by gad, you are going to know what that lawsuit is about. You know what proof you have got to have. You will know what law is involved. You will have your case ready and that will save one-half the time ordinarily spent floundering around, and many times I find that the attorneys don't know what the witness is going to testify to. But with a pre-trial hearing, you know what you have got to have, and you will have it so that your services will be so much more efficient, so much more valuable to your clients that instead of charging so much, you can double that amount and your client will be perfectly happy because he knows he has had his day in court by an attorney well prepared and the lawyer knows what he is talking about. There can't be any question. Judge Murray's system was very crude. It got results because he made the lawyers talk it over. A pre-trial hearing is not binding particularly in the first instance, but it prepares you, prepares the court so that when you present your matter, you know what you are talking about. The jury knows what they are talking about, and, strange as it may seem, the Judge will know what he is talking about when he is instructing the jury. I don't say it with any reflection on the Judges, but of course I happened to be there once myself, and many times I didn't know what I was talking about.

Gentlemen, I don't think, if you make an analysis of this that you can disapprove. I was just down in Des Moines trying a lawsuit. By the time we got thru with our pre-trial session—they don't have pre-trial procedure there—we had a session with the court four times on one side and three on the other. It would surprise you to see the length of that stipulation. It was a tax matter. Before we got thru with that pre-trial session with the court, we had pretty nearly everything stipulated, everything except one question as to whether or not a certain institution was a fraternal institution or not under the Laws of Iowa. We spent a lot of time, but we are being paid for that time. You will spend time, but you can charge for that. It is worth it for your client.

We run up against the proposition—if you will study this at all, look up the records at Detroit, Los Angeles, Cleveland and all places where pre-trial procedure is recognized and used. My recollection is that something like 40% of all litigation is disposed of without a jury at these pre-trial hearings so that is a saving to your state and county, and it is a saving to you on high blood pressure and grey hair. Now, there is one stumbling block we have got here in North Dakota. It isn't a stumbling block, just something all we lawyers have had to go and make a terrible noise about and I am glad the Chief Justice of the Supreme Court is here so that he will know how I feel about it. I think most of the lawyers will feel the same way, and may be the rest won't want to say so.

I think it is neglectful that the legislature has not imposed it upon us, and the supreme court and the district court and federal court should make rules of pre-trial so that we would have uniform practice all over the state by all of the district judges so that the attorneys would know what is what, and what they have to do. With all due respect, Mr. Chief Justice, I think the supreme court has been a little dilatory, the statute says you can, and the district court can too. Suppose Judge Hutchinson has one and Judge Grimson one and Judge Jacobsen another, and Judge Gronna another. Nobody knows the rules, but if the supreme court will provide, or the judicial council provide a set of rules of procedure governing both the bar and the courts, they could be very simple. They wouldn't amount to very much. Perhaps you could follow the rules provided in Detroit, or the rules provided by the federal court, requiring very little effort and be binding upon everybody, and I think we would all take advantage of the pre-trial procedure if we knew just what the rules governing such procedure are.

I trust, Judge, you will convey this idea to the balance of the judges of the supreme court, and the judicial council, and some committee be appointed to provide a method of fixing some rules. Nothing to it, it is so simple. There is nothing to making the rules, if they are only made by a competent authority which will be recognized by the bar of this state. If we do that, we will all live longer by saving a lot of grief to ourselves. The

courts will have more respect as well as the attorneys, and I think justice will be better administered. The gentlemen who orate, practice trickery, or, slight of hand performance will not get very far, but those having a meritorious piece of litigation will have it presented properly, speedily and to the satisfaction of everyone concerned. I thank you.

JUDGE GRIMSON: May I briefly tell you some of the experiences I have had in Court to emphasize the statements of Judge Palda. Concerning preparation I would like to suggest that if counsel furnished a short brief of the law and the facts of the case at the pre-trial conference that would greatly assist the court in ruling on evidence and in making the charge to the jury when the trial comes up.

As to experiences: I presided in a perjury case sometime ago at Linton. It was transferred from Bismarck to Linton. Before I went to Linton there was a voluntary pre-trial conference at Bismarck. The perjury was charged on an affidavit signed by the defendant before a Notary Public. At that pre-trial conference counsel stipulated the actual signature of the defendant, the authority of the Notary Public to administer the oath and other matters. That saved expense of taking those witnesses to Linton and probably a day's time at the trial.

In a civil case of claim and delivery for the purposes of foreclosure, a pre-trial conference was had. It was admitted that the defendants owed the money, could not raise it and could not pay. A cold storage meat locker plant was the property sought. It developed that there were two or three units that could be dispensed with and sold and also that the people in the community were anxious to keep the plant and were ready to pay advance rent to retain it. An adjournment of a month was taken to find out what could be done. At that later hearing it was shown that $600.00 could be raised to apply on the debt. It was agreed and stipulated that be applied and that the defendant be given six months in which to pay the balance. If he did not pay it plaintiff was to have possession of the plant for the purpose of foreclosure.

In both these cases the result of the pre-trial conference was highly satisfactory to all concerned.

I have held pre-trial sessions in different counties on all cases on the calendar in advance of court. The result always depends upon the understanding and co-operation where there was understanding and cooperation, there were only four cases left for disposition by the jury and sufficient time was allowed for preparation of those cases before the jury was called. In another county where the attorneys had not realized what could be done on pre-trial and had not prepared for it nothing was accomplished except a mere call of the calendar. I called a jury. When the second case was reached for trial it developed that a counterclaim had been put in and there was a motion to strike the counterclaim. We had to take time to hear that motion, and,

perhaps because counsel gathered what the holding might be, they withdrew the counterclaim and settled the main action, but that took time. The following two cases were settled also. We spent a whole day on those three cases with the jury standing by. While we did save the jury several days work, yet what was done that whole day could have been done in the pre-trial session we had before, if the attorneys had been prepared and cooprative. One day's expense of the jury and witnesses would have been saved.

We might as well make up our minds in order to have pre-trial successful cooperation between counsel and the court is necessary. When that is once secured much good can be accomplished. It is entirely up to the profession whether they want to avail themselves of this procedure which is made available by statute and could be better utilized by rules. I think we should try to take advantage of it.

MR. HERIGSTAD: Judge Grimson and Judge Palda, I want to thank you for that interesting and extremely instructive talk. That is of interest to the Bar. We have another matter of equal interest at this time, that is the Soldiers' and Sailors' Relief Act by our Chief Justice Morris.

JUDGE MORRIS: Mr. President and Members of the Bar: I assure you that this matter will not take a great deal of time. I have prepared a paper, but I am going to cut out some of it as I go along and hit a few high spots, because I do not feel that the time we have left is sufficient to permit us to take care of the rest of the program, and spend a great deal of time on each individual subject.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

In 1940 Congress passed a Soldiers' and Sailors' Civil Relief Act similar to the Soldiers' and Sailors' Relief Act of 1918. The 1940 act was amended and liberalized in 1942. The entire act may be found in 50 U.S.C.A. app. sections 501 et seq.

The act contains six articles. The first sets out purposes, definitions, the courts affected and the application to obligations of persons in service which affect other persons who are also subject to liability such as sureties and indorsers. The general relief provided in article II includes default judgments, stays, relief from fines and penalties on contracts, periods of limitation and a limitation on interest rates. Article III deals with evictions, repossession of property for non-payment of installments, mortgage foreclosures, liens for storage of household goods and assigned life insurance policies. Article IV relates to life insurance held by persons in military service. Article V provides protection against the sale of property to enforce the collection of taxes and assessments. Since the amendment, this protection applies to personal as well as real property taxes falling due prior to military service as well as during the period of service. Article VI deals with administrative remedies and

guards against the transfers of property for the purpose of taking advantage of the act. Article VII was added by the amendment of 1942. It affords additional relief on obligations and liabilities incurred prior to military service and also relief with respect to taxes or assessments falling due prior to or during military service. Application for relief under this article may be made either during or within six months after termination of military service.

The 1918 act was before the Supreme Court of North Dakota in Cosel v. First National Bank, 55 N. D. 445, 214 N. W. 249 wherein it was held that it was applicable and constitutional with respect to proceedings in state courts.

It would be highly improper for me here to undertake a construction of the language of the act or attempt to apply its provisions to any particular state of facts. It is however clear that it does not cancel or abolish obligations of persons in the service. It undertakes to lay down safeguards for their protection by vesting wide discretion in the courts. In certain instances involving evictions, forfeitures, repossession and so forth it affords substantive protection to those in military service and to their dependents.

Under the circumstances it might be interesting to look at some of the more recent cases wherein the courts have considered various phases of the act under consideration.

The courts are unanimous in holding that the Soldiers' and Sailors' Civil Relief Act is to be liberally construed and applied to effectuate its purpose. The Supreme Court of the State of Washington has declared that purpose to be "to extend protection to persons in the military service in order to prevent injury to their civil right during their terms of service and to enable them to devote their entire energy to the military needs of the Nation." The court then goes on to say:

> "The act should be liberally construed in favor of the individual engaged in military service. However, the fact that an individual involved in litigation is in the military servce is not a defense to an action. The act does mean that soldiers and sailors in the service who are handicapped by reason of their military service, either in making valid defenses to an action or in meeting their financial obligations, shall have the protection of the courts to prevent prejudice to their rights by reason of the service." (In Re Bashor, 16 Wash. 2d 168, 132 P. 2d 1027).

That case involved a disbarment proceeding in which all the facts had been presented to a trial committee and all questions except those to be decided by the Supreme Court had been fully completed prior to the time the respondent joined the Army. He had submitted his brief on the merits in the Supreme Court and was represented therein by competent counsel. The application for a stay under the Soldiers' and Sailors'

Civil Relief Act was not filed until after the case had been filed in the Supreme Court. That court refused to stay the proceedings and ordered the respondent disbarred.

The case of Royster v. Lederle, 128 F. 2d 197, involved an application for a writ of mandamus to compel the judge of the district court to vacate and set aside an order of continuance entered in an action for damages growing out of an automobile accident. At a pre-trial hearing the court ordered the case continued until the expiration of sixty days after the defendant, Ruggiero's discharge from the Army. The defendants was insured against liability and the insurer agreed to defend the suit. The Circuit Court of Appeals refused to issue the writ of mandamus and with respect to the rights of the defendant said, "We cannot say, as a matter of law, that Ruggiero's rights would not be affected by proceeding to the trial of the cause in his absence." With respect to the rights of the insurance company to a continuance because of the defendant's military service the court said:

> "The protection afforded under the Act to persons secondarily liable must be applied in such a way as to affect the rights of claimants to no greater extent than is necessary to effectuate the purposes of the Act. To this end, at any time during the postponement, any person affected thereby may apply to the court to vacate the stay and proceed to trial if a showing be made that the military service of the party or the person secondarily liable would not be materially affected by resumption of the proceedings."

The case of City of Cedartown v. Pickett, 194 Ga. 508, 22 S. E. 2d 318, is interesting both from the standpoint of procedure and substantive law. It involved a suit by Pickett against the city of Cedartown and others to enjoin the defendants from enforcing an order by the city commission adjudging his business to be a nuisance and order him to abate it. After some preliminary legal sparring, Pickett filed an aplication alleging that he was in the military service of the U. S. and asking that all proceedings in the case be stayed for the duration of his military service and for 60 days after the termination thereof under the Soldiers' and Sailors' Civil Relief Act. The trial judge without notice to the defendants and without any provision for further hearing granted the application and entered an order staying the proceedings. The Supreme Court of Georgia reversed the trial court and in paragraph 3 of the syllabus says:

> "A stay of proceedings under that act should not be granted without giving the opposite party notice and allowing him an opportunity to be heard. The stay order here complained of was granted without such notice and opportunity to be heard, and therefore it was invalid. The order was invalid for the further reason that the act in question does not authorize a stay of proceedings which would have the effect of perpetuating a condition

which has been finally adjudged to constitute a public nuisance."

Most of the litigation involving the Soldiers' and Sailors' Civil Relief Act reaching the appellate courts involves stays and continuances. One of these cases reached the Supreme Court of the United States and was decided in June 1943, a little over a year ago. It is the case of Lightner v. Boone, 319 U. S. 561, 87 L. ed. 1587. It was an action for an accountig brought against Major Boone in the state courts of North Carolina to require him to account as trustee of a trust, to remove him and to obtain a personal judgment for a deficiency in the fund that he administered which it was claimed was caused by his illegal management. The trial court granted one continuance on the ground that Boone's lawyer was about to be called into military service and would not be able to try the case. In the order granting this continuance the court found that the presence of Boone at the trial was highly desirable and directed a copy of the order to be sent to the Adjutant General of the United States Army in order to advise Boone's superior officers of the situation. When the matter came on for trial, Boone was still in the service and appeared through counsel and sought a stay of proceedings under the Soldiers' and Sailors' Civil Relief Act. Boone's deposition had already been taken. The trial court refused to grant the stay upon the ground that the ability of Boone to conduct his defense was not affected by reason of his military service and that he had ample time and opportunity to properly prepare his defense. Counsel for Boone declined to further appear in the case whereupon the court orderd the trial to proceed in the absence of the defendant and in the absence of any lawyer representing him. The jury found against Boone and judgment was entered to the effect that he had been guilty of misconduct in handling the trust fund and that he was personally liable in an amount exceeding $11,000. An appeal was taken to the Supreme Court of North Carolina wherein the judgment was affirmed. The Supreme Court of the United States upon application of Boone granted certiorari and after hearing the case affirmed the North Carolina courts in a decision written by Mr. Justice Jackson, Justice Black dissenting. The prevailing opinion contains an excellent discussion of the applicability of the Soldiers' and Sailors' Civil Relief Act to the situation presented in that case and is so appropriate to the matter now under discussion that I quote at length from it.

> "The positions urged by petitioner come to these: first, that defendant's military service in Washington rendered a continuance mandatory; second, if not mandatory that the burden of showing that he could attend or would not be prejudiced by his absence was not on him, but on those who would force the proceedings; third, that the Court did not make the finding required by the Act for denial of a stay; and last, that in any view of the law the trial judge abused his discretion in this case. * * *

"1. The Act cannot be construed to require continuance on mere showing that the defendant was in Washington in the military service. Canons of statutory construction admonish us that we should not needlessly render as meaningless the language which, after authorizing stays, says 'unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.'

"The Act of 1940 was a substantial reenactment of that of 1918 * * *. The legislative history of its antecedent shows that this clause was deliberately chosen and that judicial discretion thereby conferred on the trial court instead of rigid and undiscriminating suspension of civil proceedings was the very heart of the policy of the Act. While this Court had no occasion to speak on the subject, the Act was generally construed consistently with this policy.

"Reenacted against this background without reconsideration of the question beyond a statement in the Senate Committee Report that 'There are adequate safeguards incorporated in the bill to prevent any persons from taking undue advantage of its provisions, we are unable to ignore or sterilize the clause which plainly vests judicial discretion in the trial court.

"2. The Act makes no express provision as to who must carry the burden of showing that a party will or will not be prejudiced, in pursuance no doubt of its policy of making the law flexible to meet the great variety of situations no legislator and no court is wise enough to foresee. We, too, refrain from declaring any rigid doctrine of burden of proof in this matter, believing that courts called upon to use discretion will usually have enough sound sense to know from what direction their information should be expected to come. One case may turn on an issue of fact as to which the party is an important witness, where it only appears that he is in service at a remote place or at a place unknown. The next may involve an accident caused by one of his family using his car with his permission, which he did not witness, and as to which he is fully covered by insurance. Such a nominal defendant's absence in military service in Washington might be urged by the insurance company, the real defendant, as ground for deferring trial until after the war. To say that the mere fact of a party's military service has the same significance on burden of persuasion in the two contexts would be to put into the Act through a burden of proof theory the rigidity and lack of discriminating application which Congress sought to remove by making stays discretionary. We think the ultimate discretion includes a

discretion as to whom the court may ask to come forward with facts needful to a fair judgment.

"3. * * * The Act does not expressly require findings. It is one intended to apply to courts not of record as well as those of record, and it requires only that the court be of opinion that ability to defend is not materially affected by military service. We accept the findings as sufficiently evidencing the opinion of the court to that effect.

"The Soldiers' and Sailors' Civil Relief Act (of 1940) is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's right or liabilities are being adjudged is usually prima facie prejudicial. But in some few cases absence may be a policy, instead of the result of military service, and discretion is vested in the courts to see that the immunities of the Act are not put to such unworthy use."

In addition to staying actions and proceedings before the court the act also provides for stays in the execution of judgments and orders and vacations and stays of attachments and garnishments, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service. The act further provides that the term of military service is not to be included in the computing the ordinary periods prescribed by statutes of limitation.

We have been considering matters largely dealing with procedure in the courts. We should give some consideration of parts of the act that affect substantive law and substantial rights of the parties. These provisions are in the nature of moratoria. Article III deals with rent, installment contracts, mortgages, liens, assignments and leases. It would seem to prohibit the exercise of any right or option to rescind or terminate a contract for the purchase of real or personal property or the repossession of any such property where a payment has been made before the purchaser entered military service unless an order of court is first obtained. A violation of that section is made a misdemeanor punishable by imprisonment for one year, a fine not to exceed $1000 or both. Article IV protects life insurance policies of men and women in service. The United States upon application will guarantee the payment of premiums upon policies up to $10,000 face value. This feature of the act is administered through the United States Veterans Administration.

Article V deals with taxes and public lands. It prohibits the sale or property of persons in service to enforce collection of

taxes or assessments without leave of court. According to the terms of the Act this prohibition applies to taxes and special assessments whether falling due prior to or during military service. It includes taxes on personal property and on real property owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents. It may be noted also that the legislature of North Dakota has by Chapter 267, Sess. Laws N. D. 1943, provided for the extension of payment of all taxes upon property of persons in the service of their country. This statutory provision appears to be absolute and is not dependent upon the discretion of the court as is the relief provided by the Soldiers' and Sailors' Civil Relief Act.

MR. HERIGSTAD: I think George Soule has something to say. I want to say that Mr. Soule has had charge of sectional meetings.

MR. SOULE: We had some books over from the meetings at Bismarck and Grand Forks. We brought them up and the President has suggested if some of you did not attend those meetings, we would be glad to have you call for them. If you didn't attend at either Grand Forks or Bismarck, be sure to come up and take one of these.

MR. HERIGSTAD: I believe the next order of business is the report of the resolutions committee. Will the chairman of that committee, Mr. Bergeson, come forward? It has been suggested by our secretary that the motion to accept the report of Judge Grimson has not been adopted. What is the wish of the Association.

MR. WOOLEDGE: I move the reports be adopted and published in Bar Briefs.

Motion seconded and carried.

MR. BERGESON: By the way, on behalf of the other members of the committee I want to express to Mr. Gay Wooledge our appreciation for the use of the facilities of his office and of his stenographer in preparing this report.

MR. BERGESON: I move the adoption of these resolutions.

Mr. PALDA: Second the motion. Motion carried.

MR. BERGESON: Mr. President, after these resolutions had been prepared, in fact, after Mr. Dixon made his talk this morning, there was handed to your president and then to the committee a proposed resolution. We discussed it some, but the committee felt that we didn't have enough information upon which to warrant a recommendation. However, we feel is should be submitted to the Association and Members of the Association for such action as you may deem best.

Attached to the resolution is a copy of the by laws from which it would appear that any organization that desires may be a member of the Postwar Highway Association by the elec-

tion of two members who are automatically members of the Board of Directors of the Association. So far as I can see there is no financial obligation. We simply submit it to you for such action as you may deem best.

MR. HERIGSTAD: You have heard the proposed resolution in regards to going on record in favor of this Postwar Highway construction, what do you propose to do about the proposed resolution?

MR. PALDA: Mr. President, I heartily favor all of the assistance possible to the Postwar Highway Commission. However, should this matter that is controversial be sumbitted to the public vote, in so far as voting is concerned, wouldn't we as an Association be putting our foot into a trap by a resolution of this character? I think if the resolution read that we are very much in favor of, or that we endorsed the proposition of the Postwar Highway Commission, it would be all right, but to go so far as to join the Association, and the election of two members and going that strong as the resolution suggests, it would be going too far. It is nothing that interests lawyers, except as citizens. I am in favor of what they are doing, and would do whatever I could, but I don't think we should go on record as an Association to something that doesn't interest us, except as citizens.

NELS JOHNSON: I thought I would like to suggest that the matter be referred to the Executive Committee of the State Bar Association without any recommendation from this body at this time.

MR. HERIGSTAD: You make that a motion?

NELS JOHNSON: Yes.

MR. HERIGSTAD: You have heard Mr. Johnson's motion that this be referred to the Executive Committee without any recommendation on the part of the Association.

MR. BURTNESS: Second the motion.

Motion carried.

MR. BURTNESS: I desire to offer a short resolution. It is the same as I offered at Grand Forks. "Be it Resolved that during the present war emergency and until peace is declared, there is hereby granted to the executive committee full authority to dispense with meetings and until another meeting is held, that the officers elected be allowed to serve until the next meeting." The necessity for this resolution or some such resolution is the provision of our bylaws that the annual meeting be held at least once a year. It will make it possible for the executive committee to dispense with the meetings without being criticized by someone on the ground they do not follow the constitution. I move the adoption of the resolution.

Motion seconded.

JOHN LAYNE: I speak against that. I think we should meet. The lawyers tell us how they stand on the constitution. If President Roosevelt declared we shouldn't have an election during this emergency, wouldn't the Republicans make a howl? I don't think the Bar Association is any better than the people of the United States. We are going to have an election this year despite the war. I wasn't present when that was adopted two years ago. I think the Bar Association should get together once a year. I am going to vote against that for the same reason we should have an election.

MR. BERGESON: If I am not mistaken, the Bar Association was called off, the meeting was called off last year, at the request of President Roosevelt.

MR. HERIGSTAD: That to a certain extent is true. I had a letter from Washington requesting that we dispense with the meeting this year.

Motion carried.

MR. LAYNE: If I hear any Republican lawyers cussing about four terms, I am going to call their attention to the fact that they set a bad precedent.

MR. HERIGSTAD: I want to thank the resolutions committee. I want to call on a man who perpetuates himself in office. He is president of the alumni association, George Shafer.

MR. SHAFER: I think he is talking about me. I am president of the law alumni association. I understand what you meant, but I wanted it correct.

MR. HERIGSTAD: I meant law alumni.

MR. SHAFER: The North Dakota University Law Alumni will hold the regular luncheon today as soon as we are able to adjourn at twelve o'clock in the basement of the Presbyterian Church which is in the same block as the Elks Club. Some of you will know where the Elks Club is when you wouldn't know about the Presbyterian Church. That is where the alumni are holding their meeting. I want to invite all of the other irregulars who are graduated from other colleges around the state. I want to assure them they will be welcome and will profit by it. That will include the prospective president, and that will keep us altogether until we get thru and we can enjoy ourselves during the luncheon period.

MR. HERIGSTAD: I observe that one of our past presidents wasn't here this morning when I introduced them. He is here now, Mr. Duffy will stand and take a bow. The next order of business is unfinished business.

MR. MCBRIDE: It is necessary to elect a delegate to the American Bar association as a member of the House of Delegates to the American Bar Association. It is two years since we had the last election, and it is necessary to elect a delegate.

MR. FOSTER: I nominate Herb Nilles.

MR. HERIGSTAD: He is already elected.

MR. FOSTER: I though we had just one.

MR. MCBRIDE: This is the one that the Bar sends. He is a member.

MR. OWENS: May I explain to the members that North Dakota has and is entitled to two delegates, to two members to the House of Delegates of the American Bar Association. Those two belong to the American Bar Association. Those who belong to the American Bar Association vote for the statewide members. They have already selected Herb Nilles as their statewide representative member to the House of Delegates. Heretofore it seems that it has been the courtesy of the Association to elect the president of the Association as the member of the House of Delegates representing the North Dakota Bar Association. That would mean that our friend, the President, was the representative thru the courtesy of the Association. He resigned and the Association and the Executive Committee elected me as a member, and I have faithfully enjoyed attending the American Bar Association, and I intend to go again, but in all fairness to our President, I hope you will elect Herigstad as a representative of this Association to the American Bar for it is very important that we have a member there. I took his place and I would like very much, and I nominate President Herigstad as a member of the House of Delegates of the American Bar Association from this Association.

MR. HERIGSTAD: Just a moment. I would like to make that clear. You see I was elected for a two year period, and I had the privilege of attending the Detroit convention. Because we didn't have our Annaul meeting in 1943, I felt it was only fair that the man who undoubtedly would be president if we had had a meeting, should attend the meeting the following year. In order to give him that opportunity, I resigned and he was appointed. As much as I appreciate your fine gesture, I probably would be unable to attend the meeting this year any way, and for that reason it would probably be better to select another man.

MR. MCBRIDE: Maybe you had better wait until you elect the officers.

MR. HERIGSTAD: That could be referred and left to the Executive Committee.

MR. LAYNE: I think that is a good suggestion as long as you have taken that position, I think it would be much better to send the vice president elect to the House of Delegates so that he will be better perpared to be president, after he has contacted the people in that House of Delegates, if that is your wish, Mr. Herigstad.

MR. HERIGSTAD: It is my wish.

MR. LAYNE: You let the vice president go, he will be better equipped to be president the next year.

MR. HERIGSTAD: I don't feel like I would be entitled to go at the expense of the Association more than once, and I appreciate the opporunity. What is your wish?

MR. OWENS: I withdraw that.

JUDGE HUTCHINSON: I move that the vice president also be elected as a member of the House of Delegates.

Motion seconded and carried.

MR. HERIGSTAD: Now the unfinished business.

JUDGE MORRIS: May I have permission to present another matter?

MR. HERIGSTAD: Yes, sir.

JUDGE MORRIS: I owe you an apology for the number of times I have been on this floor. Soon there will be another Chief Justice. We have had correspondence with the Lawyers' Co-Op. Publishing Company concerning the plates for the North Dakota reports. They don't want to continue with that stock any longer, and don't have the investment of storage space. They want to sell the whole works to the State of North Dakota. Here is the substance of the offer contained in two letters. Then they have on hand two classes of stock. They have both volumes and a supply of printed, but unbound volumes. Now, the unbound stock amounts to 4379 volumes and the cheap bound volumes and Buckram bound volumes added toegther, that is all bound volumes, total 1198 volumes.

Now, the supreme court didn't feel it should undertake to sponsor an appropriation to buy all of this property, or even that we should decide whether or not it should be bought. It is a matter that is of interest, real interest to the lawyers of the state, both as lawyers and as taxpayers. $16,000.00 is a lot of money. That is the price F.O.B. Rochester. We would have to pay the transportation charges. I don't know if that would be so great from Rochester here. We have the space in the basement of the capitol to take care of the stock if it was sent up. The question is whether the bar association are interested in this, the lawyers of the state. Whether they want to appoint a committee to consider the matter. The supreme court is not urging the matter one way or the other. We feel it should be presented to the lawyers. They are the interested people.

MR. HERIGSTAD: Would it be proper to refer it to the Executive Committee for study?

JUDGE MORRIS: Any action the Bar takes is satisfactory.

JUDGE HUTCHINSON: I move the matter be referred to the executive committee with power to act as they feel it is well for

the Association to recommend its purchase, that they refer the matter to the Executive Committee for a proper bill.

Motion seconded.

JUDGE MORRIS: I might add that our librarian made the statement that so far as the bound volumes are concerned, that there were enough on hand to supply the state for the next fifty years, and that the purchase of plates would be looking quite a ways into the future. That is an estimate that we wouldn't need to bind up any more of those volumes for the next fifty years.

Motion carried.

MR. HERIGSTAD: Any other business to come before the meeting? If not, the next order of business will be the election of officers.

MR. MCILRAITH: I have prepared quite an elaborate speech in favor of the candidate whom I propose for President, but in view of the late hour, and in view of his outstanding and shining personality, I now present as the candidate for that office our good friend, William G. Owens.

MR. HERIGSTAD: Mr. Owens has been nominated.

MR. BURDICK: I had an elaborate speech to second this nomination. In the interest of time and paper, I will second the nomination of my fellow townsman.

MR. NOSDAHL: On behalf of our representative three lawyers, I second the nomination.

MR. BENSON: I second the nomination. I move the nominations be closed and that our secretary cast a unanimous ballot for Mr. Owens.

MR. HERIGSTAD: You have heard the motion.

Motion seconded and carried.

MR. MCBRIDE: I take pleasure in casting the unanimous vote of this Association for William G. Owens for President.

MR. HERIGSTAD: The next question is should we elect a vice president, or should we consult the president as to who should be vice president? Next in order is the election of vice president.

MR. SOULE: I would like to be a little more frank than some of the gentlemen who made nominating speeches, and in the beginning state that I am no public speaker. That is fortunate for the man I am about to nominate. If he were to depend upon my ability to tell you people about him, it would be disastrous to him. Roy Ployhar is well known to you. You know how he worked in the Association. You know his ability, and in order to save time, I would like to place in nomination the name of Roy Ployhar for vice president.

MR. TRAYNOR: I haven't the pleasure of having my name in the record. Not only for that reason, but because I want to

do it, I want to second the nomination of Roy Ployhar. I would like to move the nominations be closed.

MR. HERIGSTAD: And our Secretary cast a unanimous ballot. Mr. Nilles?

MR. NILLES: I have no elaborate speech of seconding the nomination, but I second the nomination.

Motion carried.

MR. MCBRIDE: I take pleasure, gentlemen, in casting a unanimous vote of this Association for Roy A. Ployhar for vice president for the ensuing year.

MR. HERIGSTAD: Next order of business in the election of secretary and treasurer.

MR. MCILRAITH: I hope that the present secretary be perpetuated in office.

MR. STURGEON: Unlike the two gentlemen nominating the president, I haven't a prepared speech. I take great pleasure in nominating my fellow townsmen and friend Morton L. McBride for secretary.

Motion seconded.

JUDGE PALDA: In addition to secretary and treasurer it would be well to add the title "perpetual dictator" but I think secretary-treasurer enough. I move that the nominations be closed and that the president cast the unanimous ballot for secretary-treasurer of this Association.

Motion seconded and carried.

MR. HERIGSTAD: It is with a great deal of pleasure that I now cast an unanimous ballot for our efficient Scotch Secretary-Treasurer Morton L. McBride for the coming year. Before I turn over the gravel to our new president, I want to say it has been a great pleasure, and I deem it a privilege to have served as President. I will appoint Burtness and Foster to bring the new president up here.

MR. HERIGSTAD: Glad to see you come up here, Bill.

MR. OWENS: Fellow members of the Bar of North Dakota: If you all, at the present time, feel as happy and full of inspiration and honor as I do at the present moment, I fear the Mayor may have to tighten the rules of freedom he gave us yesterday and refer our conduct somewhat to the police department. Forty years is a long time to hope, work and serve with the idea of being some day, perhaps, the head of the State Bar Association. My aspirations in conducting myself as a practicing lawyer, and my hopes have in most all cases been fulfilled. As a young man I had ambitions to argue cases in the greatest court of the world. In 1920 that ambition was fulfilled, and with fear and trembling, as many of you have, I approached the bar of the

Supreme Court of the United States, and presented arguments. I always like to read and re-read the remarks of President Taft, Chief Justice at that time, when he started his opinion and said, "The question involved is not over the line, but we concede that it is close to the line." It involved a question that was peculiarly fitting to the State of North Dakota.

Then I had an ambition to attend inauguration of the President of the United States. That was fulfilled and I took in every phase of that inauguration, and if any of you gentlemen have ever attended an inaugural ball, it appealed to me as one of the best drunken brawls that I ever attended in my life.

Then I had to fly to Philadelphia to witness an army and navy football game. That was another ambition. Maybe, and I hope, some of you have seen that contest.

The inauguration of the president, the approach to the supreme court, and the inaugural parade isn't to be compared to the golden gleam of the football contest between those kids of the army and the navy, and it is worthwhile for any American to witness those things. Now, then, to be president of the North Dakota Bar Association is an ambition in my mind fulfilled. That is more worthwhile than to take part in all of those governmental affairs, especially in this group where you have unanimously chosen me your president sits men with whom I went to college. Men that knew me as a young, brilliant budding young lawyer years before I came to North Dakota. But there is one man I miss in this group, and who I thought would be here, and that is Art Knauf who encouraged me and enticed me to come to North Dakota, and he settled me in Williston.

We heard a great deal about McKenzie County last night. Williston is just across the river, and in my earlier years, I used my energies to rehabilitate and straighten out those outlaws across the river, and we did educate and train seven lawyers out of the county. One became attorney general and then governor, and now chairman of our legislative committee of the bar association. I can see I still have some work to do. Another was assistant attorney general. Two of them are in the army. One of them is justice of the supreme court of the State of Montana, and he has ambitions to be governor. At least he told me one time he wanted to try to catch up to George Shafer. Well, the success of my term in office depends largely—in fact, I feel entirely upon the work of you members, and when we appoint committees, we select you on a committee, I trust you will fulfill your part and present to the Association the very able information that has been presented to you during this session.

I don't think much of this, what do you call it, where you perpetuate yourself, or perpetuate yourself in office. I am a good Republican. I want you to know it, and I don't propose that any good Democrat is going to set an example for my Association. I assure you that if I have good health, that we are going to have a convention next year. That is, if any town will take us in.

You know this thing of trying to keep us lawyers from holding a session and learn and talk about any thing and so many things are going on, isn't very good for us. In fact, I want to say to you right now that much to my disappointment, the Bar Association of North Dakota is way down in 47th position in the list of Bar Associations of the American Bar. There is only two bar associations that are worse than we are, and that is New York and some other eastern one, and you could expect that. Men, we only have thirty-six or seven members in the entire membership of North Dakota that belongs to the American Bar Association. The American Bar Association is an outstanding organization in support and maintenance of government of our country. $8.00 is the membership. You get a magazine that is well worth all of that. You passed a resolution here today, or a motion a few minutes ago that the vice president shall be the members of the House of Delegates of the American Bar representative of this Assoication, and I want to say to my good friend, Roy Ployhar, he just can't be a member of this Association and not be a member of the American Bar Association. You better put up your money and get that ticket. I would like to impress upon you the value of our Association. I just happen to think, I might be in the same shape as the parrot who talked too much. I will tell you that story. There was a family that had a parrot, a pup, and a little boy, and the little fellow was playing with his pup in the backyard. Every time he would see a cat, he would say, "Sic 'em, Tige! Sic 'em Tige!" And the parrot learned it on the back porch. One day Mandy went down town, and the parrot got on a stump and said "Sic 'em, Tige! Sic 'em, Tige!" The pup didn't see a cat, so he took after the parrot and stripped the feathers off her. When Mandy came home she said, "What's the matter with you, Polly?" She said, "I talk too damn much!" I don't know if Mac has been elected, so I will conform to the election. What is the next order of business?

MR. MCBRIDE: The next order of business is to hold a meeting of the executive committee.

MR. NOSDAHL: I think it is customary to have a motion about the next meeting. I move the executive committee designate the next place of meeting if there is one.

MR. MCBRIDE: This is the time to present any invitations if there are any.

JUDGE HUTCHINSON: Isn't that the regular business of the Executive Committee?

MR. OWENS: I think the by-laws of this Association provide that the Association fix the place of the next meeting.

MR. PALDA: I second the motion to delegate that to the Executive Committee, that the place of the next meeting be fixed by the Executive Committee.

MR. OWENS: Are there any remarks? All those in favor of the motion as made and stated signify by the usual voting sign which is aye.

Motion carried.

MR. OWENS: I unintentionally overlooked calling up the vice president, Brother Ployhar. Will you come forward and tell the Association what you have to say.

MR. PLOYHAR: Mr. President, Mr. Vice President and Members and Gentlemen of the Bar: I don't really know why you need a vice president when you have a man from Williston as president. Bill Owens told me that if he was elected president that believe me he was going to run this Association, and nobody was going to have anything to say. I said, "Bill, I think that would be fine for me because I don't want to have anything to say." I know that under your able leadership the Association will go along at top speed. I really and sincerely believe that. I know that if Bill can't do it, nobody can. I want to tell you that I sincerely appreciate this honor that has been bestowed upon me and I want to assure this association that if there is anything I can do to assist in any way, I will be glad to do it. I will see that my American Bar Association dues are paid even if I have to borrow the money to do it. I agree fully with the announcement made by President Owens we should have a meeting every year. I think we missed a lot by not having a meeting last year. With those remarks, I want to leave the floor.

MR. OWENS: There are two proposals that are very important and bothering me. The laws which you have adopted making it imperative that this sectional organization elect a president exists here, and that sectional organization being a member of the executive committee of your bar association. I have only learned of one association that has elected its president. Of course, it is all right with me. In line with Brother Ployhar's remark, I can appoint anybody from your section of the country.

MR. MCBRIDE: That is under by-law 5.

MR. OWENS: And the other proposition is that the association must recommend a member of the judicial council, and there are five or six of those, five that we must recommend, and I would like to have the members of this organization bring to me recommendations for appointment to the executive committee of this Bar Association, and if I don't get them, I am rather inclined to us my own judgment. Are you willing that the executive committee recommend appointment to the judicial council as this time?

MR. PALDA: I move you, Mr. President, that the appointment of members to the judicial council be left to the executive committee of this association.

MR. HALVORSON: Second the motion.

MR. OWENS: You have heard the motion that the appointment of members to the judicial council be left to the executive committee of this association.

Motion carried.

MR. NOSTDAHL: It is customary to have a motion that if any business has been inadvertently overlooked that the executive committee be authorized to take care of it. I make that motion.

Motion seconded.

MR. OWENS: Motion has been made and seconded that the executive committee take care of all unfinished business.

MR. MCBRIDE: The constitution provides that.

MR. BURDICK: I move we adjourn.

In Memoriam