



1938

Proceedings of the Annual Meeting of the State Bar Association of North Dakota, Held at Devils Lake, North Dakota, July 15-16, 1938

North Dakota State Bar Association

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

North Dakota State Bar Association (1938) "Proceedings of the Annual Meeting of the State Bar Association of North Dakota, Held at Devils Lake, North Dakota, July 15-16, 1938," *North Dakota Law Review*: Vol. 15: No. 1, Article 1.

Available at: <https://commons.und.edu/ndlr/vol15/iss1/1>

This Bar Proceeding is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

PROCEEDINGS OF THE ANNUAL MEETING OF THE
STATE BAR ASSOCIATION OF NORTH DAKOTA,
HELD AT DEVILS LAKE, NORTH DAKOTA,
JULY 15-16, 1938.

HON. L. J. PALDA, JR., President, Presiding.
JULY 15, 1938.

Morning Session

PRESIDENT PALDA: Ladies and Gentlemen, in view of the fact that our program is quite well filled up, and although we know that many of the attorneys are still on their way out here and will be in later, I think we shall proceed with the opening and start covering our program. At this time it is a great pleasure to call on Rev. S. M. Kelly for the invocation.

REV. KELLY: Almighty and eternal God, Thou who art the great Judge of all men, Thou who art the source of all wisdom and truth and righteousness and justice, we come humbly into Thy presence asking for Thy blessing and Thy benediction. We would remember our dependence upon Thee for the things that are worthy in life. We know of our own waywardness, how easy it is for us to step into the paths of sinfulness and of waywardness; but we remember also that in Thy mercy Thou wilt temper justice with love. We would remember at this time that righteousness exalteth a nation and that sin is a reproach to any people. We remember Thy hand in history and Thy guidance in the affairs of this nation, and we think now of some of the things that hang as dark clouds over the heads of Thy people, the unrestrained passion, the sin that forgets Thee as the giver of every good and perfect gift, the things that lead us to serve self rather than that which is the great ideal of life; and we pray, oh God, that these things may be set aside, that Thou will forgive us for our sins and that Thou wilt lead us in the path of true justice and true righteousness. We would ask that Thy blessing be with these men who deliberate at this time, that in their counsels they may keep before them not only the highest ideals of their profession, but the highest ideals of all life, and that the things that may be said and may be done may be to the glory of Thy name. These things we ask in the name of the greatest Advocate of all, Jesus Christ, the Savior of men. Amen.

PRESIDENT PALDA: Ladies and Gentlemen, it is a great pleasure to present to you the Mayor of the City of Devils Lake, His Honor, W. E. Hocking:

ADDRESS OF WELCOME

MAYOR HOCKING: Mr. Chairman, Ladies and Gentlemen: It is a pleasure this morning to come here and welcome you to our city. We are always glad to have organizations hold their conventions here because of the fact that we cannot have such a gathering here without getting some good out of it. It is customary for the mayor of a city to present you with the key to the city when you have a convention, but that is not our habit. We

do not present the key to the city to you; we do not have the city locked; it is open to the public to come in. We do that for two reasons,—first, because we cannot have an organization meet here without getting some good out of it, and, second, that those who want to leave may leave. And so we welcome you to our city, and we hope that this will be one of the best conventions you have had and that you will make this your home so far as conventions are concerned. If there is anything we can do for you while you are here, let us know. We want you to have the freedom of the city, take advantage of our institutions and see our schools. We are very proud of our new school, and our Memorial Building—I think are second to none in the state. We also have a wonderful park that we want you to see. We have a good Uncle Sam who gave us the park and the swimming pool. We also have a wonderful national park, Sully's Hill, and Chautauqua, Lakewood Park, and then you will find that you will have some place in the state to go to spend your summer vacations. There are many things that I might call your attention to; there are many things that we have that you don't have in other parts of the state. If I were to tell you of all the wonderful things in Devils Lake I am afraid somebody would say that if we would work as hard as we brag we would get the Missouri River Diversion without any trouble. You know we do want water and we do want help to get it. This would be the most wonderful summer resort in the country if we had water. We know you sympathize in that with us; it is not only our local people who want the Diversion. Speaking of that, I attended a meeting of the National Red Cross in San Francisco a short time ago. On the way back I came through the Grand Coulee Dam and the Fort Peck Dam, and when I got back I thought, "Isn't it too bad that we don't have any cooperation in our state," and so I wrote our Senators and Representatives and told them that after coming through Montana, Oregon and Washington and saw how they had secured consideration for those states, and I wondered why we did not get the Missouri River Diversion Project put over. It made me think of the rooster in the ostrich pen who saw the ostrich egg, and then he went back in his own pen and he said, "Now, I'll tell you, I don't want to find fault, but they are doing bigger and better things in the other pen." And so I called the attention of our Senators and Representatives in Washington to our situation, and they wrote that they were interested and that it would be taken care of.

But we have a lot of things to be thankful for. North of us we have our Canadian friends, and last week six hundred and fifty of them came to visit with us, and really it was one of the finest conventions we have ever had here.

Now for the attorneys: I am sorry there are not more women here this morning, because each one of you should bring your wife to these meetings. I would like to meet them. I would like to know who is arguing at home to make such a good arguer of him. I noticed some women in the hotel. We want the women to know

the City of Devils Lake wants them to have a good time. If there is anything you don't get or want, call me up and let me know.

So far as the Police Department is concerned, I told the policemen that the lawyers are just ordinary citizens and that they were on their good behavior just the same as they are at home, and that they will not need the police.

Again I wish to welcome you and to say that we are glad to have you here.

PRESIDENT PALDA: Ladies and Gentlemen, I am pleased to introduce Mack Traynor, President of the local Bar Association.

MR. MACK V. TRAYNOR: Mr. President, Ladies and Members of the Bar: I really do not know what there is left for me to say after His Honor the Mayor got through. However, so far as the members of the local bar are concerned, your welcome here is not to be judged by words but it should be judged by action, what we do to make your stay a little more pleasant, a little more profitable to you. I can recall at Valley City last year Fred Cuthbert made a very eloquent speech inviting you to hold your convention in Devils Lake in 1938. He told how you were just waiting for an invitation to come to Devils Lake, and I hope that is true and that after you finish the convention that it will still be true, that you will still be waiting for the next invitation to hold your convention in Devils Lake. We have tried to arrange things to make your stay pleasant. You have a nice meeting place, a place where fellows who like to make speeches can make them. There is a good basement downstairs, and we will arrange for the overflow in the basement so that we will take care of you down there. Then for you fellows who are the playboys and like to go out and have a good time, the Mayor said that the police force and the sheriff's force has all been taken care of so you will have no interference. In other words, we hope you will have the kind of time you want to have and that you will do the things you want to do—and that includes the ladies too. I happen to be President of the local Bar Association. I appointed Clyde Duffy general chairman of arrangements and I appointed Fred Cuthbert chairman of a special committee for special entertainment. If there is anything about the convention you do not like I respectfully refer you to Clyde Duffy or Fred Cuthbert.

PRESIDENT PALDA: Ladies and Gentlemen I will call on the Hon. Aloys Wartner, Vice President of the Association, to make the response.

RESPONSE

MR. WARTNER: Mr. President, Honorable Mayor, Ladies and Gentlemen, Members of the Bar Association of the State of North Dakota: I do not know that there is very much for me to say after the hearty welcome we have received from His Honor the Mayor of this city, and from the President of the local Bar Association. They have told us about all of the good things they have here in Devils Lake, and I believe they have told the truth. I noticed that the Mayor said something about the Missouri River

Diversion and I do hope that Devils Lake will get it because I do not believe they have a Devils Lake here now; I believe they should call it the Lost Lake; I believe it needs a change of name, and I know if they do get this lost lake rejuvenated and filled up like it was some fifty years ago that Devils Lake will have a wonderful summer place for the people of North Dakota, and, I know the lawyers of the state will be for Devils Lake to get that, and if the lawyers here can do anything for them I know they will as they are heartily in favor of the Missouri River Diversion. Knowing the lawyers of Devils Lake as I do, knowing some of the people in Devils Lake, I know we are going to have a very fine time here. But that is not all that we came here for. I know we are also going to do some beneficial things here, not only for the lawyers of the state, but for the whole people of North Dakota, and so I am happy that we are here and I know we will all have a good time, that we will have a profitable time, and I am satisfied that the Mayor's welcoming words are going to be fulfilled to the letter. Ladies and Gentlemen, Members of the Bar, I thank you.

PRESIDENT PALDA: Ladies and Gentlemen, according to our program we have a few reports that will have to be brought before the Bar Association and after that we shall have a talk by Miss Leslie, of Forman. I trust the ladies will have time to remain and hear her, as well as the members of the Bar. Gentlemen, the first order of business is the report of the Executive Committee. I will call on the Secretary to present that to you.

REPORT OF THE EXECUTIVE COMMITTEE

The Executive Committee held three meetings during the year, and transacted all other business not cared for at these meetings through the medium of correspondence with its members.

The first meeting was held immediately following the adjournment of the annual meeting at Valley City on July 17th, 1937, at the Court Room in the Barnes County Court House to consider the instruction of that meeting to make such increase in the salary of the Secretary-Treasurer-Editor as the financial condition of the Association would permit.

After some discussion relative to our financial condition it was moved, seconded and carried that the salary of the Secretary-Treasurer-Editor be fixed at \$125.00 per month for the next year commencing with July 1st, 1937, provided that only \$100.00 per month was to be drawn during the year, and the balance at the end of the year, if the Association had that much money on hand at that time.

The second meeting was held at Minot on October 27th, 1937, where the recommendations of President Palda for committee appointments for the year were considered and discussed and after some changes and additions were adopted. A change in the method of naming the committees was made in grouping the members so that a majority of each committee could meet together on short notice in and about the town of the residence of

the Chairman, which should be conducive to more and better work by the committees.

The committee also considered the budget for the year, and adopted one in detail as follows, to-wit:—

Bar Briefs	\$ 480.00
Annual Number Bar Briefs	400.00
Executive Committee	250.00
President's Expense	200.00
Printing and Postage	150.00
Salary, Sec'y-Treas.-Editor	1,500.00
Annual Meeting Expense	500.00
American and Citizenship Committee	200.00
Miscellaneous	200.00
Total	<u>\$3,880.00</u>

It was further moved, seconded and carried that \$15.00 be and is hereby appropriated to purchase a Constitutional Shrine to be presented to the Minot High School by this Association.

Part of the expenses of the Secretary to the meeting of the Editors of Bar Associational Journals, and Secretaries of Bar Associations at Kansas City in the sum of \$75.00 as previously authorized by this committee was approved.

The selection of a place of the annual meeting for 1938 was discussed and it was moved, seconded and carried that we accept the invitation of Devils Lake and hold our meeting at that place at such time as shall be later determined by the Executive Committee.

The Secretary as Editor of Bar Briefs was instructed to contact advertisers for such publication to see what can be done to secure income for the same, and pursuant thereto during the year, your Secretary corresponded with several legal book publishers, legal blank publishers, newspapers, and hotels and found that they would advertise if we would take pay in books and other commodities. This, I cannot recommend to the Committee as it would involve re-sales at retail; and from such experience has concluded that the only feasible plan is to work with the Committee on National Advertising for Bar Journals recently appointed for that purpose by the American Bar Association. And in that connection would say, that I had an opportunity to meet with this Committee at a luncheon given at Kansas City to the Editors of Bar Association Journals, where I heard their plans for the coming year 1937-1938, and that they hoped to have something concrete to present to the meeting to be held at Cleveland, Ohio, commencing on July 25th, 1938.

There was referred to the Executive Committee, the proposition to have a pamphlet issued, giving the method of drawing jurors for the information of local boards, and instructions to the jurors so that they might familiarize themselves with the general course of procedure.

This matter was taken up with Judges of the various districts, practically all of whom have agreed to assist in having the expense of it defrayed by the various counties.

A tentative pamphlet has been prepared, and will be submitted to the senior judge of each district for consideration, and if approval is had, the same can then be printed in larger quantities.

The Committee has negotiated with printers, and these pamphlets can be printed at an approximate cost of from 1/2 to 2 cents each, depending on the quantity ordered. This contemplated the printing of one hundred thousand or more, and were given a price of approximately \$1600.00 for one hundred thousand. Allotments were made of these, and found that in some districts the Judges felt that the quantities allotted were too large, and it will be necessary to obtain new prices on the printing, after the Judges have gone over the form prepared. This can be done in a very short time, unless the form prepared is not acceptable to the Judges of the various districts.

The Committee reports on the question of code revision or recodification that through the courtesy of the Minot Daily News, Fargo Forum and others, a beginning has been made on the education of the people to the necessity and need of code revision.

The Committee has prepared a circular, of which copies will be available to the attorneys at this meeting, and which the committee recommends should be distributed as an educational propaganda in the state. Additional circulars can be obtained at a very small cost, and the committee feels that the attorneys should actively circularize the state, and obtain additional reprints of this circular for general distribution.

Respectfully submitted,

M. L. MCBRIDE, *Secretary*.

PRESIDENT PALDA: What is your pleasure as to the report of the Executive Committee?

MR. WARTNER: I move that the same be accepted and recorded and filed. Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that the report be recorded and filed in the minutes of our proceedings. All those in favor signify by saying aye. Those opposed. The motion is carried.

I am not going to take up much time in comment, but there is one matter that I feel is very close to the heart of all of us, and it seems that it would be proper to call it to your attention now. As you noticed from the report of the Executive Committee, there have been prepared some circulars on educating the public to the necessity of a recodification of our laws. I had five thousand printed on behalf of the Committee and they are available to the attorneys who are here. I will see that they are brought here and placed in a convenient place, and I think every attorney should take some of these circulars with him; that they should be dis-

tributed, so they get into the hands of candidates for the legislature, the leaders in the different political factions, so that the people may be educated that the recodification is not alone for the benefit of the lawyers but for the benefit of our people, and for the purpose of saving our citizens and officials, etc., a great deal of time, money and expense. We know there are probably between two and three thousand officials in the state of North Dakota who are supposed to be able to find the law, and that if any of them, city officials, township officials, justices of the peace, etc., try to take time to run down some piece of legislation back in 1907, 1908 or 1909, it is an almost hopeless task. If we can once put it across to the people of North Dakota that it is for their benefit, I believe we will have no difficulty with the Legislature. I trust you will avail yourselves of the opportunity and take some of these circulars home with you and see that they get into the proper hands. We have also made arrangements so that if the newspapers of the state desire to reprint what was published in the Fargo Forum, the Minot News and other papers, mats are available without cost. We are very fortunate that the Associated Press and especially these two leading periodicals of the state did this work for us as a matter of news, as a matter of propaganda and public education. So I hope you will take home some of these circulars.

FRED J. TRAYNOR: May I make an announcement?

PRESIDENT PALDA: If you will, please.

FRED J. TRAYNOR: There is to be a trout luncheon at the Mitchell Cafe at noon for the past Presidents of the Association and the Judges of the Supreme and District Court, and including the Clerk of the Supreme Court. I would like to know now how many I am going to have at that luncheon. I have sent out letters to all of the persons involved and I will read those names. I have received replies from most of them, some I have not.

H. A. BRONSON: I am speaking for the alumni luncheon. The luncheon Fred Traynor talked about is for the has-beens, including those retired from the bench; the luncheon for the alumni is for those who are or are to be, and there are invited to it all the lawyers here today, as well as the ladies, so we hope you will all come. The luncheon is at the Colonial Hotel. I thank you, Mr. President.

PRESIDENT PALDA: Gentlemen, the next report on the program is that of the Secretary-Treasurer.

REPORT OF SECRETARY-TREASURER

Commencing with this fiscal year on July 1, 1937, and ending June 30, 1938, our year has checked with the account of the State Bar Board and balances the same for the first time since the integrated Bar was instituted. It is the desire of your Treasurer to continue to have our fiscal year the same as that of the State Bar Board, for it will be much easier to check the amounts received during like fiscal years.

A survey of the financial situation showed that for this year our revenues would be practically the same as the past two years, hence it would be necessary to keep our budget as closely as possible within that amount, which in round numbers was and would be \$2800.00 per year. The continued policy by our present President to hold Executive Committee meetings to a minimum has resulted in keeping the expenses of the Executive Committee well within the Budget. That, together with the co-operation of the Committees in keeping expenses at a minimum has resulted in the Committee expenses being low. However, in one regard, we have had an increase, which has come through our closer co-operation with the American Bar Association and its activities. While this has not been large, it has increased somewhat the miscellaneous expenditures.

Bar Briefs the past year has received many comments of appreciation for articles contained therein, together with several, that they hoped the publication would be permanently expanded to at least eight pages, also suggestions that we increase the service on reporting of decisions by our own Supreme Court. However, to keep within the budget laid down by the Executive Committee, the four page was about all the exchequer would stand. I hope that the members will continue making suggestions, as it evinces interest in their little magazine.

The financial statement is as follows:

**SECRETARY-TREASURER'S FINANCIAL STATEMENT
FOR THE FISCAL YEAR**

FROM JULY 1, 1937, TO JUNE 30, 1938.

Balance Last Annual Meeting	\$ 827.66
Balance 1936-37 Account; 1937 Meeting	
Expenses	\$441.05 441.05
Balance for New Administration	\$ 386.61
Received from Bar Board	3,250.00
	<u>\$3,636.61</u>

Expenditures

		Budget
Bar Briefs, Annual Number.....	\$ 377.54	\$ 400.00
Bar Briefs	237.52	480.00
Executive Committee Meeting....	183.18	250.00
Postage and Printing.....	158.37	150.00
Secretary-Treasurer-Editor	1,200.10	1,500.00
Committees	216.12	200.00
President's Expense	100.00	200.00
Miscellaneous	371.38	200.00
	<u>\$2,844.21</u>	

Balance	\$ 792.40
---------------	-----------

Respectfully submitted,

M. L. MCBRIDE,

Secretary-Treasurer.

SECRETARY MCBRIDE: This, gentlemen, however, is subject to checking, whatever differences the Auditing Committee may find. I move that the report be accepted and filed. Seconded.

PRESIDENT PALDA: You have heard the motion that the report of the Secretary-Treasurer be accepted and filed. All in favor signify by saying aye. Contrary the same. Motion carried.

THEO B. TORKELSON: As one of the members of the Auditing Committee I would like to report that the Committee has audited the account and found it to be correct.

PRESIDENT PALDA: That covers the situation so the action is well taken. I can say that as to the Secretary-Treasurer's report, I always thought he was Scotch; I know it now, after one year's service and the fact that the budget has been cut rather than expanded, in most instances. The next report is the report of the Committee on Jurisprudence and Law Reform.

SECRETARY MCBRIDE: Unless the Chairman of the Committee is here, or some member wishes to come forward and read the report, I will proceed to do so as well as I can.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA

In view of the vital importance of the subject and because your Committee feels it should receive the undivided attention and support of every lawyer in the State of North Dakota, we have this year confined our recommendations to but one topic, namely, Recodification.

Your Committee respectfully recommends:

1. That a standing committee on recodification of our statutes be appointed either by the State Bar Association in convention assembled or by the Executive Committee.

2. That such standing committee so appointed draft and prepare a Bill for Recodification of the Laws of the State of North Dakota along the general lines of Chapter 60, Laws of 1937, passed by the South Dakota Legislature.

3. That this proposed Bill provide that the Committee on Revision provided by such Bill shall be appointed by the Supreme Court of the State of North Dakota and that the Supreme Court shall have complete supervision of said committee and of its work until the final completion of the revision.

4. We further recommend that the standing committee of the State Bar Association on Recodification prepare such proposed bill in complete detail and submit a copy of same to every lawyer in the State of North Dakota not later than November 1, 1938.

5. That such standing committee shall make definite arrangements to have such Bill introduced in the Legislative

Assembly on the first day of the Session at which such a Bill may be received.

6. We further recommend that such Recodification shall be complete, with proper footnotes and annotations, and that the work should be thoroughly and comprehensively done.

7. We further recommend that such standing committee on Recodification shall be granted an appropriation from this Association of an amount sufficient to defer the expense necessary to carry on the preparation and mailing of such proposed measure, correspondence in reference thereto, and their attendance at the Legislative Session to procure the passage of such a bill.

8. We further recommend that such standing committee shall constitute the Legislative Committee for the presentation of such Recodification measure to the next Legislative Assembly, and that such committee receive the support and assistance of the regular Legislative Committee.

9. We further urge that after the receipt of the copy of the proposed Bill by the lawyers of the State that every lawyer shall do his utmost to contact the Representatives and Senators in his district and explain to them thoroughly the provisions of the proposed measure and the necessity for Recodification.

Respectfully submitted,

GEO. M. MCKENNA, Chairman,
W. H. STUTSMAN,
J. P. CAIN,
JAMES MORRIS,
A. LESLIE,
NELS G. JOHNSON.

SECRETARY MCBRIDE: And pertaining to this report your Secretary has received the following communication:

COMMUNICATION

Bismarck, North Dakota.
June 22, 1938.

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

Dear Mac:

I am in receipt of a copy of the Report of the Committee on Jurisprudence and Law Reform of the State Bar Association, the original of which has been sent to you.

I agree with the committee's report with the exception of paragraphs 2 and 3. If my name is to be attached to the report, I would like to have the exceptions noted.

Yours very truly,

JM:K

JAMES MORRIS,
Associate Justice,
North Dakota Supreme Court.

Paragraphs two and three, which are objected to, are the ones that read as follows:

2. That such standing committee so appointed draft and prepare a Bill for Recodification of the Laws of the State of North Dakota along the general lines of Chapter 60, Laws of 1937, passed by the South Dakota Legislature.

3. That this proposed Bill provide that the Committee on Revision provided by such Bill shall be appointed by the Supreme Court of the State of North Dakota and that the Supreme Court shall have complete supervision of said committee and of its work until the final completion of the revision.

PRESIDENT PALDA: You have heard the report of the Committee on Jurisprudence and Law Reform and the exception taken by Judge Morris. We have studied the exception taken by Judge Morris quite carefully and the only explanation we could find was that it was a matter of modesty as much as anything else, that he did not want to be one of those appointing himself to supervise the recodification. However, you have heard the report. What is your pleasure?

JUDGE ELLSWORTH: Mr. President, I am not at all clear as to the purpose of the Committee in making this report. Now, there are references there to recodification and also to revision. Now, of course, we all know those terms are not by any means synonymous, that revision is a proposition very distinct and much greater in its purpose than that of recodification. Now, as I understand it, the committee proposed in this report is a committee on revision, but the law that is recommended provides for recodification. It seems to me that the Association, before it recommends this report, should be entirely clear as to whether or not recodification or revision is intended, and that is not clear from the report of the committee.

MR. BANGERT: I wonder if we might hold up all discussion on recodification and revision until the bill comes in this afternoon.

PRESIDENT PALDA: I think properly a motion to accept the report and have it filed might be made.

FRED J. TRAYNOR: I make such a motion.

MR. WARTNER: I second the motion.

PRESIDENT PALDA: You have heard the motion that the report of the committee be accepted and filed for further action by the Association if it so desires. All in favor signify by saying aye. Contrary no. The motion is carried.

PRESIDENT PALDA: Ladies and Gentlemen, this is the hour set for the talk by Miss Marion Jane Leslie, of Forman, and as some of you have been waiting for this time to arrive, I will drop the reports at this time to take them up later, and I am very happy to present to you Miss Leslie. She is our newest member of the bar.

MISS LESLIE: Mr. President, Ladies and Gentlemen: I feel a little out of place speaking to you here today, being so newly admitted as a member of the profession and having practiced law for only six days. I feel that I am not competent to tell you anything about the practice of law, but I do feel that I am qualified to tell you something of the agonies of the bar examination. As you probably heard, we were very thoroughly examined last week in Bismarck by Mr. Young, Mr. Cain and Mr. Murphy, and some of the questions they asked us I do not believe ever could be answered. I do not believe a man who spent a year in the trenches in the last World War suffered any more than I did those three days in Bismarck when those men would appear with a list of questions and fire at us at close range. You cannot imagine the impossible things they asked us. We studied law for five years, we learned all the technicalities of the legal profession, we learned every question had a loophole and that we should find it, and then they asked us to give them the essentials of a contract! I know I couldn't answer that question; I know the majority of my classmates were in the same predicament that I was in. We were also asked about negotiable instruments. I believe there were parties "A", "B", "C" and "D", and I believe there was a Mr. "M". The note was long over-due; judgment was obtained in Wisconsin, the debtor moved to Montana, and had a store in North Dakota, and gave his stock to a state officer to be held in escrow, and we were supposed to figure it out. One of my brilliant classmates said the debtor should pay the note. That seemed to me to be the most logical answer. We were also supposed to draw a will in ten minutes. We had a list of facts to use. I drew a will, but I am sure a Court would have no difficulty in finding flaws in the will I prepared. We knew each day that the next morning at ten o'clock we would have more questions fired at us. Most of us tried to study at night, but one of my fellow sufferers felt it was unnecessary to study after the long hours he had spent trying to learn the law, so he didn't look up the statutes and, sure enough, the next day we got another question, and he very carefully incorporated the Code in his answer and said, "It is in the Code and I haven't read it." These were only a few of the questions that were asked us in those three days, and I am sure that Dante's Inferno does not nearly compare with the trials and tribulations of young lawyers. I am sure we made a great deal of new law in those three days, and I only hope that the legislatures and the Courts of the state will some day realize the wisdom of our reasoning and adopt such laws.

I have been asked many times why I took up the study of law. People seem to find it strange for women to be in the legal profession for any other reason than finding a husband, to be in an office surrounded by a large number of good looking and intelligent men, but, to tell you the truth, that was not the reason I went into the legal profession. When I was in high school I liked very much to argue with my father,—in fact, I believed he was never right, so I was going to take law to prove to him that he didn't ever know what he was talking about. This was the

idea I had of law until I entered the Law School, and there I found myself alone in a class with twenty-five of the more brilliant sex. For once I was out-talked, I could not convince them that women had a place in the legal profession. Oh, they told me that she might have a place, that she could get a little work with her feminine charms, draw pleadings, do briefing, in fact, do everything but appear in court. She was to be the brains of the partnership, but never would be seen or heard. I had this masculine idea drilled into me for three years, until finally I accepted such a fate; and then we went to Bismarck and there that idea was changed, along with the ideas I had about how much I knew after five years of study. After one of the most strenuous days at Bismarck I went to a show and saw the preview of that new production, the "Crime School". This showed the failures of our reformation schools in the matter of children, it shows the large percentage of children sent to institutions who are not made into law-abiding citizens, but instead become hardened criminals. After seeing the show I felt there was a place for women in the legal profession, that women had a duty to perform in the legal profession, that women have a duty to perform that they could not shirk, and so when I got home I read a little further on this subject and I found that according to an eminent criminologist sixty per cent of the young delinquency in this country is caused by improper home training. If more than one-half of the juvenile delinquency is caused by improper home training, then it would logically follow that proper home relations and proper home training would help materially to remedy the situation. We in North Dakota have a wonderful training school that is rated far superior to that in any other state, yet there attaches to every boy and girl released from this school a stigma that will follow him or her all the rest of their life. This is the obstacle they have to overcome before they are recognized by society. This condition of juvenile delinquency is increasing rapidly in the United States and something must be done about it, for we all know that these boys and girls who have been sent to Mandan for the breach of some minor offense and who have not become law-abiding citizens, have followed their prior habits and become hardened criminals. With each child we send to a training school there develops a criminal, and with the development of each criminal society must lose the services of some person who will help in the development of our country.

But this field alone is not the only place for women in the legal profession. In this country there is one divorce for every six marriages. I have no fault to find with that fact for I have adopted perhaps the very modern view of divorce and accept it as a necessary evil, but I do find fault with the very great number of divorces, for with the granting of each divorce a home is broken up which is essential to good government. Who is better able to cope with this situation than a woman in the legal profession, for who understands better, and I am sure women here will agree with me, the drudgery of housework, three meals a day, the putting up with some husbands, and getting up early in the

morning and working until late at night to prepare a proper home for their children. I am sure a woman is better able to cope with this situation. So there alone is a large field which women in the legal profession may enter. But these two fields in themselves are not the only places for women, for today in this country women are as much interested in the economic and political life of this country as are men. A woman is as interested that her husband has a job so he can properly maintain his home and support his family as anyone else. She demands an equal opportunity for her children. She asks that she have the proper conditions so that she can maintain the proper home surroundings to care for and educate her children, and we business and professional women join with her in these expressions. Today in this country the interests of men and women are one and inseparable in our search for the correct answers and solutions to all the problems now before us—unemployment, job insurance, regimentation and re-employment, social security, educational opportunity, freedom and liberty are as important to the women of this country as the men, and they must join in this fight to help find the correct answers to our problems.

But it is not only men and women as individuals who must join in the fight in these critical times of unrest where we suspect everyone in this unsettled order. It isn't only men and women as individuals who have to join in the struggle, but it is the legal profession that must join in the fight, the individuals of the legal profession as such and the associations as we are here today, must put their utmost endeavor into this fight to bring order out of chaos, to insure future generations that there will be a democratic country that they may enjoy all the freedom that their forefathers wanted them to have. So I say there is an important place for women in the legal profession. They must join hands and work shoulder to shoulder and work side by side with men lawyers. Our motto should be, "Men and women lawyers, forward together."

PRESIDENT PALDA: I assure you, Miss Leslie, that I can safely say on behalf of this entire organization that we greatly appreciate your effort, your talk and your logic; it was fine, and I hope you will never have to take another bar examination or suffer by reason of it. Of course, you had bad men examining you, one of them just came in, but outside of that they still have a heart.

FRED J. TRAYNOR: I would like to have in the record here that this young lady is a graduate of our own Law School. I believe she obtained recognition for her scholarship in law by receiving the honor of the Order of the Coif, and I am not sure what degree she got, whether it was LLB or LB. Which was it, Miss Leslie?

MISS LESLIE: LLB.

FRED J. TRAYNOR: But you did get the Order of the Coif?

MISS LESLIE: Yes.

FRED J. TRAYNOR: She was one of the outstanding students in the class, and I think the Bar ought to know something of the fine work that our Law School is doing. To illustrate, I know that five boys who graduated from the University of North Dakota some three or four years ago took the bar examination in Minnesota and four of them passed, making an eighty per cent record for the North Dakota graduates, although the percentage of those who took the bar examination in Minnesota at that time who were admitted was only thirty-seven per cent, indicating that the training that is given in our own Law School must be equal to the best.

JUDGE ELLSWORTH: If I may be allowed a word in this connection at this time, not taking too much time for it, I have been very much interested in the young woman's address. Everything she said was true and has a powerful appeal to the man lawyer himself, I am sure. But some of the experiences I have come through, I think will warrant me in saying that her appeal should be directed properly to the women of this country rather than to the men. Now, I remember some years ago a young lady, a graduate as I remember it of the State University of Colorado, consulted with me in a very interested way as to her entering the study of law. She told me it was her intent and purpose to do so, that she seemed to have an urge that way, but I advised her to follow some other pursuit. Well, the question she put to me was, "Aren't women equal in their mental acquirements to men?" I said, "Certainly, we all admit that." "Don't they have the same rights that men do in this matter?" "Yes, that is true." "Then what is the reason for giving this advice?" And this is what I told her: "Now if you enter the profession of law you make that a business. A business, of course, for men and women alike, implies a living that must be made from the business. Now why is it that women hesitate about entering the profession of law? For this reason: Men do not object to them as lawyers, but there is some prejudice on the part of the ladies of this country against giving them such employment, even in such intimate cases as divorce matters and matters of that kind. They go to men with those matters, and consequently a woman practicing law is apt to be short of business. So I think the appeal should be made rather to the women of this country than to the men associates, whom I am sure are all abundantly in sympathy with this young woman.

PRESIDENT PALDA: Thank you, Judge Ellsworth. Now Gentlemen, there is a short report here on Uniform Laws:

REPORT OF COMMITTEE ON UNIFORM STATE LAWS

To the North Dakota
State Bar Association:—

In our last report at our annual meeting held in July, 1937, at Valley City, our committee reported the adoption of three Uniform State Acts by our State Legislature in 1937. These acts

simplified somewhat the introduction of evidence with respect to business records, official reports, and judicial notice. North Dakota has adopted twenty-one Uniform State Acts. These acts include the Uniform Negotiable Instruments Act, the Sales Act, the Warehouse Receipts Act, two Uniform Aviation Acts, four Uniform Acts applying to the operation of automobiles, and various other Acts.

The Commissioners on Uniform State Laws have been in existence now for over 47 years. Its members vary from two to five members from each state or territory and are appointed by the respective Governors. In consequence the Conference represents a membership of each state and territory participating in the drafting, the consideration, and the promulgation of such proposed state statutes as are deemed desirable and suitable for Uniform Legislation by the states or territories throughout our nation.

One particular phase of the work of this Conference is often mentioned, and that is its objective which seeks to preserve our dual system of Federal and State Government, and particularly the jurisdiction of the States which otherwise through the need or necessity of uniformity, might otherwise become a subject matter of Federal Jurisdiction and of Federal Legislation.

There are a host of organizations or agencies now functioning in the United States whose purposes and objectives are respectively to secure uniformity of state legislation in some particular matters such as in aviation, crime, use of highways, interstate compacts, etc.

One illustration of the work of the Conference along these lines might be mentioned. For instance, a National Life Insurance organization through their convention's desires, we will say, a uniform statutory act applicable to various features of life insurance. It might be said that such Life Insurance Agency might well prepare themselves the proposed uniform statutory act and promulgate it as such for adoption by the states.

However, this annual Conference of Commissioners on Uniform State Laws has official representatives from each state and when they meet in annual conference, each state has official representatives who are capable of presenting to the conference the viewpoint of each state with reference to the desirability or feasibility of proposed uniform action concerning each state of our Union.

Necessarily all Uniform Acts, to be such, must be those which will likely be received as desirable for adoption by each state of our Union. It therefore happens that this Conference has been considered as a representative agency of each state best fitted for the consideration of proposed uniform action by the various states in the field of uniform statutory legislation. The result therefore occurs that the various agencies and organizations of the country concerned with uniform statutory legislation

customarily refer to this annual Conference of Commissioners proposed uniform statutes.

The State Bar Associations have taken a considerable interest in the work of this annual conference. In nearly 50% of the State Bar Associations of the country there now exists permanent committees on Uniform State Laws. Our State Bar Association has such a committee which now is presenting this report. In many of the legislatures in several states, there exists in both houses a permanent committee on Uniform State Laws.

This annual conference also is cooperating with the American Law Institute in its tremendous work of re-stating the law. For instance, at the meeting of the American Law Institute in Washington in May, 1938, consideration was given to a re-statement of the law of property upon which a committee of the American Law Institute and a committee of this annual Conference of Commissioners on Uniform State Laws have been jointly working.

Respectfully submitted,

W. B. ARNOLD,
JOHN A. WALSH,
FRED E. HARRIS,
E. CLIFTON LEBACKEN,
HENRY O'KEEFE, JR.,
HENRY LEUM,
H. A. BRONSON, Chairman.

H. A. BRONSON: I move that the report be accepted and filed.

MR. LACY: Second the motion.

PRESIDENT PALDA: It has been moved and seconded that the report of the Committee on Uniform Laws be accepted and filed. All those in favor respond by saying aye: Contrary no. The motion is carried.

PRESIDENT PALDA: Is there anyone here from the Committee on American Law Institute? No report has been filed.

SECRETARY MCBRIDE: Mr. Vogel is chairman.

PRESIDENT PALDA: We have as the next committee report the report on Americanization and Citizenship, Judge Knauf, chairman.

REPORT OF COMMITTEE ON AMERICANIZATION AND CITIZENSHIP

MR. KNAUF: Mr. Chairman, Ladies and Gentlemen:

Jamestown, North Dakota.
July 14, 1938.

Hon. L. J. Palda, President,
And Members of the Association:

Your Committee on Americanization and Citizenship beg leave to report:

Owing to scarcity of funds, all of our work has been carried on through correspondence—each of the counties leading in work through local committeemen. Very few, less than 200 of some 6400 open schools in 1938 failed in putting on good, patriotic programs during America's great days, Constitution Day, Legion Day, Lincoln's and Washington's Birthdays and through the entire past year the patriotic work has gone on, stimulated, aided and often conducted by the Bar of the State—all free of charge to our schools, societies and clubs, attorneys sometimes driving over country roads twenty-five to sixty miles in winter time to do their bit on patriotic programs in small town and country schools, clubs and societies.

Without exception, our men have always spoken for constitutional government, generally stressing the importance of the pillar of the Court in our grand scheme of government. We feel the work has been worthwhile.

We have tried to keep account of the work carried on and believe the students and pupils attending these various patriotic programs to be lowly estimated at 40,000 in the small town and country schools with over 80,000 adult attendants at these various programs, while all of the city schools have held patriotic programs with many adults attending.

Then the Masonic Association put on a series of patriotic educational programs. The various churches joined in the work, the Elks and the K. of C's and many other societies and clubs assisted, and usually through the inspiration of one of the members of this Association. It seems to us that the continued study and teaching of the Federal Constitution from a patriotic viewpoint should never cease but should continue increasingly, at least until after the 150th anniversary of the inauguration of our first President.

(1) We recommend that the work of the committee be continued unceasingly.

(2) That each member of the Bar of North Dakota be again pledged to aid and assist on all patriotic occasions within their respective counties, and free of charge for such assistance.

(3) That a larger sum be annually appropriated for and allotted to such committee with which to carry on the work.

(4) That the new committee be appointed by the New President immediately with instructions that the work begin in earnest for Constitution Day, (September 17th, 1938).

(5) That Association members lead in patriotic teaching of the necessary place of the independent court system in our Government.

Very respectfully submitted,

JOHN KNAUF, Chairman.

MR. KNAUF: Mr. Chairman, I move the adoption of this report. Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that the report of the Committee on Americanization and Citizenship be adopted as read. All in favor signify by saying aye, contrary the same. The motion is carried.

I wish to take the opportunity at this time to compliment Judge Knauf on the report and also on the work of this committee. It is greatly regretted that a larger amount of funds has not been available for this work.

MR. KNAUF: I would like if I might for a moment go into some of the details of this work.

PRESIDENT PALDA: We have about five minutes.

MR. KNAUF: I will waste less than that. The work of a committee of this kind would need, to be effective, to be carried on by the various committeemen of the various counties. With a more thorough organization in each county along this line we may never anticipate such episodes as we have passed through during the past two or three years. We ought to have committees of this Association made up and headed by members of the Bar all over the state and in every county, following the plans and specifications which have been outlined by your committee during the past eight or ten years. In five or six of our counties we have many foreign born citizens who pay little or no attention to our form of government, either in form or substance, and who care even less. And, strange to say, there are many university graduates not only from North Dakota but other states who have immigrated to North Dakota who seem to have little regard for the principles of government as laid down in America, and if through this Association we could so organize the educational societies of our various counties we would be doing a wonderful work; and then it might be possible that in the future, as it has been in the one hundred and fifty years in the past, that the courts of not only the states but of the nation will understand the real meaning of the American form of government. And I want to ask every member of this Association to help the new committee which will be appointed by the new President, and that you see to it that the work is carried on more thoroughly, and especially in those five counties from which we had no report this year. Thank you.

PRESIDENT PALDA: Ladies and Gentlemen, as a part of our program there is to be a committee appointed on Resolutions at this time, so they will have sufficient time to perform their work before we adjourn tomorrow. I will appoint on that committee Hon. H. A. Bronson, William G. Owens, of Williston, H. L. Halvorson, Minot. You will get together sometime when convenient. At this time there appears to have been an arrangement whereby there is to be a special meeting of the Lake Region Bar Association. It does not state where the meeting is to be held.

MR. L. L. BUTTERWICK: I understood that meeting would be on Saturday at this hour. I mailed notices to all members for Saturday forenoon, July 16th.

PRESIDENT PALDA: There is an error then; it is scheduled at this time. Ladies and Gentlemen, at this time the hour for adjournment has arrived.

MR. BANGERT: Mr. President, I wonder if I understood correctly, that after we convene this afternoon the balance of the Executive Committee report will be presented, and that the bill will be presented with reference to the recodification of the Code. I would like to serve notice on all of the lawyers that they should be here because I think it is going to be most important.

PRESIDENT PALDA: Gentlemen, I will make this announcement: In order that there may be no mistakes and in order to give everyone time to eat his luncheon in comfort and do such other things as are necessary prior to lunch or after, that I will make it a special order of business at two o'clock, notwithstanding anything that may happen, to take up the balance of the report of the Executive Committee which will deal with the proposed law for recodification.

SECRETARY MCBRIDE: Are you trying to get out of making your address?

PRESIDENT PALDA: I am. For that reason I shall see that it takes place at two o'clock and that will give me an excuse.

JUDGE BUTTZ: I think we are very fortunate this year in our Canadian guest speaker and he has arrived and is here with us at this time. I want to present the Honorable F. Trafford Taylor, of St. Boniface, Winnipeg, immediate Past President of Kiwanis Clubs International, who will speak to you at two-thirty this afternoon.

FRED J. TRAYNOR: Major W. H. Drane Lester, of the Federal Bureau of Investigation, is here and you do not seem to have any place provided for him on the program.

PRESIDENT PALDA: Yes, we have a place all provided for him.

FRED J. TRAYNOR: I want to introduce Major W. H. Drane Lester, of the Federal Bureau of Investigation.

PRESIDENT PALDA: We are most fortunate in having Major Lester here. All this is done through the cooperation and good will of Mr. Hoover, the Chief. We will now take an adjournment until one-thirty.

Afternoon Session

PRESIDENT PALDA: Gentlemen, if you will kindly come to order. We have a telegram from the Secretary of the Chamber of Commerce at Fargo, which I will have read.

Fargo, N. D.,
July 15, 1938.

M. L. McBride,
Secretary State Bar Association,

Fargo extends greetings to the Bar Association and a cordial invitation to come to Fargo for their next meeting.

W. P. CHESNUT,
Secretary Chamber of Commerce

PRESIDENT'S ADDRESS

Were it not for the custom established by all of my predecessors, you would not be burdened with an address by your President. You will, during this session, hear from several speakers far more able to present important messages, which, I am sure, will inspire you to greater activity in and appreciation of the Association of lawyers in North Dakota and in the United States.

Your association has, at times, been attacked by uninformed laymen, also by some of its own members. It has been charged with inefficiency, lack of accomplishment, and want of purpose. These charges are usually made by those who have personal malice or feel that a back-fire of criticism is necessary in order to shroud some personal act which has been questioned or is under investigation.

The membership of an association, whatever its character, can only get from it, benefits, in proportion to what they put into it, of energy, thought and service.

A survey of the assaults made from time to time on the State Bar Association of North Dakota shows that these come from those who have never turned a hand or given a thought to its improvement or development.

The insignificance of such criticism usually stamps it with the mark of insincerity.

There is, of course, much to be accomplished by the Bar Association of this State, but this is also true of the whole world, if we hope for social and professional improvement. Advancement in jurisprudence and law can, therefore, only be accomplished by an organized effort on the part of the lawyers themselves.

You all know that the businessman and average citizen today is disregarding his rights of citizenship, and taking no special interest in politics or the exercise of his right of franchise. This is done either in fear of the loss of business, or in disgust. Who, then, but the lawyers of the country can and should take the lead, and actively fight for improvement in the passage, administration, and enforcement of just and beneficial laws. They have been the leaders in the protection of public rights since the establishment of our government and the State of North Dakota.

Conditions, at the present time, are such that the lawyers must, without hesitation or fear, and even at personal sacrifice, put their shoulders to the wheel, and seek to clarify our political, economic, and judicial status. This is not said with any political motive. It matters not what political party you may be a member of, or what faction of any party you belong to. It is clearly up to the legal profession to take part in and see that the activities of such party or faction are not only clean, but with a purpose legally and equitably to better the conditions of all citizens.

Lawyers certainly have the courage to do this, otherwise they would not have entered our profession, whose great purpose is, and should be, the protection of the rights of all with total disregard of class.

The primary elections in the State of North Dakota are a matter of history. They disclosed an appalling situation. In checking up on the votes cast compared with the votes that should be expected in the State of North Dakota, we find that a great percentage of those entitled to exercise their right of franchise have failed to do so.

This delinquency on the part of the citizens leads us to wonder what will become of our government if those who are best prepared to participate in the selection of officials of a democratic state, refuse to participate in choosing the same.

The lawyers of this state have a duty to perform in connection with this state of affairs. They should persistently impress it upon the minds of the people that unless they exercise their right of franchise, their democratic form of government must fall. Those who have personal interest will govern and rule in such a manner as will best promote their own purposes. This necessarily leads to an autocracy or a bureaucracy, which, once established, can only be deposed by revolutionary and undemocratic methods. The lawyers' duty is clear.

The many things that our Association can and will accomplish cannot be brought about in a day, a year, or a decade, but constant work in the right direction will in the end bring the desired results.

I have mentioned these things to you as leading up to some reforms that I am about to suggest.

It is not the purpose of this meeting for us to pat each other on the back, or inform each other what wonderful men we are, or what a marvelous organization is our Association. The purpose of a meeting of this organization is to better the conditions of the members of our profession, and to improve the conditions of our citizens by working toward the ends of a better administration of justice, of better laws, and a state where right prevails.

One of the outstanding needs in this State is a recodification of our laws. Every judge and lawyer and official in North Dakota devotes a large part of his time in delving through

volumes of poorly indexed codes, supplements, and session laws, searching for the rules guiding the conduct of citizens of this state, the rules provided for the administration of justice and the interpretation of the acts of our legislature.

Many times the search seems hopeless, and in the end, with fear and trembling that some law or rule has been overlooked, a conclusion is reached which may or may not be correct.

The uncertainty and cost in time must be paid for by the citizens of North Dakota. We, as members of this association and good citizens, can carry a message to the voters of this state, showing the needs of recodification of our laws, and they in turn will, or at least should, demand of their representatives in the legislature that this obvious waste of time and money and the uncertainty be done away with, and the chaotic condition of our statutes remedied.

This is one of our constructive jobs. Will we do it, or will we just sit back and struggle along as we have for the past many years? I hope that your attention having been called to the necessity of work in this direction, will inspire you to a devotion of at least some time in educating your friends and fellow-citizens to an understanding of this great need.

There is another matter of great importance, and which I think, if carefully gone into by the lawyers and judges of this state, will bring about a condition that will reflect great credit on our association and its endeavor to save the citizens of the state unnecessary expense.

We are all concerned with speedy, fair, and simple administration of justice if we are practicing law to the end that real justice be done between litigants. Anyone who claims membership in the legal fraternity, who believes that victory is justified regardless of the method by which it is obtained, will not be interested in pre-trial proceedings before the courts. If, however, it is our earnest desire that justice, and justice alone, shall prevail, and that the same shall be obtained in the shortest possible time, and with the least possible expense, then we should study pre-trial procedure as practised elsewhere at the present time.

The new rules of the Federal Courts, I believe, provide for such procedure to a greater or less extent.

I wish, briefly, to call your attention to the system now in vogue, and so successfully carried on in Los Angeles County, California, Wayne County, Michigan, Boston, Massachusetts, Cleveland, Ohio, and many other large counties and cities.

One experience in the trial of an action before courts having pre-trial procedure will, I believe, convince any member of this Association that the system has great merit, although it may not, as yet, have been developed to a point where we can say it is perfect. However, the work has gone far enough so that you are impressed by its simplicity, fairness, and speedy determination

of litigation. There is nothing complicated in pre-trial proceedings and hearings. In a general way, it is simply this:

The courts establish rules under and by which there are hearings of all cases, noticed for trial, a month or two prior to the calling of a jury for the trial of the same; the court simply notifies the attorneys on both sides that there will be a pre-trial hearing on a certain date at the court's chambers;

The attorneys on both sides appear, the pleadings are gone over, and if any amendments are necessary, or are deemed to be necessary by the attorneys, they are arranged for at such hearing; if there is to be any cause for delay or continuances to be demanded, this is disposed of in the pre-trial hearing;

The pleadings are gone over, and all matters that can, without question, be proven, either by records or oral testimony, are stipulated by the attorneys on both sides;

If there is a long accounting to be gone into, this is checked at the pre-trial hearing; if there are any facts such as the width of streets, the height of buildings, the time when the sun rose or set, whether it rained or was cloudy, these are all stipulated, as they are physical facts easily proven, and it is simply a waste of time to put on witnesses for the purpose of proving them; there are usually records to be introduced which can and will be stipulated at such pre-trial hearing; so that, in the end, there will perhaps be two or three material facts to be proven when the jury is called, if one becomes necessary; but it has been the experience in several of the jurisdictions holding such hearings that nearly fifty per cent of the litigation is disposed of prior to the time it is called for trial, and a great percentage of litigation resolves itself into a simple question of law to be determined by the court.

Thus, you will readily realize that not only the cost of holding juries for long periods, or the cost of having a trial lasting ten or twenty days, can be eliminated, but an important piece of litigation can be disposed of in one or two hours. It has been the experience in the jurisdictions having pre-trial hearings that there are usually but two or three facts in dispute in any piece of litigation when the chaff and straw has been eliminated by stipulation. It has been the experience in these pre-trial hearings that a large percentage of cases are settled, although it has been the practice of the courts in no wise to force settlements; for the experience shows that settlements come of themselves when the issues are clarified.

There is nothing technical about this pre-trial procedure. It is really a get-together, friendly meeting of the attorneys on both sides of the litigation and the court. It is purely informal, and really in the nature of a conference of all parties interested.

The Judge, in going over the pleading at this conference, eliminates many imaginary issues, which also shortens the time of the trial.

You will readily understand that after such a pre-trial hearing, the court can and does know approximately how long it will take to try cases, and there is no waiting on the part of witnesses, no delays in disposition of matters before juries; thus both saving time and money for the litigants, and making the presentation of litigated matters a pleasure so far as the attorneys are concerned.

In one instance that was called to my attention, a long accounting was had which was submitted to a master, who himself was an experienced accountant, and when his report was submitted, both sides stipulated to its correctness. You will all readily agree that this pre-trial procedure, although more or less of a hardship on the judge, does speed up the trial dockets; and, when all is said and done, a lawyer only makes money by disposing of his cases, and having the calendar cleaned up.

There are, at times, actions defended with one purpose, and one alone, in view, and that is delay. These delays would be obviated at a pre-trial hearing, and the attorneys, even for the defendant seeking delay, would lose neither prestige, dignity, or fees, as every litigant knows that under our system, delays are only sought in the most hopeless of cases.

Such proceedings will, then, greatly help to re-establish the high standards of our profession, which, in our hearts, we all desire.

I had an opportunity to examine a report of the Wayne County, Michigan, pre-trial report, and I was amazed at the large percentage of cases disposed of at pre-trial hearings. These proceedings are applicable to both law and chancery cases.

There is nothing new about this procedure, as the same has been practiced to a greater or less extent in England for a long period of time. It is also practiced and recognized in France, Germany, and some of the other European courts. We in the United States have been backward so far as this advance in procedure is concerned.

I have been so interested in this, I felt that my address to you would be of greater value if this advance in procedure was called to your attention, with the view that your next President and Executive Committee may work out, under some active committees, a trial of this system.

I am confident that the attorneys would welcome it, and would cooperate with any of the courts that establish rules leading up to such pre-trial proceedings. This may require some legislation, but where the pre-trial is practiced, it was started without any special acts by the legislative bodies, but was established by rules adopted by the courts in the counties and cities that I have mentioned.

There is no question but that such procedure will tend to build up the respect for the courts, the law, and the lawyers.

In closing, I wish to express my thanks and sincere appreciation to the members of the Bar of this State, to the committees and officers of the Bar Association, for their very sincere and hearty cooperation during this year that I have been your president.

I fully realize that our visible accomplishments have not been great, but I believe that we have made progress, and I am sure that if this Association and its members cooperate in the future with its officers and committees, there will be real advancement within the next few years.

PRESIDENT PALDA: Now, Gentlemen, we have some committee reports that are due at this time, and first on the program I wish to call on Mr. Pierce, of Valley City, to report on the Junior Bar Association Committee.

REPORT OF COMMITTEE ON JUNIOR BAR ASSOCIATION

MR. PIERCE: Mr. President: The Junior Bar Association Committee, which has existed in the Bar Association for the last two or three years, has apparently accomplished little or nothing. Today I am presenting this report as one unique in the annals of committee history. Instead of reading several pages of what ought to be done and an apologetic line of what little time our committee did have, and did not do it, and hoped next year's committee would, we are, for several reasons, recommending as the report of the committee that the Junior Bar Association, whether it be as a committee or a part of the North Dakota Bar Association, be discontinued. We do this for several reasons. First, we do not believe the active Bar Association is large enough to accommodate a junior section. Further, we believe that with times as they are, and from necessities appearing in the Association, every effort should be made by all of the members, and particularly the younger members, because, when all is said and done, when we come to the Bar convention twenty years from now, most of it will be comprised of what is now the younger members of the Bar. If the Association is to continue and we are to have a meeting twenty years from now, then we must commence now for all the members to work not for any particular section or as junior or senior members, but as members of the North Dakota Bar Association. For that reason we feel it would be for the best interests not only of the younger members, not of the older members, but for the Association as a whole, that that be discontinued. The only way I had of ascertaining the sentiment of the members was by mail, and all but one of them responded; one did not answer. That, of course, indicates that nothing much can be accomplished. We sometimes feel that more committees would accomplish more things if they felt there was much use for their existence. Your committee feels that we should put all of the chips back into the pot. I thank you.

PRESIDENT PALDA: I thank you for the report, Mr. Pierce. What is the pleasure of the Association on the matter of the re-

port of the Junior Bar Association committee? Do you wish to take any action? If not, it will be made a part of the record.

MR. WARTNER: It seems to me there should be a motion for adoption of the report of the Junior Bar Chairman, and it seems to me that he should make the motion and that his report be accepted and filed.

MR. PIERCE: Not ever wanting to disregard any wise counsel, I make a motion that the report be adopted.

MR. WARTNER: Second the motion.

PRESIDENT PALDA: You have heard the motion that the report of the Junior Bar Committee be adopted. All those in favor signify by saying aye. Those opposed no. The motion is carried and the recommendation adopted.

We next have the report of the Committee on Ethics and Internal Affairs.

REPORT OF COMMITTEE ON ETHICS AND INTERNAL AFFAIRS

To The State Bar Association:

The Committee on Ethics and Internal Affairs of the Association during the Association year has had submitted to it eight complaints setting forth grievances against certain members of the Bar. Three of these involved misunderstandings between clients and attorneys which were readily adjusted. One case involved a dispute as to attorney's fees in which there was no professional irregularity. In two cases the complainants withdrew their charges from the Committee to file formal complaints in the Supreme Court. The remaining two are in process of adjustment. The Committee has no recommendations to submit.

Respectfully submitted,

C. L. YOUNG, Chairman,
GEORGE S. REGISTER,
MILTON K. HIGGINS,
R. L. PHELPS,
JOSEPH G. FORBES,
H. C. DEPUY,
THOS. G. JOHNSON.

PRESIDENT PALDA: Gentlemen, you have heard the report. What is your pleasure?

MR. WARTNER: I move that the report be adopted and filed. Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that the report of the Committee on Ethics and Internal Affairs be adopted and filed. All those in favor signify by saying aye. Contrary the same. The motion is carried.

The next is the report of the Committee on Modification of the Jury System.

SECRETARY MCBRIDE: Mr. President, we have no report from either the Committee on Modification of the Jury System or Fee Schedule at this time.

PRESIDENT PALDA: The reports on the Modification of the Jury System and Fee Schedule will be called for again sometime during the session.

Gentlemen, the hour has arrived, and it gives me great pleasure to introduce to you at this time an old friend of North Dakota, an outstanding King's Counsel of Winnipeg, and immediate Past President of Kiwanis International, the Honorable F. Trafford Taylor.

MR. TAYLOR: Mr. President, Members of the North Dakota State Bar Association, Ladies and Gentlemen: Someone has said that it is better to travel hopefully than to arrive, but I assure you it is the reverse in coming to this delightful city of Devils Lake, because it has possibly been longer in my memory than any other portion of the state. I will tell you very briefly why. I attended with some seventy-five or eighty Winnipegers an International Kiwanis Convention in St. Paul in 1925, and being one of the rank and file then I was naturally not encumbered with the responsibilities of office as I was last year as International President, and I was out for a right good time. The jolliest bunch there was a group from Devils Lake. They had hired a special conveyance—I think it was a bus—and they had a band and they went from St. Paul to Minneapolis with some song about Devils Lake, and they certainly awakened a great enthusiasm among the more staid delegates at the St. Paul International convention. I do not know how many of those men who were there some thirteen years ago are here in this room now, but I always have desired, after making the acquaintance of those men, to view for myself personally the City of Devils Lake, and here I find myself today. My presence here is made all the more pleasurable because of the fact that upon coming into this room I met a man who made it possible more than any other for me to get the necessary position all lawyers must have to continue in business, and I must say that Attorney Gray of Grafton gave to my former partner and myself some mighty good, fat fees in the by-gone days when prices were going places in Winnipeg. I have not seen Mr. Gray since 1916, a long time, but he recognized me immediately and I do not think there is any thrill greater than meeting an old friend in one's own profession and the pleasant memories it recalls. My good friend, Mr. Justice Buttz, who has visited in Winnipeg in Kiwanis circles for a number of years I also had the pleasure of renewing acquaintance with, and I see down here a good many friends from Bismarck, the former governor of the state, the various Justices of our Supreme Court, Mr. Justice Burr, and I understand Mr. Justice Morris, Associate Justice, is also to be here. Mr. Justice Morris I remember being a District Governor of Kiwanis in the year, I believe, of 1934-35. Now, I

do not wish to take up time unduly, and have briefly reduced my little speech to your Association today to writing and I will present it to you in as short a space of time as possible.

I bring greetings and felicitations from the Dominion of Canada and all members of the legal profession and friends therein, and especially from the members of the Manitoba Bar Association who held their Annual Convention on June 17th, at Lower Fort Garry, near Winnipeg.

Judge Proudhomme of St. Boniface, who is the oldest living judge in the Canadian Northwest, once related some of his reminiscences of the early pioneer days in Manitoba and the Dakotas. His Honor went on to explain how he rode horseback on circuit, and the many thrilling experiences and encounters with the Indians, and some of the early romantic characters in the pioneer days in the history of Winnipeg.

One instance, probably more humorous than others, was His Honor's narrative of the first trial, which took place in the territory of the Dakotas, and related how a government land agent without legal training was clothed with authority of a judge to meet the emergency, and holding his first court on the trial of an Irishman accused of horse stealing, was at a loss how to proceed in the orthodox, dignified, judicial manner. The Irish prisoner was represented by a fellow countryman, who had a smattering of the law, the jury was empanelled and the court opened by the judge rapping loudly with his gavel, a huge homemade affair, and calling the meeting to order. The judge then asked what business there was to come before the meeting, and after an interval of considerable silence, a law officer pointed to the Irish prisoner and read the charge against him. Another period of longer silence, and taking advantage of the situation, the prisoner's advocate, in response to a call for motions from the judge, made a motion that the prisoner be discharged, another longer period of silence, when the prisoner plucked up his courage and seconded the motion, whereby the trial was concluded.

Law and the judiciary have made great strides since pioneer days not only in the territory of the Dakotas but in the Canadian Northwest, but we who practice law today need only to glance back through the pages of history to see the distinct advantages under which we are enabled to practice law today compared to our predecessors of some forty or fifty years ago.

North Dakota and Manitoba have probably the greatest similarity in every respect, geologically, geographically, financially, economically, climatically and otherwise. Both are essentially almost dependent entirely upon the soil for livelihood, and agriculture is paramount in our two domains. We have not only been blessed with bountiful crops in the good years, but have suffered alike in the years of drouth and distress.

Apparently we have learned our lesson, that the old biblical saying is as true today as ever, namely: that as sure as night

follows day we are to have intermittently the seven lean years followed by the seven fat years. Not only the farmers, but also we of the legal profession in the past, either altogether ignored or conveniently forgot this inexorable law of nature. We have suffered accordingly. It would appear that we are entering into a new cycle of bounteous crops and prosperous days, and let us hope that we will not again forget to provide for the future. From a long range view, legal practitioners in your state and our province are almost entirely dependent upon the success or failure of our predominantly farming community, and the annual returns from agriculture, our main industry. It would, therefore, seem advisable for us to assist the farmers in their problems and cultivate a closer relationship between country and city.

Possibly no profession has suffered more in the last decade than our profession of the law. We have no cartel by which to control, nor may we place limitations or restrictions upon our services, such as in many other walks of life.

We have in the main suffered in silence. Much of the legal work formerly done by the lawyer has been diverted into other hands, many commissions and boards, possessing judicial and semi-judicial power and authority, either governmental, civic and community, have been created and are now flourishing entirely without the guidance and benefit of a duly qualified lawyer. We of the law should see to it at all times through our respective associations that properly qualified lawyers are given the first opportunity to fill positions on any of these commissions or boards, which require legal training and skill. In many cases, also, these boards or commissions are not under the jurisdiction of any court, and it is hoped that all future appointments in that respect will be made from the bench.

It may be that we lawyers have not suggested any alternative to the control of such boards and commissions, and it is suggested that, in the future, we study the fundamental reasons or causes for the formation of such commissions or boards with judicial or semi-judicial functions. I believe that we lawyers should carry on an educational program to the public in general, emphasizing that the legal profession, the oldest and most honorable of all professions, is still occupying that high pinnacle of public respect and honor, and will continue to do so. I might, at this time, pay deference and my best respects to those Kiwanians who occupy such high judicial positions of honor in your State, your President, the Hon. Mr. Justice Palda, Jr., of Minot, the Hon. Mr. Justice C. W. Buttz, and the Hon. Mr. Justice James Morris, of Bismarck, member of the Supreme Court of North Dakota, and Governor in 1936 of the Minnesota-Kiwanis District, Kiwanis International, and Hon. Mr. Justice Burr of your Supreme Court.

I had the honor of speaking at a luncheon of the San Francisco Kiwanis Club with the International President of Rotary, Maurice Duperry, of Paris, France, a delightful personality, and who also was greatly impressed with the friendliness of the American people. This occasion was the first time that the two

major service club organizations met in convention in the same city, in the United States, and the President of each was from a country other than the United States, the President of Rotary being from Paris, France, and myself from St. Boniface, Canada. This unique coincident will probably not happen again, and it strikingly illustrates the truly magnanimous generosity and thoughtfulness of the members of these two organizations in the United States, who with 90% of membership are yet willing to confide the destinies of these two extensive organizations to citizens of France and Canada.

Another interesting coincidence is that the feature address at our San Francisco convention was given by the Hon. Burton K. Wheeler, United States Senator from Montana, and I notice that this evening this distinguished gentleman and statesman is also addressing us upon the subject of "The Constitution and the Courts". We certainly enjoyed Senator Wheeler's splendid address at San Francisco and, with you, I look forward to again hearing Senator Wheeler this evening.

I might now be permitted to say a few words in connection with what I might term the larger and broader field of the legal profession, namely our relationship and contribution to national and international affairs in general. We of the legal profession, with others in our two countries, have experienced during the past decade, many reversals in business, which have, to a great degree, reformed and reshaped our respective opinions as to what constitutes in the final analysis, real worthwhile success in life. I might be permitted to offer for your consideration what, in my opinion, is one of the best definitions of success in life I have ever heard.

We in the law are following those who in the early days practiced the law because of the professional interest which they had in that particular profession, and I was very interested in that respect in reading an article by Viscount Snowden recently, wherein he related the affinity which lawyers enjoy in politics, that law in England and the United States has always been considered a stepping stone to politics, and Viscount Snowden pointed out that there are still men in England on the bench and off the bench, lawyers there who are making large incomes, who are quite willing to give that up and accept cabinet positions which pay a small fraction of their usual income. So we in America must remember that although we have given the yardstick to the profession to some extent in the past in the good days, there is yet a background of interest in the law to which the definition of success applies.

I would especially caution our leaders against that arch enemy of mankind, Fear. Someone, sometime, somewhere said "God give us men who know not fear".

There was a time when confidence reigned supreme in our two countries. We were proud of our past, gloried in our present, and looked forward without apprehension to our future. Today

confidence is tethered in the Dungeon of Despair, the Tyrant Fear is sitting upon the throne and we are all lying prostrate before him, afraid to stand erect. The irony of it all is that there is really nothing to be afraid of. We are just as wealthy in this country as we ever were. Everything we require for food, clothing and shelter is around us in unlimited profusion. And what do we require in order to withstand this deadly onslaught to which we are being subjected? Leadership:—brave, devoted, unselfish leadership, more than anything else. Leadership in politics, leadership in economics, leadership in industry, leadership in finance, leadership in the legal profession. We need as never before men without fear in their hearts. Men who believe in themselves, in their country and us. With such leadership the fight would soon be won, and the recession, which after all is based on despair, would vanish as fog disappears before the rising sun. Today as never before our prayer should be, "God give us men who know not fear." Everything which will encourage a more active and healthy interest by the average citizen for the betterment of his particular community is really worthwhile.

It has been said, "The world of tomorrow depends on the man of today" and that "The world must rearm morally". We in the legal profession may help. Apparently democracy is now limited to the three major powers, the United States, the British Commonwealth of Nations and France. There is no difference, in my opinion, between Communism and any other "ism". Both are operated by a dictator through force and compulsion. The difference between Democracy and these other "isms" is that in Democracy one may still think for himself, while in the other "isms" someone always does the thinking for us, and one does what he is told. We lawyers should always be on guard to thwart any encroachments upon Democracy in our two countries, and should also relentlessly instruct, inform and encourage the younger generation of the inestimable value of our Democratic institutions, for there are those among us who are already preaching and teaching otherwise.

Former Premier of Great Britain, Stanley Baldwin, upon his retirement, among other things stated that, although Democracy was possibly the most difficult form of government to function perfectly under all circumstances, nevertheless, with all its weaknesses, it was in every way certainly preferable to Autocracy. A form of government by dictatorship was by far the easiest mode of government, because everyone did what he was told, but in so doing, lost his freedom of action and thought, and, more important, his individualism, whereas in Democracy everyone has, in some small way, a voice in the government of his country. Real Democracy has not yet attained its most perfect state in the world, in my opinion.

There seems to be a constantly growing realization that the nations of the world are in the process of ranging themselves on the side of either Democracy or Autocracy. Unless, therefore, the exponents of Democracy continually exercise the utmost vigilance

and care, and are prepared adequately to defend themselves against aggression by dictator nations, then the future is a very dismal one. Great Britain is spending upwards of seven or more billion dollars as an adequate insurance policy against attack on any of the British Commonwealth of Nations. In this manner of adequate preparedness, and apparently only so, may it be possible to prevent catastrophe which might otherwise be inevitable. Apparently it is conceded that a well-armed Great Britain is the best guarantee of peace in Europe today.

My message to you today is that in every way possible, as members of the legal profession, we should strive to bring about the utmost influence to guard our sacred rights and privileges of Democracy obtained at such great costs by our predecessors. I would also stress the need of constantly educating youth to the advantages of Democracy and its preservation and perpetuation, the primary reason being that since people organized themselves into collective groups, they have from time immemorial striven to obtain complete harmony in human relations. At certain stages of our civilization this worthy aim has almost reached attainment, only by intolerance, hatred, greed and distrust to be once again retarded. Many have spoken on this subject and it is receiving constantly greater prominence everywhere. It has so, because the inherent and fundamentally basic reason for the existence of our two great countries, is founded upon the spirit of international amity and good will I think it is unquestionable that in all the world there is certainly no better example of international good will as there is between the United States and Canada. I believe the legal profession has been a large factor in creating and perpetuating this good will and harmonious international relationship between our two countries. The United States and Canada are giving a demonstration to the world of how neighboring nations may merge differences and get along on friendly terms. It is the spirit of brotherhood and not material wealth that makes a nation truly great. It is love of country that makes one a patriot, and patriotism is best displayed by promoting the peace and welfare of one's country while fostering all the movements that make for international friendship.

What of the future? My message to this Association and kindred organizations is to actively combat those agencies and forces seeking to destroy Democracy by use of unconstitutional methods. Our two great countries are possibly the youngest and greatest exponents of Democracy in the world today. Our pioneers bequeathed us a truly rich inheritance—freedom of thought, freedom of speech, freedom of religion, freedom of pursuit of personal happiness, a land rich in natural resources, a standard of living second to none. Let us consider ourselves in effect special trustees of this great legacy to preserve and perpetuate these blessings, so as to be able to pass them on for the enjoyment of our successors.

It is said that recovery is possible only through International cooperation, otherwise millions unemployed will remain unem-

ployed. We should all render our contribution. Let us not hesitate but continue. Permanent retention of Entente Cordiale between the United States and Canada is a living monument of good will and harmonious relationships to the world today. We should strive constantly to thwart all undemocratic influences and sponsor good will, harmonious relationships and the practice of the Golden Rule. Civilization as we know it and desire it will apparently only be saved through united cooperation of all democratic, peace loving people who know and believe in tolerance.

Tolerance has been defined in different ways,—“The most lovable quality that any human can possess is tolerance. Tolerance is the vision that enables us to see things from another’s viewpoint. It is the generosity that concedes to others the right to their own peculiarities. It is the bigness that enables us to let people be happy in their own way instead of ours.”

Our first problem, as we see it, is not to try to humanize war, which is impossible, but to discredit those persons who think that such a thing is possible. That we have this problem on our hands is the most melancholy commentary that can be made on contemporary European politics.

A leading statesman has said that “War is World’s Greatest Crime.”

In the International Peace Garden on the boundary line between North Dakota and Manitoba, in the Turtle Mountains, Kiwanis has erected a Peace Plaque, at which I presided in the presence of many thousands of Kiwanians and friends. In the natural amphitheatre there in the open air, in the presence of those thousands of people, it was a wonderful tribute to the worthwhile effort of Mr. Stormon and his companions, Mr. Danielson, of Minot, and others, who worked so unselfishly to bring this project to the extent that it has developed today. I had the pleasure of making a tour through New Jersey. We started at Summit, over the New York border, and went down through six divisions of New Jersey, and at one of these divisions I met the International President of the Peace Garden, and who wished me to present greetings to John Stormon if I came across him in the next few months. He is a resident of New Jersey and he told me that the Peace Garden will grow bigger and better as the years go by.

We should strive for a permanent peace. We have lots of manufacturers making war machines and war munitions, and we have technicians who are giving all of their time toward improving defense and combat machines of war, but have we anyone in Ottawa or in Washington who is planning a permanent peace? I have not hear of any such department and I make bold to suggest that a Department of Peace be established, run by able, reasonable men who may in their due time see to it that if war may be prevented that it will be, and particularly today to see that everything that may be brought to bear against war may be brought.

Sir George Paish, Governor of the London School of Economics, said “Narrow nationalism is destroying the world today”; that

"Wise nationalism is internationalism." Narrow nationalism is a false and vicious theory. It is bringing the world to ruin. Is it not time we looked for the real cause of our trouble? Everything showing a nationalistic policy is the wrong policy. I appeal to you to reflect on the situation. We should undertake to the best of our ability to assist in this altruistic project,—the creation of International Good Will.

"Canada has something of vital importance to contribute to the future peace of the world by keeping her foreign policy closely in line with the policy of the United States." Thus said the Rt. Hon. Lord Marley, Deputy Speaker of the House of Lords, at a recent Canadian Club luncheon. "I don't say we will have war tomorrow or next week, or even next year," he said, "but only in war could Germany's present organization and policies come to fruition, with attacks on either her European neighbors or the British Empire, or both." In the face of this threat there was one hope, the building of a united front of all the democratic nations of Europe and the British Empire. If the United States could be brought into cooperation with this democratic front, to which her democratic feeling naturally would make her sympathetic, the possibility of peace would be greatly increased. To Canada, as closest neighbor of the United States, and senior Dominion in the British Empire, fell the historic duty of seeking the United States' cooperation. Toward this end, she could help best by continuing to keep her foreign policy similar to that of the United States.

In conclusion, I hope I have not wearied you. May I suggest that we keep brightly burnished those enduring links of that golden chain of genuine friendship, tolerance and harmonious relations, stretching along and uniting the borders of our two great Democratic Nations, the United States and Canada,—the youngest in worldly experience, but very possible God's instrument through which by their shining example of complete harmony this weary world may yet find that abiding faith and ultimate peace which is the real desire of all peoples of all nations, if given sufficient opportunity. Some ancient scribe once said,—"There will be peace, harmony and prosperity when the peoples of the world learn to walk together, talk together and work together." Thank you.

PRESIDENT PALDA: I am sure we all appreciate the great message and wonderfully delightful talk by Mr. Taylor, and it will start us studying along the lines he suggested.

JUDGE KNAUF: Mr. President, I move you that the address of Mr. Taylor be transcribed in our book of records and placed permanently in our files, and that we make the honorable gentleman, our Canadian friend, an honorary member of this Association.

JUDGE ELLSWORTH: I second the motion.

PRESIDENT PALDA: Gentlemen, you have heard the motion that the address of Mr. Taylor be made a part of our permanent

records and that Mr. Taylor be made an honorary member of the State Bar Association of North Dakota. All those in favor will signify by rising. The response is unanimous and the motion is carried.

MR. TAYLOR: I assure you, Gentlemen, that I consider this is a great honor. Will you be so good as to forward a copy of the motion to the Manitoba Bar Association?

PRESIDENT PALDA: It is ordered that the stenographer transcribe the motion and the result of the vote taken and furnish it to the Secretary in due course, and that the Secretary forward it to the Bar Association of Manitoba.

Gentlemen, I made a special order of business this morning the report of the Committee on Recodification. We will now take that matter up. Is the report ready? Gentlemen, I wish you would all give this your sincere consideration.

MR. BANGERT: Your President appointed a special committee last night to consider further the matter of presenting a bill for the Recodification of our laws, and the report we wish to make is this:

REPORT OF COMMITTEE ON CODE REVISION

To The North Dakota State Bar Association:

Your special Committee upon Code Revision, appointed by the President of the Association, beg leave to report:

That we submit herewith for the consideration of this assembly a proposed Statute very similar in terms to an act passed by the Legislature of our Sister State of South Dakota; and we request that every member of the Association get back of and put forth every possible effort in securing its enactment at the forthcoming session of our own Legislature.

Respectfully submitted,

PHILIP R. BANGS,

C. J. MURPHY,

CHARLES G. BANGERT, Chairman,
Special Committee.

Before reading the bill I want to say this. I hope every lawyer will feel that it is his duty to get out and try to get this act across. I hope you lawyers will not be like the good people that they tell about, after six years of drouth the ministers in the community finally concluded that they had better get together and pray for rain, so all the people got together. Lead by their various ministers they started out to pray for rain, but the only fellow who had confidence enough in getting results was a little boy about six years old and he came to the meeting with an umbrella. Now I hope you lawyers will not go to that meeting unless you carry an umbrella with you. They say a pessimist is a fellow with two propositions and he accepts

both of them. Let's not be pessimists; let's see what we can do. I am going to read the Act as it is proposed, omitting the preliminary part.

BILL PROVIDING FOR A REVISION AND CODIFICATION OF THE LAWS OF NORTH DAKOTA

An Act entitled, An Act Providing for the Revision and Codification of the Laws of North Dakota; Assigning to the Supreme Court Certain Powers and Duties Relating Thereto; Creating a Code Commission and Defining Its Powers and Duties; Authorizing the Expense Required for a Revision of the Rules of Court; Appropriating Money for the Purpose of This Act and Declaring an Emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Code Commission Created. That the Supreme Court of North Dakota is hereby authorized and directed forthwith to select and employ not more than three persons resident of the state and learned in the law, to be known as a Code Commission.

Section 2. Duties of Code Commission. It shall be the duty of such Commission, acting under the supervision and direction of the Supreme Court, to revise, annotate, and index the laws of this state, to continue to date the annotations of the Constitution of this state and to prepare, annotate, and index a complete set of rules of practice and procedure for all the courts of this state, including all proceedings in which quasi-judicial functions are exercised by administrative offices and departments of the state government and also including rules and regulations for admission to and disbarment from the practice of law, and to make a report as herein required.

Section 3. Powers of Code Commission. Such Commission shall have the power and it shall be the duty of such Commission in said work to eliminate all statutes that have been repealed either directly or by implication, or that are inoperative or that are special and limited in the nature, to reconcile all inconsistencies, to eliminate duplication, to eliminate or restate all useless, contradictory or confusing words and language, to incorporate all amendments and statutes of general application, to harmonize the statutory and the declaratory law so far as possible, and to revise all laws wherever it may deem it necessary to make a perfect, complete and consistent Code of Laws and also to draft suitable Rules or Practice and Procedure as stated in Section 2 hereof.

Section 4. Preparation And Adoption. The work of said Commission and the preparation and arrangement of said Code and Rules shall be so done, arranged, printed and bound in such an approved and modern manner and form with the purpose and to the end of producing and securing a Code of Laws and Rules of Practice and Procedure that will best and most economically serve the people for a maximum period of time. The proposed code of

political, criminal and substantive law shall become effective when enacted by the Legislature; and the said Rules of Practice and Procedure and of Admission to and Disbarment from the Practice of Law shall become effective when promulgated by the Supreme Court.

Section 5. Aid To Commission: Supervision of Court. Said Commission, under the supervision and control of the Supreme Court, is hereby authorized and empowered to employ such technical experts and clerical assistants as are necessary to the proper discharge of the duties imposed by this Act. The Supreme Court, in its discretion, may designate one or more of the District Judges of the state to assist said Commission, and in such event such Judge or Judges shall receive no salary or compensation from the funds appropriated by this Act other than their necessary and actual traveling and living expenses while on such duty away from their place of residence but shall receive their judicial salaries and expense allowance. The Supreme Court shall determine the compensation of all persons appointed or employed, except as herein provided, and have power to discharge any commissioner or employee, and to fill any vacancy in the Commission or Staff. Said Commission shall be provided with suitable office space and equipment in the state house and shall be provided with all necessary copies of the Existing Codes and Session Laws, and may purchase all necessary office supplies through the division of purchases and accounts.

Section 6. Completion Of Work. The work of said Commission required to be done under this Act shall be done as quickly and expeditiously as possible, commensurate with the best results to be obtained. Provided, however, that the report of said Commission including its proposed Code of Laws and Rules of Practice and Procedure shall be completed and said report completed and available for filing and delivery, by copy thereof, to the members of this Legislature and to additional members elect of the Legislature to convene in January, 1941, not later than December 1, 1940. If the proposed Code is enacted and rules promulgated, said Commission shall continue until such Code and Rules are printed and bound according to contract; provided, further, that if in the opinion of the Supreme Court it is feasible to have the acts of the Legislature of 1941 included and incorporated into said Code and the delivery of bound volumes thereof be not thereby delayed beyond June 15, 1941, such Commission may be continued to include such work.

Section 7. Oath Of Office. The members of said Commission before entering upon the duties of their office shall subscribe to an oath of office to be prescribed by the Supreme Court and said oaths of office filed in the office of the Clerk of the Supreme Court.

Section 8. Contracts. The Supreme Court shall have the supervision of all work required to be done under this Act and the disbursement of all money appropriated by this Act. It shall also have control over the making of all contracts, and no contracts

shall be made or be binding upon the State or the Commission unless and until it has been reduced to writing, signed by the parties and approved by the written approval of the Supreme Court by and through the Presiding Judge thereof.

Section 9. Report. Not later than January 1, 1940, the Code Commission shall determine upon a style of printing and binding to be used in the Code and Rules if adopted, and it shall advertise for bids for the printing of the report to be made to the Legislature of 1941. Such report shall contain or have appended the proposed Code of Rules, with temporary bindings and shall contain a table indicating the place in such proposed Code and Rules where the existing laws may be found, and indicating the existing laws which are amended or repealed. The advertisement for bids for the printing of such report and for the binding and sale of said Code of Laws and Rules of Practice and Procedure when and if adopted, shall be made in four principal newspapers of the state once a week for four successive weeks before the letting of a contract, and in such additional manner as the Court may determine. The Code Commission shall accept the lowest bid which, in its opinion, is the best bid consistent with quality of printing, paper, binding, expeditious service and to the best interests of the state and which is approved by the Supreme Court and such printing is declared to be of a special nature and is not subject to the provisions of the printing laws of the state except as the Supreme Court may determine.

Section 10. Appropriation. There is hereby appropriated for the purpose of this Act the sum of \$50,000 which shall be known as the Code Revision Fund, which shall be disbursed upon warrants executed by the Chairman of the Code Revision Committee and by the Chief Justice of the Supreme Court.

Section 11. Whereas the work involved in carrying out the provisions of this Act is of such complexity that more than eighteen months of time may be required therefor; and a prompt revision of the laws of this state is necessary for the immediate aid and support of the state, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

Now, Mr. President and Members of the Bar, just briefly—and I am sure there are other members who know the details a little better than I do: South Dakota adopted a statute almost word for word as I have read this to you and proposed it here. They have appropriated \$50,000.00 and the report is that they will have some money left after they get the work completed. The Codes will be sold at \$15.00 or \$16.00 a set; the plates will all belong to the State of South Dakota, and when they get ready to use some more Codes they can print them from those plates. I am satisfied from the experience I have had with our legislature that if we do as I say, go to that meeting expecting that our prayers are going to be answered, and carry with us the umbrella, there won't be any question at all about getting a new Code; and as the President said he has had some circu-

lars struck off showing the hopeless condition our laws are in and comparing them with the State of Iowa, where they have one volume and we have six or eight. The question is, are we going to be pessimists and take both horns of the dilemma, going in the wrong direction, or are we going to believe in our prayers and get out and put the thing over. I move you, Mr. President—

MR. WEHE: Before the motion is put I would like to rise to a question of inquiry. The report of the Committee on Jurisprudence and Law Reform runs along the same lines this bill calls for. Judge McKenna is not here and I question whether or not it would be proper to have the record show that this report had been filed and accepted before the Act be submitted for approval.

PRESIDENT PALDA: I think you are probably correct. The report has been read. Has it been acted upon?

MR. BANGERT: It was to be left until later. Mr. President, may I withdraw my motion and move that this report be made a part of Judge McKenna's report and then adopted as a whole? Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that this report be made a part of the report of the special committee on Recodification, and a motion is now made that the same be adopted as a whole.

MR. WEHE: I suggest that before we take any further steps that we had better discuss this on the floor because it is a very serious proposition that we are taking up here, the recodification of the laws of this state. From 1913, when we had the last compilation of our laws, until 1938 is a big task, and there are some things that our attention should be called to before we take this up and consider it by this body. I shall proceed by casually reading over this bill here to point out what some of the defects that are shown up are, as I look at it, and I would like to have them taken in the record and then I will enlarge on them. The first one is that this Act proposed is for the recodification of our laws, and as drawn the Act is too all-inclusive; (2) That the Act as drawn is unconstitutional; (3) The legislative powers that are given in it to this committee and also to the Supreme Court are unconstitutional, in my opinion, and as a member of the bar I am expressing my opinion freely on the floor of the convention; (4) The Bar Association should have something to do with the appointing of this committee, if you please. It affects us very seriously, and, if we are going to have a recodification we should have a right to suggest nine members and let three be taken, and have something to do with the revision of the laws, and then the power shall be given the Governor to appoint three members from the nine suggested, or if there are five, from the fifteen selected by this organization; (5) That the expenses provided for, \$50,000.00,—to delegate that and turn it over to the Supreme Court, in my opinion, and allow what to disburse those

funds, would be unconstitutional when we have other state departments which can do it legally. And I say, taking up some of these things in the law, as I read it, coming back to number one, it is too all-inclusive and not specific enough—the appointing of three commissioners that you are going to allow the Supreme Court to appoint. I wish to call your attention to that so that you may go on from there and consider it from that viewpoint. It has got to be more definitely drawn than it is before it will ever get my support. Second, I said it was unconstitutional under Sections 96 and 119 of the Constitution,—giving the Supreme Court the power of appointing other boards and members, except which are judicial in nature—and, not only doing that, under this law it gives the Supreme Court supervisory powers over the Commission, and the action of the legislature shall be subject to their final analysis. That is what it means, if it means anything to me, and the lawyers of this state. Now, stop and think about that. One section says the Supreme Court shall have no power except as designated in this section of the Constitution, and shall hold no other offices but as Supreme Court Judges. If I understand the Constitution that is what it says, except as provided in the Constitution. Then go to Section 119—that any other office held and any and all offices held by Supreme Judges shall be void. Look under Miscellaneous Section of the Constitution. Many lawyers stop at No. 96, and do not go to 119, where it says that any other office shall be void, or any other appointments or powers assumed shall be void. That is what it says, if I understand English. I have been going into some of these constitutional questions quite thoroughly, and I am willing to go on record before this Bar Association and tell them what my views are. Those things should not be turned over to the Supreme Court. Haven't we got any brains besides the Supreme Court to codify these laws? Let's not burden down the Supreme Court with all these side duties and bring them into politics. I have lived in Bismarck for nineteen years, and I have seen this thing brought up time and again,—give the Supreme Court this and give the Supreme Court that. We want to keep the Supreme Court free from politics. That is what I have been fighting for. Keep them out of politics, so they can sit on the bench there and hand down unbiased opinions without catering to this or that clique. That is what I don't like about it. And I have gone over quite fully the laws that have given the Supreme Court powers. Rep. Godwin asked me what the constitution said on a certain law; they were appointing a member of the Supreme Court on a board, and I told him it was unconstitutional, and he went on the floor of the House, and read the section of the constitution, and the law was withdrawn and changed. That is the way they put through these things. I am going to object to this thing from the first to the last because it is unconstitutional, and it isn't right to burden the Supreme Court with these other duties or to give the Supreme Court power to act on boards or to assume those powers. There is a bunch of lawyers coming into this Bar Association who will fight for the freedom of the lawyers, who will have something to say about these things, and I

am one of them. I will go on record as one of them. We have sat back for years and let the minority run things; we are not going to do that any more. We are going to get into the open and fight for our rights, as well as those few, because we are citizens with rights, as well as lawyers. When the law gives us these rights, the constitution says so and so, let us live up to them. I do not presume for a minute that these other lawyers are so ignorant they don't know these things are unconstitutional. They are trying to put something over. They haven't been to the legislature for nothing. These interests want to control; they want to control this codification. You might as well drag the skeleton out of the closet. There are lots of others that you can appoint on this Code Commission, and the Governor can make the appointments. But here is the point, remember: If you give power to the Supreme Court to appoint a board of three, and that the Supreme Court appoints a Commission of three, and that Commission shall designate two lawyers, if you please— (interrupted.)

MR. BANGERT: Mr. Wehe, just a minute—

MR. WEHE: Just a minute—I have the floor. I will be through in about two or three minutes.

MR. BANGERT: Will you yield to a question?

MR. WEHE: No, I want to finish first. I know your tactics. I want to finish.

PRESIDENT PALDA: You will finish in two minutes. Our time is limited.

MR. WEHE: In regard to this proposed law, the proposition of turning this over to the Supreme Court. If this Court can legislate and revise the law, and the Judges of the Supreme Court shall have revisory powers and control that Code Commission, pay its expenses, expend this money, what use is there for the Legislature passing on it, after the Supreme Court Judges legislate and make the laws under the Act? They want to take the Legislative power away from us. They have got the judicial power and let us keep them Judges, keep them out of politics; don't give them any more of these side issues. Let them hand down unbiased decisions. That is all I am asking for.

MR. CASEY: Mr. President, I think it is conceded by all that we need a revision of the Code and I believe that some of the conclusions of the gentleman who just had the floor may be correct, but this is not the Legislature. We cannot legislate here. We can only recommend, and I believe a broad recommendation under the report of the Committee that revision be had, should be made, and then the bill will be taken up by the Legislature, and there it will be revised, drawn and passed, and then perhaps there will not be so many objections.

MR. WEHE: I am in favor of revision, Gentlemen. Get that. And we all want to get this on record here to call out defects in the bill - - -

PRESIDENT PALDA: Just a minute. Mr. Casey has the floor.

MR. CASEY: Gentlemen, I think the thing to do is to adopt the report of the Committee. Then we can go down there and tell the Committee in charge of the bill in the Legislature what we think is right.

MR. BURTNESS: I ask for recognition for the purpose of asking some questions so that I may vote intelligently on this report. It is a matter I have not given any study to at all. If I may have Mr. Bangert's attention.

MR. BANGERT: Yes, sir.

MR. BURTNESS: Now, if I understand it correctly, this commission that will be appointed will of itself have no Legislative power.

MR. BANGERT: Absolutely none.

MR. BURTNESS: Whatever work the commission does do with its experts, etc., would be worked into a volume, and reported back, the theory being that the Legislative Assembly of 1941 would enact the entire Code as a bill. Is that correct?

MR. BANGERT: In other words, to make it simple, the commission would do the work, the Supreme Court will approve the work, and it will be presented then to the Legislature for enactment as the Code.

MR. BURTNESS: If that is the case then I am forced to join the viewpoint of the gentleman from Burleigh, Mr. Wehe. I think we are attempting to go too fast. I do not care whether you call it revision or codification or compilation, so far as that is concerned, I feel I would be greatly aided by a compilation of some sort so I could go through one or two volumes instead of ten or eleven, but certainly I do not believe you can hire experts or get attorneys within the State of North Dakota or elsewhere who in the period of fifteen or eighteen months can go through all of the laws that have been enacted by the Legislature of this state over a period of how many years?

PRESIDENT PALDA: Since 1913.

MR. BURTNESS: I think it is forty-three years. I think since 1895.

PRESIDENT PALDA: 1895 is right.

MR. BURTNESS: In other words, so far as the Legislative act is concerned, they would first have to go back to 1895 and then you have forty-three years of its work after that to cover. It would mean almost endless revision. It would mean amendments and eliminations, and obviously the Legislative Assembly in 1941 will have neither the time nor ability to pass on the work that has been done before then. If mistakes are made, and it is beyond human intelligence to assume that there won't be many

mistakes made, that Code will be adopted as a law. You say it is going to be approved by the Supreme Court before that?

MR. BANGERT: Yes, sir.

MR. BURTNESS: I agree with Mr. Wehe that that is absolutely wrong. If the Court is under any of the provisions of the act to be responsible for any of the work of the commission. Personally I would be very happy to see the Supreme Court employ and appoint the commission. I think it would be a fine thing, if it is permitted by the Constitution. But I think their responsibility should end with that appointment. I do not think it is within the theory of our government or any of the principles of our government to have the Supreme Court, in addition to appointing the commission, pass upon the correctness of the work of the commission. Why, good Lord, if that is done - -

PRESIDENT PALDA: It does not pass upon the correctness.

MR. BANGERT: It merely supervises the work.

MR. BURTNESS: Mr. Bangert in answering my question said they would approve it.

MR. BANGERT: That is a mistake.

MR. BURTNESS: It would pre-judge every lawsuit that would come before it. You can't tell me that anybody can prepare a new Code going over a period of more than forty years without at least—I don't know whether you would call it making mistakes or not—but without, in any event, coming in with a new statute that, by the error of a stroke of a pen, would change the property rights of the parties. True, the property rights of the parties before the Code was changed would not be changed, but who of you lawyers would be able to tell beforehand in how many places the law had actually been changed, and who would know what the different property rights might be in the future. And I am wondering, ladies and gentlemen, whether the task at the beginning is not so big but what we ought to think in terms of a convenient compilation, in terms of a commission whose job it will be, and then we could get the work done, and we wouldn't have to wait for the Legislative Assembly. Let us get a job of compilation which will be helpful to everyone, but which will not be a stroke of the pen or the act of an intelligent or unintelligent or informed or uninformed Legislature. At least let us not rush off on it. Let us have some compilation which will avoid those tremendous difficulties in the future. If we do, then it seems to me that if we get the Legislature with us that work will all be done, it will be a Code, it will be useful, the volumes will be used by our people, by the Courts, and in those cases where a lawyer or someone else investigating preceding statutory enactments finds it is not in harmony with what the law actually is, then it will be corrected from time to time as the case may be. But, in any event, you won't be relying upon the work of two or three men, experts or not, ratified by a vote of the Legislature. Why, gentlemen, I think it would take ten years to do that kind of work well, if you

want to actually codify it and expect the Legislature and Governor by a stroke of the pen to enact the Code into law and wipe out every statute we have had. Let us hesitate, let us talk it over; it is too important. I do not agree with Mr. Casey, who says all we have to do is make a general recommendation to the Legislature. Let us not make a recommendation so hastily that we will regret it later.

MR. BANGERT: I wonder if I made myself clear - -

PRESIDENT PALDA: Gentlemen, I am forced to limit these talks to three minutes.

MR. BANGERT: Mr. Burtness, it would not only be ten years, it would be ten years before we got started. I have attended sessions of the Legislature. If the lawyers don't know what they want, God knows the Legislature isn't going to give it to them. The South Dakota people have worked it out, have not only passed the bill, but are ready to present their Code, with money loaned out of their appropriation, and every lawyer in South Dakota that I have talked to is more than pleased with the results. The law provides that this shall be done by a commission under the supervision of the Supreme Court, and I want to tell you that if this commission were composed of Mr. Wehe, Mr. Burtness and Bangert, and presented to the Legislature without the Court's approval, we would not get to first base. We must have some Court approval, and South Dakota decided the Supreme Court was not to pass upon the laws but to pass upon whether or not the revision had been properly made. I will say to you that every Legislature, including those you and I were members of, made laws that should never have been passed, and perhaps there will be laws in this Code that should not be passed, and the Legislature can make corrections as they have been doing for years. I say, if you fellows want to start a fight on it, you won't even get started in the next ten years, to say nothing of getting the revision.

MR. BURTNES: Has South Dakota adopted the Code?

MR. BANGERT: They are ready to pass it.

PRESIDENT PALDA: Mr. Bangert has the floor.

MR. BANGERT: They may not get it passed at all, but it is certainly an effort in the right direction. I would like to see this Association take some action, some definite stand, and if we are going to fight on it, perhaps we can all start to present bills, and then we will - -

MR. WEHE: I move a substitute motion to the other motion, which has been made that the report of the special committee on Revision and Codification, etc., be received and filed as a substitute.

MR. BURTNES: Second the motion.

MR. CUPLER: Mr. Chairman, I am impressed with the wisdom of the remarks of our President in his address that we

cannot do everything in one year. You know and I know from experience in this Association and other organizations that progress is only made by continuous effort. Of course, you must get started in the right direction. One of the major objectives of this administration has been the revision of the Code, not a compilation but a revision. My recollection is that we have not had a revision since 1895. Let us cast our thoughts back over the last fifteen years or so on the work of this Association along that line. That 1925 incident is very vivid in my mind. This Association went on record in favor of a revision of the Code. The matter was presented by the Legislative Committee to some Committees of the Legislature and, omitting details, the result was that the Legislature adopted the recommendation of this Association, that a supplement to the Compiled Laws be provided for. That work was done very largely through the labor of Mr. Justice Johnson, then on the Supreme Court, other members of the Court, with the staff of secretaries in the Supreme Court, assisting. It was annotated, it was thru the labor of this Association in 1925 that you gentlemen and the people of this state received, you might say, half a loaf of what you requested and needed at that time, namely, a supplement to the 1913 Compiled Laws. That has been a great help, but it was not the thing to do; we knew it at the time; but we took what we could get. I am convinced that this Association will accomplish nothing of any great importance or anything of lasting benefit to its members unless we act unitedly, and refrain from quarreling over details. The recommendations of the committee are nothing to quarrel over. If there are any provisions of the bill that are not satisfactory, the committee to which it is referred in the Legislature can certainly correct it. It can be ironed out before being presented to the Legislature, and I know a Legislative committee is intelligent enough to make whatever revision is necessary to get it through the Legislature. Manifestly we ought to agree. I plead for cooperation. When President Palda first suggested this some months ago, I know our local county association discussed it and passed a resolution approving it, and we promised him we would get back of it. Let us not disagree on the mechanics. We all agree that there should be a revision. A compilation means nothing but a new index. Let us have a revision. Then, as the chairman of the committee suggested, if there are laws passed by the Legislature that should be amended and changed, that will follow just the same as the others. Let us get together and not split on fundamentals.

MR. PAUL CAMPBELL: I do not believe this body of men should discredit their influence with the Legislature. I believe the legal fraternity, if it will exercise it, does hold that position of public prestige and public influence to which it has long been entitled. I do not believe in a mere compilation. I believe in a revision of this Code. There may be some slight criticism; perhaps it should come from the members of the Supreme Court rather than from us. I regard the matter of a mere compilation or codification as absolutely foolish for this reason: That in the

last year I have personally worked and made a codification, or attempted to, of the tax and revenue laws of this state. When I got through I had nothing, because they were so inconsistent, so confused, so irreconcilable in their terms and language that it was almost impossible for me to finally determine them even though I had them codified and each provision brought definitely before me. I, therefore, suggest that this body get behind and use its influence, and I am satisfied it will win, for a revision of the Code, and I do not believe it will take any ten years, or any longer time than you have allotted. I thank you.

PRESIDENT PALDA: Gentlemen, you have heard the motion.

MR. WM. G. OWENS: What is the parliamentary situation?

MR. WEHE: I arise to a point of order.

MR. OWENS: May I ask what the original motion is and what we are substituting?

PRESIDENT PALDA: The original motion was on the adoption of the report of the committee, together with the report of the committee on Revision, at this time the adoption of the recommendation of the special committee and the motion. The recommendation of this committee is that we get behind and propose to the Legislative Committee, and they in turn propose to the Legislature, a law similar to the South Dakota law under which they revised the Code of South Dakota. This is on the recommendation of the Recodification Committee and the Committee on Jurisprudence.

MR. WM. G. OWENS: I understood the original motion carried a substitution of a substitute motion, namely that the report of the committee be filed and approved, the recommendation of the special committee. Am I wrong on that?

PRESIDENT PALDA: That is the original motion.

MR. WM. G. OWENS: The substitute motion is that it be filed?

MR. WEHE: That it be received and filed and that it isn't subject to amendment.

MR. WM. G. OWENS: Then, Mr. President, I move that the substitute motion be laid on the table. Seconded.

PRESIDENT PALDA: Gentlemen, the motion before you is that - -

MR. BURTNES: If it was laid on the table, would not that lay the whole subject on the table?

PRESIDENT PALDA: I think that may be true.

MR. WM. G. OWENS: My motion is that the substitute motion be laid on the table, which is not a part of the original motion, and, if I understand anything about parliamentary law, the motion is in order.

MR. WEHE: I call for the substitute motion. They are out of order.

PRESIDENT PALDA: I am going to put the substitute motion. The motion before you is that the recommendation and the original motion, together with the recommendation and the resolutions of the committee, be received and filed without any action. All in favor say aye. Contrary the same. The noes have it.

MR. BURTNES: May I now make a substitute motion?

PRESIDENT PALDA: We are on the original motion now.

MR. BURTNES: I arise for the purpose of making a substitute motion.

PRESIDENT PALDA: All right, make your motion.

MR. BURTNES: I move that the reports be referred to the incoming administration, officers, and the Executive Committee, with the request on the part of the Association that it continue its work toward a revision of the laws of this state in the most practical manner they can find. The sense of the motion is that they continue with the work and bring the matter before the Legislature. My sole purpose here is this: That we do not approve every single word and every single section in the proposed bill as being the very last thing in this piece of Legislation. I move that this be referred to the officers and Executive Committee elected here tomorrow and that it be the sense of the Bar Association that the incoming administration be authorized and instructed to do everything within its power to bring about, at the earliest possible moment, a complete and satisfactory revision of our laws.

JUDGE ELLSWORTH: I second the motion of Mr. Burtness.

PRESIDENT PALDA: You have heard the substitute motion as made by Mr. Burtness and seconded by Judge Ellsworth. All in favor say aye. Contrary the same. The substitute motion is lost. I will now put the original motion with which you should be acquainted by this time.

MR. WEHE: State the original motion, please.

PRESIDENT PALDA: It is the one you objected to, Mr. Wehe. All in favor of the one Mr. Wehe objected to will say aye. Contrary the same. The ayes have it and the motion made by Mr. Bangert is carried and adopted.

Now, Gentlemen, I am sorry that we have been delayed because we have on our program something of great interest to us.

MR. STUTSMAN: May I rise to a point of information. What is the situation now?

PRESIDENT PALDA: The incoming officers and Executive Committee will name a Legislative Committee and it will be taken care of by such committee.

Ladies and Gentlemen, it is with a great deal of pleasure that I introduce a man, whom I am satisfied, has something interesting to discuss with us. We have with us today, the Hon. W. H. Drane Lester, who is connected with the Federal Bureau of Investigation, at Washington, D. C. He is a man with a record as an instructor lawyer, and an officer, and I am sure we will be more than pleased to hear from him on the latest developments in that department of our government. Mr. Lester is a Major in the United States Intelligence Department of the United States Naval Reserve Corps. He is, at the present time, carrying on the instruction of men in three different training schools. He is not only efficient and proficient along that line, but is a lawyer of high standing, carries many degrees, from the University of Mississippi, Oxford University and the University of Tennessee. We are very fortunate in having him come through the courtesy of the Federal Bureau of Investigation, which is under the direction of J. Edgar Hoover.

ADDRESS ON MODERN TRENDS IN CRIMINOLOGY

MR. LESTER: Mr. President, my fellow lawyers: Before taking on excessive weight I played professional baseball. I well remember that seventh inning stretch, and before I start talking let's all get up and try it.

I am glad to be here this afternoon and have an opportunity to speak briefly to you about the biggest business in the country. It costs \$15,000,000,000.00 a year, the biggest single business in the country today. If you are a member of the average American family of four persons, you are paying a tribute to this business, and that is the subject I want to talk to you about this afternoon. I have so many things I want to tell you about this biggest business in the country today.

(The address comprised thirteen pages of closely-printed matter, and because of space limitation, the Executive Committee decided only a summary should be carried in Bar Briefs.—Ed.)

As stated by the Major, The Federal Bureau of Investigation has primary investigative jurisdiction, therefore, his subject naturally divides itself in three parts;

1. The selection and training of law enforcement officers, particularly how we train the investigators in our organization.
2. Our identification activities.
3. The increased use of criminological laboratories in modern scientific crime detection.

As developed in the address, the crime problem in the United States differs somewhat from those existing in most foreign countries, particularly from a geographic standpoint. Contrary to popular belief, FBI does not place one of its Special Agents on the trail of a criminal to chase that criminal all over the United

States. Theoretically, that is fine; but practically it is impossible. They have only 660 Special Agents who are responsible for the welfare of approximately 130 millions of people in connection with the Federal crimes they investigate, and who must cover a total geographic area in excess of 3,619,000 square miles. To be able to handle 22,000 investigations every year, it is obviously necessary to have a highly mobile force operating through a thoroughly organized and carefully coordinated system of investigation. To accomplish this, they have 45 field divisions, located at strategic points throughout the United States and in Alaska, Puerto Rico and Hawaii. If the work is comparatively light in the district covered by the Miami, Florida, office, in the extreme southern portion of the United States, and comparatively heavy in the New York area, they shift their Agents from the South to the East, as the occasion demands. Of if work is particularly heavy in the Seattle, Washington, district and comparatively light in one of the Mid-West districts, they shift Agents from the Mid-West to the Far West.

A Special Agent of the organization today must be between 23 and 35 years of age, of unimpeachable character, since he is investigated almost from the cradle up, and must have a law degree from a recognized law school or be an expert accountant. In addition to these qualifications men are preferred who have had at least two years experience in the business world. However, there is a third alternative, which is regardless of the fact that an applicant is not a lawyer or an expert accountant, he will be given serious consideration for appointment as a Special Agent if he has had outstanding practical investigative experience.

Since July, 1935, there has been instituted by the FBI the National Police Academy, designed to give special training to outstanding local law enforcement officers from all over the United States and in this Department several training classes have been conducted under its supervision. The results have been outstanding, as recognized by promotions, in which some of such officers have been placed in active charge of training school operations. The Major went into detail in regard to the training of their investigators and the history of their successful operation. They have drawn their operators from many professions and businesses.

They have also largely developed the finger print system, which they have proved to be a very successful method of detecting criminals, and the Department already has on file over eight and a quarter million sets of finger prints, and their records show that only an average of five minutes time is necessary to locate any set of finger prints. It is now conceded that this method is much more infallible than the Bertillon system, although that is an assistant in many cases. It was interesting to note that the FBI exchanges finger prints with seventy-five foreign countries and six U. S. territories and possessions. This international exchange has proved very practical. In 1910 a life prisoner escaped from Leavenworth Penitentiary by commandeering a railroad en-

gine and driving it to freedom through the penitentiary gates. One of FBI jobs is to catch escaped Federal prisoners. A case is never closed on an escaped Federal prisoner until the man is caught, or until it is proved definitely that he is dead, preferable by his finger prints. Twenty-five years went by. In the fall of 1935, a man was arrested in Alberta Province, Canada, for shooting game out of season. Canada is one of the 75 countries which exchange finger prints with us. The Canadian officials sent his finger prints to Washington and there, a quarter of a century later, was found our escaped Federal prisoner through his finger-prints.

In his discussion of modern scientific crime detection methods he told the story of a well-known police chief of the West Coast concerning an experience he had during the early days of his criminological laboratory. A lady came into his department one day greatly perturbed. She brought with her a package which she stated contained a bomb someone had sent her. The chief, after taking the necessary precautions, had the suspect package examined by means of his photographic X-Ray equipment and informed the lady that the package contained nothing more harmful than a box of chocolates. She then conceived the idea that someone was trying to poison her. The Police Chief thereupon stated to her, "Very well, Madam, I will have the chocolates analyzed by one of our chemists and report to you tomorrow whether or not they contain poison."

This proposal did not altogether satisfy the good lady and after considering the matter for a few minutes, she said to the Police Chief, "Why you great big coward, why don't you eat some of them and find out!"

Unfortunately, some of our good citizens expect too much of their law enforcement agencies and have equally as erroneous ideas concerning the operation of modern scientific laboratories, particularly in connection with criminological work.

As an example of the speed with which this Department operates the Major said, "We use the teletype system very extensively in our criminal investigation work. We have seven teletype machines in our administrative headquarters in Washington. One of our clerks writes a message on one of these machines and instantaneously and simultaneously that message is reproduced on a similar teletype machine in forty-two of our field offices from coast to coast, or they can communicate with us and with one another."

In closing his very interesting and informative address the Major said, "I want to talk to you about one phase of our investigation in a famous case. Three months before Hauptmann, who was eventually executed as the kidnaper-murderer of the Lindbergh baby by the New Jersey state authorities, was ever heard of or suspected in connection with the Lindbergh Kidnaping Case, Mr. Hoover, as Director of the Federal Bureau of Investigation, sent a cartoonist for a Washington newspaper to New York City

to work with Dr. Condon or 'Jafsie' who paid over the \$50,000 ransom money to somebody in a cemetery one night. Dr. Condon described and re-described that individual. The cartoonist drew and redrew his features from Dr. Condon's oral description, hundreds of times, the eyes, the nose, the ears, the mouth, the teeth, the forehead, then two composite pictures, for more than two days, until Dr. Condon said, 'That's the man to whom I paid the ransom money.' We exhibited those two drawn photographs to merchants and others in New York City who had received ransom bills and when they could remember, invariably they said, 'That's the man who paid us the ransom money.' Here on the left are those two drawn photographs, as we had them in our possession more than three months before Hauptman was ever heard of or suspected in connection with the Lindbergh Kidnaping Case. Here on the right is a picture of Bruno Richard Hauptman taken the day our Agents arrested him in New York City, more than three months later. Those two drawn photographs are correct in every detail. They could literally have been drawn from life. In a nut shell, we knew exactly what the man we were looking for looked like, three months before we knew who he was and three months before we arrested him and when we did arrest him more than three months later, he looked exactly like these two drawn photographs that we had of him. That is a modern application of modern scientific crime detection methods.

"I believe the best picture of the possible solution of the crime problem in the United States of America is a triangle. One side of the triangle should represent the local law enforcement authorities, municipal, county and state. The second side of the triangle should represent the Federal law enforcement authorities throughout the country, but there would still be missing the third side, the base side, and the all-important side of that triangle. That side, we feel, should represent the good citizens of the country and until they weld the third side of this triangle into place, we do not feel that we can get anywhere in the solution of the crime problem in the United States."

PRESIDENT PALDA: I want to call your attention, Gentlemen, to a change that was made since the Bar Briefs were printed, and that is that the banquet will be held at six o'clock in the Great Northern Club rooms and not in the basement of this building.

Gentlemen, we arrive at the point where the question of the Bar Board and its functions is most interesting to us. We have present with us one who knows all about the Bar Board functions from its beginning, and I am pleased and delighted to call upon Mr. A. W. Cupler, of Fargo. Will you come forward, Mr. Cupler, at this time, please?

MR. CUPLER: Mr. President, and Members of the North Dakota Bar Association. I have not prepared a speech. I thought when the President asked me to talk on the subject of the Bar Board and its functions that I would review the work of the Bar Board during the fifteen years it has been in operation under the

present law, and I wondered where I could get that material. I assume, of course, that you know all about the Bar Board; I assume you know its function, and I assume thru knowledge of fifteen years' experience you know what the Bar Board has done. The State Bar Board has been in the habit each year of submitting quite a report to the Bar Association and those reports are in the annual proceedings. I anticipated when I started to prepare a talk along this line that this year's report would cover this particular year. I thought, too, that it would be too much labor on my part to go through the annual proceedings, and I asked the chairman of the Bar Board if he would have the Secretary look up the material and give me the facts and figures, both as to examinations, the discipline, the finances, etc., and he wrote back to me and told me the report of the Bar Board that would be submitted at this meeting would contain a review of the fifteen years' operations, at least general comments and the figures I wanted. After that I thought to myself, "Well, now, I think this is probably a good time, fifteen years after the Bar Board Act was passed, to take stock and refresh our recollections and memory as to the organization of the Association as an integrated bar and as distinguished from a voluntary association, at which time the Bar Board as it at present operates came into existence, or about that time." And, fortunately, I had saved the minutes of the annual meetings, and I have them for, I think, back to about 1910. It happens, too, that about that time, and I suppose that is the reason the President delegated to me the duty of discussing this subject, that I was quite active in the Association, when it was a voluntary Association and when it became an integrated bar, and I served on these particular committees. Now, I think it will be of interest to you to hear something of and to review what took place during those formative years of this Association, and I will therefore go back to 1919.

You will recall in 1919 the Legislature passed a bill creating the State Bar Board, composed of three members to be appointed by the Governor. Up to that time, as I recall it, we had a State Board of Law Examiners; disciplinary matters were, as they properly were and as they still properly are, under the supervision of the Supreme Court. We must never lose sight of the fact that we as practicing attorneys are officers of the Court, and the Supreme Court being the Chief Court in the state, primarily that is the place to which we look for guidance, for assistance and for any supervision that may be necessary in the conduct of our office. In that bill it changed the set-up of Law Examiners and added to their duties the matter of disbarment proceedings under the supervision of the Supreme Court, and it delegated the power to appoint to the Governor. There was provided in Section 9, and that, by the way, was an amendment of an existing statute, what became known at that time, and there was a great furore among members of the Bar about it, as the "dog tax." By Section 9 every lawyer in the state was obliged to pay an annual license fee of \$15.00 "to defray the expenses of the State Bar Board." Now I don't find in the minutes of those meetings and I haven't any

recollection of what happened at the time prior to the passage of the bill, that the North Dakota Bar Association had anything whatever to do with the adoption of that bill. I feel quite sure that the Bar Association, or only in a vague way through some of its members, had been thinking about a more effective organization of the Bar, and had never thought of having our organization created by an act of the Legislature. I took down the 1919 proceedings and went through them and I find on page 28 something that verifies, I think, my supposition. It is in the form of a letter that was read by the Secretary from Mr. O. B. Burtness, of Grand Forks. At that time Tobias D. Casey was President of the Association and Oscar J. Siler, of Jamestown, Secretary. In this letter Mr. Burtness says:

"I am in receipt of a letter from Mr. Casey, the President of the Association, advising me that I have been assigned for discussion at the state meeting, House Bill No. 103, known as the Licensing of Attorneys Act. Mr. Casey in his letter further adds that if it is impossible for me to be present to put my thoughts into writing and send them to you or some other lawyer who will be present.

"Mr. Casey in his letter seems to assume that a humble member of the minority should be familiar with the reasons for the passage of this or other laws that were placed on the statute books during the last session. If he had made a short visit to Bismarck last winter he would, of course, have known better. I must therefore limit my statements to what the law is rather than to the purpose thereof."

And then he goes on to discuss the bill and says what changes were made, and one little statement in connection with it will show what confusion there is in the Legislature when you come to bring up such a bill as Senator Bangert has offered here:

"We had the pleasure in the Legislature of listening to a number of flowery and touching orations from such orators as Dell Patterson and others concerning the treatment inflicted upon the widows and orphans by the attorneys of this state, and that it was absolutely necessary for the protection of the public to obtain better control over the members of the Bar. What answer could the six lawyers in the Senate and House make? None whatever. We admitted it. Let us hope that the three appointees of the Governor will be able to thoroughly cleanse the profession."

And then he takes up and discusses the \$15.00 license fee and thinks that is a terrible imposition on the lawyers and, as one of the lawyers said today, it is unconstitutional but it still stands. Now, it is an ill wind that blows no good, and if memory serves me right, John Greene was Secretary of the Association following Oscar Seiler, who moved to California about that time. John E. Greene you men knew and loved as we all did. Some of you younger members ought to have known him; I am sure that being with him and getting the inspiration that came from association

with him concerning the proper organization of the Bar would speed you on to greater heights. John Greene had tried to keep the organization going, to get money to operate. The attendance was small, finances were low, and the charge was made when the organization attempted to present anything of interest to the state and to the profession, "Oh, well, it is just a handful of lawyers that travel on passes who attend the meetings." Attendance was small, unless you were at some central city that imported speakers and paid for them.

I turn to pages 10, 12, 13 in the proceedings of 1921, which contain the financial report of the Secretary-Treasurer, John E. Greene, and listed there are the names of our loyal brothers who had paid their dues. John started out that year with \$80.42 in the treasury and by indefatigable effort, constant reminders and obtaining from many of the members dues that were two or three years delinquent, I see many \$10.00 and \$15.00 items, he increased the income to \$1170.00, which I am sure is the largest amount received in any year for years prior to that. Right now I feel we should stop and compare that with the income today; suffice it to say it is twice that, at least, now.

In 1921 this Association, through its Legislative Committee and by the efforts of the men who were active at that time procured the adoption of Chapter 25, Laws of 1921, which is the first integrated Bar Act in the United States. I know that Alabama claimed to have the first act. I attended a meeting of Bar Association delegates at the American Bar Association and a brother from Alabama made the statement in the meeting and I challenged that, and I think later he conceded that I was right. We preceded Alabama by a few months. Under the Act there might be taken into the Association every lawyer who paid his license fee and every lawyer exempt under the Act by reason of his official office from payment of the license fee, and as the result of the so-called "dog tax" of 1919, which made us pay into the state \$15.00 a year, we decided we should have the expenditure of at least a part of that money, if not all of it, for that Association. We were modest in our first claims and we asked the Legislature and they gave us \$3.00 per member from the funds paid in to the State Bar Fund from this license fee. In 1923 we went back to the Legislature and through our efforts obtained the enactment of Chapter 133, Laws of 1923, which increases to \$5.00 per member the amount paid to the State Bar Association, and that it may be disbursed for the printing of the annual proceedings and "for the payment of other necessary expenses of said Association."

By Chapter 134, Laws of 1923, we procured the amendment of Chapter 69, Laws of 1919, the so-called "dog tax" law, by which the State Bar Board is to be appointed by the Supreme Court from the list of the members of the State Bar Association, which includes all the lawyers of the state, the three members of the Bar Board to be appointed from such nominations.

We also at that time procured a reduction of the license fee to \$10.00, thirty-three and one-third per cent, which is not so bad.

To go back just a moment to the earlier proceedings I want to direct your attention to the proceedings of 1921. At pages 38 to 48, to show you the activity of our organization for an Integrated Bar, to include all members of the Bar, and to provide for not only the admission of the members of the Bar, but for disciplinary action which would be more directly under the control of the members of the Association. And I want to refer you to page 38, of the 1921 proceedings, wherein this occurred:

"THE PRESIDENT: The next in order of business is the report of the Special Committee appointed to prepare and present an outline of a bill to organize the Legal Profession of the State of North Dakota."

John E. Greene, chairman of that committee, reported as follows:

"To the Bar Association of North Dakota: Your committee appointed pursuant to resolution adopted at the annual meeting of the Association in August, 1919, (That is the meeting at which Mr. Burtness presented his report) to draft a bill following as nearly as may be the Canadian Legislation on this subject, submit herewith an outline of such measure. Its provisions are taken partly from the Legal Act of Saskatchewan and partly from recommendations of the Bar Association meeting held in Boston in September 1919. The outline or draft is as follows:"

Then follows up to page 48 the draft of the bill.

Just as was mentioned on the floor during the discussion of the proposed bill for the Revision of the Code, we did not get this bill passed, but we did get a bill passed that accomplished the same purposes by amendments and changes that took place as we went along. But to show you the sense of the members of the Bar at that time as to the subjects that were entrusted to the State Bar Board under the present Act, - - I am not going to undertake to read this law to you, it is quite long, but I want to call your attention to Sections 29, 30 and 31 as showing the attitude of mind of the members of the Bar at that time, because this bill was received with a great deal of approval by the Association at that time. It was referred back, as appeared later in the proceedings, to the committee with instructions to consider further the matter and to present a report at the next meeting, and in the interim they and the Legislative Committee got a bill passed which is entirely different from this but, as I say, accomplishes the same purposes:

Section 29. (d) Power to determine qualifications for admission to practice.) The Board shall have power to determine the qualifications of admission to practice in the state, and to constitute and appoint a special committee to examine candidates as to their qualifications and to recommend such as fulfill the

same to the Supreme Court for admission to practice under this Act; provided, however, that until this power is exercised the requirements for admission to practice under this Act shall be the same as those now prescribed by the Supreme Court for admission to practice in this state and shall be enforced as the same now are enforced.

Section 30. (e) Power to formulate rules of professional conduct.) The Board shall have power to formulate and enforce rules of professional conduct for all members of the Bar in the state.

Section 31. (f) Power to discipline and disbar.) The Board of Governors shall have power for good cause shown, and after a hearing, to disbar members of the Bar in this state and to discipline them by reproof, public or private, and by suspension from practice; and the Board shall have power to appoint one or more committees to take evidence and make a determination on behalf of the Board, or to take evidence on behalf of the Board and forward the same to the Board with a recommendation for action by the Board. Nothing in this Act contained shall be construed as limiting or altering the power of the Courts of this state to disbar or discipline members of the Bar as this power at present exists.

I might say in passing that the committee appointed in addition to Mr. Greene, who was chairman, and who I admit did all the work on the committee, was John Knauf and myself.

Now, on page 100, of the proceedings of 1920-21, we knew we were going to get a bill through, but which one we were not sure. On motion made by John Knauf, duly seconded and carried, the Chair appointed a committee to Revise the Constitution and By-laws and to make a report at the next meeting. The Chair appointed John Knauf, L. R. Nostdal, of Rugby, and C. J. Fisk, of Minot, and they amended the By-laws and the Constitution so as to fit in with the new Act.

Now, one other reference to the proceedings which I will make was in 1921-22, on page 79 of the 1922 meeting. Mind you, nothing had been done toward reducing the license fee, if that was advisable. Nothing had been done with regard to changing the powers of the Bar Board since 1923, if any changes should be made. On page 79 of the proceedings for 1922, this occurs:

"MR. MCINTYRE: In proposing amendments or considering amendments to laws under which the Bar Association is organized and Board of Examiners created, I beg leave to submit the following:

"Be It Resolved, That the State Bar Association should continue to be recognized as a State institution.

"That the license fee should continue to be required of all practicing attorneys, upon the payment of which they become licensed practitioners and members of the Association.

"That the Association should be a self-governing body in relation to all matters properly coming within the scope of the professional interests of the lawyer and that the Association should, under the direction of the Supreme Court, or upon its own initiative, assume responsibility for all disciplinary matters in connection with the conduct of attorneys and counselors at law.

"That as a self-governing institution, functioning in connection with the Judicial Authority of the State, it should have the disposition of the funds accumulated through the payment of the annual license fee, to the end that it may encourage proper activities in the interest of the Legal Profession, and that it may defray all expenses incident to the operation of the Association, including the discipline of its own members.

"To this end we recommend amendments to the existing laws as follows:

"1. That the funds of the Association, after the appropriation of a reasonably liberal amount, for the investigation of complaints and disbursement purposes, shall be disbursed by the officers of the Association, who shall be accountable to the Association for the handling of the same.

"2. That the law be so amended as to provide that whenever the fund created by the law shall amount at the close of any year to such sum as shall equal \$15 for each member in good standing, that thereupon the Secretary of the Board shall be authorized and directed to issue to each member in good standing a license for the ensuing year without charge, and at a proper time prior to the first of the year it shall be the duty of the Secretary to ascertain what amount will be necessary to raise the fund to a sum which shall approximate \$15 for each member in good standing, and shall thereupon ascertain the per capita amount necessary to raise the fund to such limit, and for the ensuing year the license fee to be charged each member in good standing shall be the amount so ascertained.

"3. We recommend that the present laws be amended so as to provide for the appointment of the State Bar Board to the Supreme Court of North Dakota, all members to be appointed from a list of members of the State Bar Association to be submitted from time to time by the Association, the list so submitted to consist of three members of the Association for each appointment to be made.

"4. We recommend that the incoming President instruct the Legislative Committee to be appointed to draft Legislation in accordance with these recommendations.

"Moved and seconded that the report be adopted.

"Motion carried."

Now, following that the amendments to which I have referred were passed by the Legislature in 1923. As I said in my opening remarks, I thought it was a good time, after 15 years, to refresh our memory as to our organization as an integrated Bar and I hope I have been helpful in doing so as I think it has functioned much more effectively than the old voluntary organization. I said the State Bar Board had made a report which I had the privilege of just reading, which covers the balance of the remarks I was about to make. I would like if that report might be read now in connection with what I have said. It covers the work of the Bar Board since 1923, not only the present membership of the Board, but since the Board was constituted; and my judgment, from what I have observed the past fifteen years of the operation of the present Bar Board, is that we have just as effective a government of our members in regard to disciplinary subjects as we would have if we had a committee appointed from this Bar Association to do the same thing; that the State Bar Board is essentially a part of this Association, while under the law it is separate, I am satisfied, that as the Board is constituted now, it performs fully as well as it could perform under any state integral Bar Act that I have read. Although I do not know just how many, fully one-half of the states, I am sure, have by now followed the example we set in 1921 by the adoption of this integrated Bar Act. I thank you.

PRESIDENT PALDA: Mr. C. J. Murphy, did you have a matter you want to present prior to reading that report?

MR. MURPHY: Mr. President, I desire to move the election of Mr. Lester as an honorary member of this Bar Association. Seconded.

JUDGE ELLSWORTH: I didn't hear the motion.

PRESIDENT PALDA: The motion is that Mr. Lester, who talked to us this afternoon, an attorney at law, be made an honorary member of this Association. All in favor please rise. The motion is unanimously carried.

MR. LESTER: Thank you very much.

PRESIDENT PALDA: On the program we have some additional reports of committees which will be taken up at 9:30 tomorrow morning, and Mr. Murphy will now present the matter of the Bar Board, in place of the report of the Committee on Legal Education.

MR. C. J. MURPHY: Mr. President, Members of the Bar. This is the report referred to by Mr. Cupler, which gives a review of the activities and the proceedings of the State Bar Board since it began to function under the present law.

REPORT OF THE STATE BAR BOARD:

There is no statute calling for the submission of a report of any kind by the State Bar Board. Upon the organization of the board in 1923 it was thought by its members that an annual re-

port to the State Bar Association would be proper. Accordingly it has become the practice to bring to the Association regularly, a showing of the receipts and disbursements of the Board and of its activities. While the sufficiency of the showing thus made appears to have been acceptable to the rank and file of the Bar, it seems advisable to depart from the practice and to present to the Association a review of the functions of the Board and of its activities over a period of years. A report of this kind should be welcomed because comparatively few members of the profession appear to have a clear conception as to the organization, powers, activities and responsibilities of the Board. Attention therefore is directed to facts which should serve to clarify such lack of understanding as may exist.

1. The History Back of the Existing System of Bar Organization and Control.

Sections 782 to 813 inclusive, Compiled Laws of 1913, contained all of the Legislation relating to admission to practice and discipline of members of the Bar which existed at the time of the enactment of the first Bar Board Act. The origin of those statutes is not pertinent in this report. Under them there was provision for a State Board of Bar Examiners appointed by the Supreme Court. This Board conducted Bar examinations. It had no other duty to perform. Whenever there was a complaint to the Supreme Court of professional misconduct warranting disbarment or suspension, the Court was required, under the statute, to refer the charges to the State Bar Association for investigation and report. Upon rendition of the report the Court, if the findings warranted, ordered the prosecution of the charges by the Association through counsel selected by it. When a complaint had been investigated, or prosecuted, the Court was authorized to order the state auditor to issue to the Bar Association a warrant to pay the expenses incurred in the investigation or prosecution, and the Court in its discretion could allow to the attorney or attorneys a reasonable amount as compensation for the services rendered in investigating or prosecuting such charges.

In 1919 those who had been active in the State Bar Association, then a voluntary organization, believed it wise to have certain changes made in the regulative machinery. Their ideas were incorporated in Chapter 69 of the Laws of 1919. None of the present members of the Bar Board were active in Association matters at that time, and are not familiar with the inside story relating to this change of law. However, the Act of 1919 was a Licensing Act and provided for the organization of a State Bar Board. The Act amended Sections 782, 784, 787, 799, 808, 809, 810, 811 and 812 of the Compiled Laws of 1913. Sections 785, 786, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 800, 801, 802, 803, 804, 805, 806 and 807 remained in full force and effect. Under the new Act, the members of the Board were appointed by the Governor. The annual license fee of each practicing attorney was fixed at \$15.00, and the Board took over the function previously left to the State Board of Bar Examiners of

conducting examinations, and that of acting in lieu of the Bar Association as an investigating committee for the Supreme Court when complaints of misconduct were referred to it by the Court.

At that time there was considerable agitation in the profession for a more effective organization of its members. Certain men who had at heart the welfare of the Association which then existed, and the welfare of the profession, fathered what is sometimes called the first act in the United States providing for the so-called integration of the bar. Among the prominent sponsors of the legislation were the late John E. Greene, the late Theodore Koffel, Judge H. A. Bronson, Judge S. E. Ellsworth, and the attorney members of the Legislative Assembly. The results of their efforts was Chapter 25 of the Laws of 1921, which called for the payment to the Bar Association of \$3.00 out of each license fee collected for the purpose of meeting the expenses of the Association. It was provided that attorneys paying the license fee and those exempted therefrom should be entitled to membership in the Association.

Those active in securing the enactment of this Legislation believed it desirable to carry the integrating principle a little further and so in 1923 the Association Act of 1921 was amended by Chapter 133 of the Laws of that year and the Bar Board Act of 1919 was amended by Chapter 134 of the Laws of 1923. By this Legislation the license fee was reduced to \$10.00 a year and one-half thereof was required to be paid to the Association to defray its expenses. The Bar Board Act of 1923 in its new form amended those sections of the Compiled Laws of 1913, which had been amended by the Act of 1919, and neither of these Acts has been amended since.

2. The Selection of the Bar Board.

One of the aims of the integrated Bar movement was increased responsibility of the Bar for its regulation and control. It sought to extend the democratic principle into the government of the profession. Prior to the Act of 1919 the Board of Bar Examiners was selected by the Supreme Court. Under the Act of 1919 the members of the Bar Board were appointed by the Governor. The Act of 1923 placed the power of appointment of members in the Supreme Court, with the proviso that the selection should be made from a list of members submitted to the Court by the Association. The method of the selection of these names by the Association was not prescribed. To give all members a voice in the selection there was adopted the policy of conducting a referendum upon each list of names proposed. This practice has been in effect for fifteen years. For each vacancy on the Board the names of the three members receiving the highest vote in the referendum have been certified to the Court, and the appointments have been made from this list.

3. The Personnel of the Board.

Under the Act of 1919 the following persons served as members of the Board: Judge S. E. Ellsworth, Judge Geo. H. Moell-

ring, R. Goer, H. T. DePuy, and C. J. Fisk. Since the taking effect of the Act of 1923 the members who have served at different stages have been Judge C. J. Fisk, S. D. Adams, Judge John Knauf, W. A. McIntyre, C. J. Murphy, J. P. Cain and C. L. Young.

4. Functions and Procedure.

There is a general misconception as to the functions of the Board and its procedure. The existing Act is consistent with the well established principle that the Supreme Court has inherent power to determine who shall be admitted to the Bar and to provide for the discipline of those admitted who transgress professional regulations. This inherent power was asserted in *Re Simpson*, 9 N. D. 279, 43 N. W. 541; *Danforth v. Egan* (S. D.) 119 N. W. 1021; *Ruben v. State*, 194 Wis., 207, 216 N. W. 513; *State v. Canon* (Wis.) 221 N. W. 603; In the matter of the Bar Association of the city of New York, 222 App. Div. 580; In the Matter of the Brooklyn Bar Association, 223 App. Div. 149.

In general the Board is a servant of the Court which is designed to assist the court in the discharge of its inherent functions. It is a board of examiners to help ascertain the fitness of applicants for admission to the Bar and inquires into their records and moral qualities. It has no authority to admit applicants nor to determine if they should be admitted. It makes recommendations regarding applicants and the Court passes upon the question of admission.

The Board also serves as an investigator for the Court when complaints are made against members of the Bar. The present Act requires that complaint of professional misconduct shall be lodged with the Court. If it appears that the charges should be investigated the Court refers them to the Board. The Board has no authority to initiate any proceeding or investigation except upon the order of the Court. It is merely an agent or instrument of the Court. It acts under the instructions of the Court. The complaints are made to the Court. The Board upon reference of the charges by the Court makes an investigation. It has authority to administer oaths, to take testimony and to issue subpoenas. The accused is apprised of the charges made and is given an opportunity to make an explanation either orally or in writing.

When the work of investigation is completed the results are reported back to the Court with the findings and recommendations of the Board. The Board has no authority to take any action with reference to the conduct investigated. Its report is reviewed by the Court and it is the Court which disposes of the complaint made. If it is found that the complaint is not sustained and that no discipline is warranted thereby, it is the Court and not the Board which dismisses it. If on the other hand the Court finds that the charges are such that suspension or disbarment or other punishment may be warranted, the Court and not the Board directs the initiation of the proper proceeding. If a proceeding is ordered instituted by the Court it then becomes the duty of the Board to initiate it by filing written accusations and specifications.

Under Section 810 as amended by the Act of 1923, it is the duty of the Board to select an attorney or attorneys to prosecute the proceedings instituted, or in lieu of such selection prosecution may be conducted by the members of the Board. The prosecution has been conducted by the Board in only one or two cases. In other cases an attorney disinterested in the subject matter of the charges has been selected to prosecute. When a disciplinary proceeding is ordered the Court designates a District Judge as referee to hear the testimony. The accusations are prepared by a member of the Board. The attorney chosen prosecutes the case and the referee designated hears the evidence and submits a transcript thereof together with his findings of fact and his recommendations to the Court.

The selection of counsel to prosecute disbarment proceedings is not a new departure. Under the law in effect prior to the Act of 1919 it was contemplated that counsel should be selected by the Bar Association and that those selected should be compensated for their services and reimbursed for their expenses out of the state treasury upon order of the Supreme Court. The Bar Board Act of 1919 and the Bar Board Act of 1923 carry forward this provision with specific authority to select prosecuting attorneys and to reimburse them for their expenses and compensate them for their services. In its selection of counsel the Board always has aimed to choose someone who is competent and free from interest or bias in the case placed in his charge. Restrictions are placed upon the compensation allowed. We believe that taking into account the nature of the work done, the time required therefor, the care which must be exercised and all of the circumstances which go to measure just compensation, the amount allowed to prosecuting counsel has been fair and reasonable to all concerned. Attorneys who have been employed to prosecute disbarment proceedings are the following: John Burke, W. C. Green, J. A. Manley, H. G. Nilles, John W. Carr, Francis Murphy, J. A. Hyland, Fred J. Traynor, A. W. Cupler, W. H. Hutchinson, W. A. McIntyre, S. E. Ellsworth, Torger Sinness, C. C. Wattam, W. H. Stutsman, Charles S. Ego, W. F. Burnett, Iver Acker, Clyde Duffy, O. B. Herisgstad, C. F. Peterson, Thos. J. Burke and P. R. Bangs.

5. The Work of the Board.

Since July 1st, 1923, the Board has conducted twenty-two examinations for admission at which 421 applicants have been examined and 382 have been passed. The moral qualifications of each applicant have been investigated by the Board. During that same period twenty-four members of the Bar from other states have applied for admission on motion. Investigation has been made as to the fitness of each of these. Two were denied admission and twenty-two were admitted by the Court. Ten applications for reinstatement were made by attorneys who had been disbarred or suspended. These were referred to the Board by the Court and investigations were made. Five applications were denied and five were granted. During this period one hundred and

twenty-one complaints against members of the Bar were filed in Supreme Court, and referred to the Board for investigation. With three or four exceptions the investigations have been made personally by members of the Board. When investigations have been completed reports thereon have been made to the Court and as a result thereof twenty-six disbarment proceedings have been instituted. In thirteen of these cases the accused has been disbarred. In two he was suspended. In two there was complete exoneration. In four, reprimands were administered and in three, the accused died during the pendency of the proceedings. Two proceedings now are pending, one other has been ordered by the Court and one other has been recommended by the Board to the Court.

6. Established Policies with Reference to Disciplinary Matters.

While it has not become necessary to interpret the provisions of the Act by written opinion it nevertheless has received effectual judicial construction through established practices. Recognizing the fact that frequently the charges contained in a complaint are not sustained and so do not warrant discipline of any kind, both the Court and the board have exercised the greatest care to hedge complaints with protection against publicity. Great injustice would result to an accused if unfounded accusations were heralded abroad. In most of the cases in which the accused has been disbarred opinions have not been written by the court. The order of disbarment has been entered, generally without public announcement, but if announcement of the fact has been made it has been done without parading the details out of which the order grew. It is our belief that this practice should continue to the extent that its continuance shall be consistent with the discipline requisite to maintain the integrity of the profession and the confidence of the public.

7. The Financial Administration of the Act.

The license fee of \$10.00 imposed by statute is required to be collected by the Board. One-half of each fee is paid to the State Bar Association. The remainder thereof is available for the following purposes:

(1) The expenses of the Board. (2) Expenses incurred by members of the Judicial Council, other than Judges, in attending meetings of that Council. (3) The expenses of the committee on unauthorized practice of the law of the State Bar Association.

In addition to the license fees collected the Board also collects an examination fee of \$20.00 from each applicant for admission. This fee is prescribed by Section 786, Compiled Laws of 1913, which was neither amended nor repealed by the Association Act nor by the Bar Board Act. The fees which have been received from this source have been reported annually to the Association in the Board's annual report. The statute provides that the ex-

amination fees just mentioned shall be applied towards the expenses and compensation of the respective members of the board and that the secretary of the Board shall be allowed such compensation for expenses and services from the fees so received as the Board may determine. The original Act providing for this additional compensation for the Secretary of the Board also provided that the Clerk of the Supreme Court shall be ex officio Secretary and Treasurer of the Board and that provision also is contained in the Bar Board Act. The work of the Clerk of the Supreme Court is increased very greatly by reason of his imposed service as Secretary of the Board. Section 786 expressly authorizes his extra compensation for the performance of these additional duties and extra compensation is allowed to him by the Board in the sum of \$300.00 a year. In view of the fact that the members of the Board are charged with the administration of the provisions of the Bar Board act as well as those provisions relating to the regulation of the profession which were not amended by that Act there has been no allocation of expense to the license fee fund and the admission fee fund. The entire amount collected in each fund, however, has been reported separately to the Association annually, together with the entire cost of administering all of the statutes required to be administered by the Board.

Attention is called to the fact that certain expenses are required to be paid out of the Bar Board fund by statutory mandate and that in the disbursement of these expenses no discretion is vested in the Board. Chapter 124 of the Laws of 1927 created the Judicial Council and provision was there made that the expenses incurred in attending meetings of those members of the council other than the Judges of the District and Supreme Courts should be paid out of the Bar fund. Under this provision expenses amounting to \$767.40 have been paid.

Again, in Chapter 143 of the Laws of 1933, provision was made for the payment of the expenses incurred by the Bar Association in conducting investigations and prosecuting proceedings to protect the Public and the Bar against unauthorized practice of the law by corporations or persons not licensed so to do. This is an expenditure over which the Bar Board has no control. Such expenses are incurred, and are contemplated by statute to be incurred, only by the committee on Unauthorized Practice of the Association, and when the vouchers of that committee are presented for payment they are payable out of the fund without right of review or rejection on the part of the Board. For this purpose expenses of the committee on Unauthorized Practice of the Association have been paid since March 7th, 1933, when the Act took effect, to the extent of \$4,799.00. A considerable part of this expense grew out of the Merchants National Bank & Trust Company case.

In 1930 the Board discontinued the midwinter examination theretofore held. Meetings are held only when necessity therefor exists. For the entire period under discussion the average

annual amount expended for per diem and expenses of the Board has been \$1,136.08. The elimination of the midwinter examination and the reduction in the number of meetings has resulted in the lowering of this annual expenditure so that the average annual amount expended for this purpose during the past eight years has been \$766.24. The average annual expenditure for the prosecution of disbarment proceedings for the entire period has been \$987.96. The average cost of these proceedings has been \$569.96. In this connection it should be remembered that these costs include the traveling expenses of the referee who hears the testimony, the expenses of the official reporter, the cost of the transcript which is required in each case for the information of the Supreme Court, the expenses of the counsel employed and the attorney's fees allowed. During the past three years the cost of prosecution has been negligible, the average annual expenditure for those years being only \$186.44. These averages have no particular significance so far as the future is concerned for they have no degree of permanence. Complaints always have come with great irregularity and expenses for one purpose or another may mount in any fiscal year.

In accordance with the custom mentioned we submit as a part of this report a financial statement of the receipts and expenditures for the fiscal year ending June 30th, 1938. This report is as follows:

STATE BAR BOARD FINANCIAL STATEMENT FOR THE FISCAL YEAR

FROM JULY 1st, 1937, TO JUNE 30th, 1938.

Balance from all sources, July 1, 1937.....	\$ 6,267.02
Collections from all sources July 1, 1937, to June 30, 1938:	
Licenses	\$5,380.00
* Examination Fees	340.00 5,720.00
Grand Total	<u>\$11,987.02</u>
Total Disbursements July 1, 1937, to June 30, 1938....	<u>\$ 5,600.78</u>
** Balance June 30, 1938	\$ 6,386.24
* Not available for general disbursement.	
** Included in the above balance is the amount due the State Bar Association for period covered by this report, vouch- ered but warrant not issued, 99 licenses at \$5.00 each	\$ 495.00

Distribution of Disbursements:

State Bar Association	\$3,250.00
Salary and Expenses of Secretary.....	306.19
Per Diem and Expenses of Members of State Bar Board	855.57

Attorneys Fees and Expenses Disbarment	
Proceedings	114.00
Postage	108.56
Supplies	112.96
Printing	78.39
Clerk Hire to Secretary and Members of Bar	
Board	230.00
Miscellaneous (Refund Examination Fee)	20.00
To Committee on Unlawful Practice	525.11.
<hr/>	
Total	\$5,600.78

We trust that the information contained in this report will bring to the membership of the Association a better understanding of the functions and services of the Board. Our position is wholly subordinate. All that we do is reviewed by the Supreme Court, and no views expressed by us upon any matter submitted to us have vitality unless they are approved by the Court and are given effect by its order. We have sought to serve the interests of the Bar and the public and to discharge our duties within the limitations imposed by statute and the official action of the Court.

Respectfully submitted,

C. J. YOUNG, President.

C. J. MURPHY,

J. P. CAIN,

State Bar Board.

MR. STUTSMAN: I would like to know whether either of these gentlemen who have furnished so much valuable information about the old Bar Board, can tell us what became of the \$15.00 we paid. It is very interesting to get the discount to \$10.00, but I would like to have them go back and tell what the \$15.00 was for. As I remember, they called that a Revenue Act and that went into the State Treasury and was used for general government expenses.

MR. CUPLER: I would not want to vouch for the statement I make, but my recollection, I think, is pretty clear. The \$15.00 went into a fund known as the State Bar Fund. It was not the property of the state, it was put in there to pay the expenses of the State Bar Board. My recollection is that there was about \$10,000.00 in the fund. Correct me, gentlemen, if I am wrong. There was \$10,000.00 transferred from that fund by Legislative Act, but as the result of efforts by the Legislative Committee and members of the Association, to purchase books for the Supreme Court library. Am I correct? You see, there was a great desire on the part of the Legislature at that time to get hold of money, that is, to spend it. They needed to build a memorial building and other things, and they saw this money lying there. They were going to take the money and spend it for general purposes, and we thought we had better help them by putting it some place that would be of some value to the members of this Association, and the money was transferred into the Supreme Court Library

Fund by the Legislature. What other money was diverted from that point I do not know.

MR. MURPHY: I move the adoption of the report.

MR. WEHE: I would like to say a word in connection with the \$10.00 fee.

PRESIDENT PALDA: Mr. Wehe, just a moment.

MR. WEHE: This is to the question.

PRESIDENT PALDA: Very well, go ahead.

MR. WEHE: At one time this matter was up in regard to the accumulation of fees, and the money in excess of what we needed in the State Bar Fund. A bill was introduced to cut the fee down to \$5.00, and provided that \$2.50 of the \$5.00 should go to the State Bar Board and the remaining \$2.50 to the State Association. I am still of the opinion that we should not build up a fund to tempt the Legislature or others that wish to appropriate money that belongs to us, and I hope it is unconstitutional to use this money for other purposes. It is a special tax. To wipe out any temptation to divert it into any other fund, I would suggest we pass a law cutting the fee to \$5.00, and dividing it between the Bar Board and Association. This would provide sufficient money for operation, take away the temptation and eliminate any wrangle about what the Board is doing with the money. Let's go on record recommending some sensible Legislation.

MR. MURPHY: I recommend the report be adopted and printed in the annual. Seconded.

PRESIDENT PALDA: You have heard the motion. Is there any question? All in favor signify by saying aye.

JUDGE BRONSON: May I have about five minutes at this time?

PRESIDENT PALDA: We are late - -

JUDGE BRONSON: In view of the remarks of Mr. Wehe with respect to the license fee, and with respect to what happened to the \$10,000.00 in 1923, I have two motions to present. I will not take the time now, but they involve this surplus in the Bar Board Fund, the matter we had under discussion, and of being able to do something of service to all of the lawyers of the state by using some portion of the surplus fund for the purpose of securing our membership in the American Bar Association—along that line, Mr. President. I will take no time now, but I want to make a presentation of those motions.

PRESIDENT PALDA: I will make that a special order of business at 9:45 tomorrow morning, Judge Bronson.

MR. WEHE: I move that we adjourn. Motion seconded and carried.

Evening Session

PRESIDENT PALDA: Ladies and Gentlemen, the history of the world teaches us that in every crisis, when things look darkest, there appears upon the scene some man or woman whose courage cannot be questioned, and whose reasoning is uncontradicted. Such a crisis occurred here in these United States a short time ago, when perhaps the very foundation of democracy was threatened, and such a personality appeared on the scene and demonstrated again that history's teachings are true and such a champion of the people appeared, courageous enough to sacrifice self and become a champion of democracy, the upholder of the constitution. The speaker this evening needs no introduction; you know him from his record, and it is a great pleasure to present Senator Wheeler of Montana.

(Senator Wheeler's speech was very informative and also very delightful. However, as it covered over fifty pages of transcript, the Executive Committee has thought it best to summarize it, as much as possible, without leaving out any high lights, which is an extremely difficult matter, but we have done the best we could.—Ed.)

THE CONSTITUTION AND THE SUPREME COURT

"I think this Supreme Court issue has been a good thing, not only for the people, but for the members of Congress, because it has made them study the Constitution and our form of government, and it has also aroused in their minds the desire to learn something about them.

The Senator's trips to central Europe in the past few years disclosed men of all professions seeking menial and manual labor to preserve life, yet all of those people desired to raise their children so that they would not be obliged to endure such labor.

Their ambitions, like ours, has lead them to amass fortunes in money and property. Yet recently the fortunes have vanished and the property has been confiscated by Dictators, or destroyed by inflation and deflation. There is, therefore, the necessity of teaching our children, not only the dignity of manual labor, but how to perform it well, so that in time of need they may support themselves, if those same times should come here.

But what has that to do with the subject of the Constitution and the Supreme Court? It is this; because the people over there in Germany and Italy traded their liberty for what they thought was security, and before they got through, they found they had neither security or liberty, and many had lost their lives.

So, in this country we have many people traveling around saying that we can all enjoy everything the rich have, if we will just change our form of government.

Don't do it! Don't distrust your form of government, but distrust the men who are trying to pervert it. Because what has happened in Europe can happen here, if you allow it to. Don't be

carried away by hysteria. You cannot set up a dictatorship in the United States of America over business, nor can you set up dictatorship over agriculture in the United States and make it a success. If they have done it in Russia, Italy and Germany it is by virtue of the force of a large army and navy. A democratic government is not founded or maintained by these things. The very life of a democratic republic is competition in business. Price fixing kills competition. It is unlawful and unconstitutional under our government, and so the Supreme Court held the NRA unconstitutional and so it did the A.A.A., and so it did the law in the "hot oil" decision.

You cannot solve economic problems by vesting Judicial authority or Legislative authority, or both of them, in the Chief Executive of this nation.

When the President sent over the bill to increase the Supreme Court by six more judges, for the reason that the "need of the times" required the liberalizing of the Court, Senator Wheeler replied, "If the Democrats put six men upon the bench to meet the needs of the times' as we find them, then when some reactionary Republican President comes to power, he may put men on the bench to uphold the Constitution and interpret it as he sees it." So when you increase the membership of the Supreme Court, in order to control it, you break down the judicial system of our government. Whatever faults our judicial system may have, there is still none other in any other country to compare with it.

Because a party leader, a Congress, or a President is dissatisfied with a decision of our Supreme Court, is no reason for packing it. If changes are to be made, let it be by Constitutional Amendment, submitted to the vote of the whole people.

The Supreme Court Bill was not a partisan measure, and it was not favored or opposed upon that ground, but it was a measure creating a departure, or a change, from our plan of government so the issue was a fundamental one, not one of parties, either Republican or Democratic, and it was opposed not to oppose a Democrat, not to oppose President Roosevelt, but because it was a change which would upset the very fundamentals of our government. Ultimately, of course, what the people will want, the people will have, be it relief, packed courts or too much money, resulting in inflation or deflation. But let us not give up our liberties to obtain fancied security, for once given up, it is a long hard pull to get back the power to make our liberties real again.

President Roosevelt does not want to be a Dictator — The President himself has said about some of the powers the present Executive has sought, — "that these powers given to some Administrations would be a dangerous thing for the people of the United States." But remember, that if these powers were once given to one President, it would be a very difficult matter to deny them to another.

"Some people say this is a bad law and that is a bad law. But you can place a bad law on the statute books and if it does

not work out satisfactorily, the next Congress or some Congress will repeal it. But once you delegate the powers of Congress to the Executive branch, it is quite a different thing. That is the difference that a good many people couldn't understand. They could not understand why Congress would stand up and fight the fundamental issues as they did on the reorganization bill,—not that they did not want a reorganization, everybody wanted it, but all they wanted of the President was that he formulate plans and send them down to Congress, and that we wouldn't debate it more than five days. But we wanted left in the Congress of the United States the powers delegated to it by the Constitution and to say whether these laws should be abrogated, whether this department should be abrogated, and I told the President that if he would do that we would have no trouble with the reorganization bill and that, in my judgment, he would get 95% of the things he wanted. Those were the issues presented to the Congress of the United States.

"Now, my friends, I am afraid I am taking up more time than I should have. I did want to call your attention to some figures, but I will not do that tonight. I do want to say this to you: We have in the United States solved the problem of production, but we have not solved the problem of distribution. People are saying everywhere, why should people be hungry in the midst of plenty? Why should people be going without food when people want the things we produce? We have to solve that problem. We have not given much thought to that problem here in the United States because we have been blessed as no other country in the world has been blessed,—our rich resources, coal and lumber and everything under the sun, until we got into this machine age, until we could turn out in normal times as much as a thousand or two thousand times as much as we turned out twenty-five or thirty years ago. We have got to find a market for the things we have to sell. There are something over two million people down in the South on these little farms that are really little more than economic slaves. They work for as little as 32c to 50c a day. How can a man work for from 32c to 50c a day and buy the products, if you please, that are produced by labor bringing in \$8.00 a day? How can he have a farm, how can he have a house? The problem is to get that man's income up so he will have purchasing power and be able to purchase the things that people have to sell.

"Now there is one other thing I am going to discuss with you. You are either going to have to find a market and sell a great many of our products abroad, or else you are going to have regimentation in the United States of America and price fixing regulations, and when you have regimentation of our industries and farming, then the next step to that is to give up your liberties and to have somebody come in and say you have got to do so and so, and you have got to do so and so.

"My friends, your forefathers went out and made a lot of sacrifices, they spilled their blood, as mine did, all up and down

the New England shore that we might have a country to call our own, in order that we might have a written Constitution, because the people in those days did not trust the power being placed in one man. They had lived, if you please, under tyranny in the old world, and they had left there and come here to have religious liberty and freedom of thought and freedom of speech. They remembered the twelve men of Dodson,—twelve farm laborers who, because they had petitioned the government for better living wages, better living conditions, had been sent away to Australia; and they remembered, my friends, how people had not been given any trial by jury, and they remembered how Mary, Queen of Scots, when she was killed—the last words from her dying lips were, ‘Confront me with my accuser.’ And so they insisted, if you please, before they agreed to adopt the Constitution of the United States, that there should be written in there the first twelve amendments, the Bill of Rights.

“You can pack the Supreme Court to interpret the laws as you want them in one respect; you can pack the Supreme Court and say ‘do away with the freedom of speech, do away with religious liberty in America,’ and you can pack the Supreme Court so it will interpret the Constitution to do away with all the guaranties that were known as the Bill of Rights and placed in the Constitution of the United States. Your forefathers and mine spilled their blood in order that you and I might have a written Constitution, that we might have, if you please, that Bill of Rights. They wanted three independent branches of government, the Court, the Legislature and the Executive branches. What are you people willing to do? What sacrifices are you willing to make? You hear a good deal of talk today about social conscience. What you ought to have is a personal conscience, and the personal conscience of the people today seems to be at a very low ebb. You may laugh, if you please, at crime and the breaking of the law, and you may sneer, if you please, at people who want to uphold the law, and while you see crime rackets going on all over the country you do nothing about it. You have a duty resting upon you, as lawyers. I venture to say that some of you won’t take the trouble to go out and vote on election day. People will complain for three hundred and sixty-five days a year about their government and their community, and then not vote. Some people give contributions to one party or another and think they have done their duty. They haven’t. You get in this county and state and country the kind of government you deserve, no better and no worse, because if the majority of people don’t deserve good government they don’t get good government. They have the right to put out of power any man in public office who is corrupt or crooked and doesn’t live up to his oath of office. I say to you, the reason you don’t get good government is because you don’t deserve it.

Here in the United States of America because you have the power, you think you know that we, with our great institutions of learning and everything else, and our free schools that we support, you would think we could turn back the pages of history

and sit around and solve our problems. But we are not doing it. You can go with me into any of the great cities of the country and we find them reeking with graft and corruption. I say to you, friends, that unless there is a moral awakening on the part of the men and women of this country, and that particularly applies to the lawyers of the country who are leaders in their community, this nation of ours is going to go and this civilization is going to go the way that every other great civilization has gone in the past.

"If I have done nothing else tonight but leave this thought, that it is upon you as members of the legal profession, as Judges, Supreme Court Judges and District Court Judges and lawyers, to get out and fight for the things you know are right to preserve this nation for ourselves as it was intended to be, then I will have felt repaid for coming to North Dakota to speak to you on this occasion. And I thank you."

MR. C. J. MURPHY: I have the honor to place in nomination as an honorary member of this organization the name of Burton K. Wheeler. Seconded.

MR. MURPHY: And that was a wonderful speech the Senator made. I move it be made a part of the record and placed among the minutes of this Association. Seconded.

PRESIDENT PALDA: You have heard the motion. All those in favor signify by rising. The motion is unanimously carried.

JULY 16, 1938

Morning Session

PRESIDENT PALDA: Gentlemen, if you will come to order we have two or three reports here which will be filed. They are without positive recommendations and I thought we might dispose of these as our program is going to be very full this morning and I would like to get going before it is too late so we will be able to finish up this forenoon. The local committee has arranged for a Dutch lunch in the basement of this auditorium sometime after twelve o'clock, and the Lake Region Association wants to meet prior to that, and we have considerable work on hand. I will ask for the report of the Committee on Legal Education.

SECRETARY MCBRIDE: The Committee on Legal Education has submitted a fine report consisting of five pages of single spaced writing, containing informative historical matter on the subject, with its conclusions and recommendations.

MR. FOSTER: This report is long and we are behind time and I move that the report be filed and printed in the Bar Briefs annual issue. I understand it requires no action.

MR. WEHE: Second the motion.

PRESIDENT PALDA: You have heard the motion, gentlemen. What is your pleasure? All those in favor signify by saying aye. Contrary the same. The motion is carried.

REPORT OF COMMITTEE ON
LEGAL EDUCATION

Your Committee on Legal Education begs leave to submit the following report:

At the last meeting of the Association your Committee on Legal Education filed an extensive report relative to standards and trends generally throughout the country. No important change has occurred during the past year.

We therefore take the liberty of referring the members to that report as fairly summarizing the situation as it exists today. The thought occurs to us, however, that you may be interested in a somewhat detailed summary of the work done at the only law school within our own state, — the University of North Dakota School of Law.

The College of Law was established in 1899. It is a member of The Association of American Law Schools and is on the list of schools approved by The Council of Legal Education, which approval is dependent upon meeting certain standards as to entrance requirements, faculty, library and curriculum.

Entrance Requirements: Candidates for admission to the School of Law as regular students must present credits showing the completion in residence at the University or a college of recognized standing of one-half of the work acceptable for a Bachelor's Degree granted on the basis of a four year period of study. This means sixty (60) semester hours or ninety (90) quarter hours with a C average, exclusive of credits earned in non-theory courses. These requirements comply with the standards of The American Bar Association and the rules of The Association of American Law Schools.

Law School Faculty: 1. John W. Kehoe, B. A. Columbia College, Iowa. J. D. North Dakota 1934. Post-graduate work in law at Duke University, 1934-1935. Two years practiced law in Cando, N. D. Teaches Agency, Common Law Action, Personal Property, Criminal Law, Code Pleading and Evidence.

2. Hubert E. Nelson. B. A. and L. L. B. University of Illinois. In active practice four years at Springfield, Illinois. Taught one year in Lincoln College of Law, Springfield, Ill. Teaches Torts, Equity, Conflict of Laws and Business Associations, which includes Partnership and Corporations.

3. Ross C. Tisdale. B. S. in Commerce and L. L. B. North Dakota. One year's graduate and research work at University of Chicago School of Law. Teaches Contracts, Sales, Negotiable Instruments, Security and Creditors Rights. Course in Security includes Guaranty, Suretyship, Conditional Sales, Trust Receipts, Pledges, Liens, Chattel and Real Estate Mortgages. Courses in Creditors' Rights deals with the rights and remedies of the unsecured creditors and includes Judgments, Execution, Creditor's Bills, assignment for Benefit of Creditors, Receivership and Bankruptcy.

4. The Dean of the School of Law is O. H. Thormodsgard. B. A. Spokane College. M. A. St. Olaf's College. J. D. University of Chicago. For five years taught Accounting, Money and Banking, Corporation Finance and Principles of Economics in recognized college; awarded Teacher's Fellowship in International Law by Carnegie Endowment for Peace. Graduate student in Harvard Law School doing research work in Public Law, including Roman Law, International Law, Advanced Constitutional Law and Conflict of Laws; teaches Real Property, Conveyancing, Wills, Trusts and Constitutional Law. In addition during the past two years chairman of Administrative Committee of University.

Besides the four regular teachers, the School of Law recognizes the merits of having active practitioners in Grand Forks teach some of the law subjects.

1. Philip R. Bangs, teaches Criminal Procedure and Office Practice.

2. Carroll E. Day, teaches the courses in Trial Practice and Court Practice.

3. S. Theodore Rex, teaches the courses in Municipal Corporations and Domestic Relations.

Library: The School of Law has in good faith complied with the requirements of an adequate law library. It consists of nearly 20,000 selected law books. Each year it expends for law books from \$2000 to \$2700. Includes reports of all the states up to the beginning of the National Reporter System, the Reporter System, the Federal decisions, and the Canadian and English decisions. The principle leading legal periodicals are in the library. Statutes from all the states are there, but more recent ones are needed. The library is in charge of Florence B. Yonaka, who serves as librarian and secretary to the Dean.

Curriculum: The curriculum of the School of Law covers a period of three years. It is designed to prepare students for professional activities as advocates and counselors on legal matters. It also prepares the students for judicial, legislative and administrative positions. The Law School, because of its relatively small faculty, cannot offer many elective law subjects. Since the chief aim of the Law School is to train students in the principles of the common law and statutory law, to develop their power of legal reasoning and to teach the fundamentals of practice, the following basic courses have been selected:

FIRST YEAR

First Semester		Second Semester	
Contracts (a)	3 hrs.	Contracts (b)	3 hrs.
Torts (a)	2 hrs.	Torts (b)	3 hrs.
Property I (a) (Personal)	2 hrs.	Property II (Convey-	
Property I (b) (Real)	4 hrs.	ancing)	3 hrs.
Common Law Actions	2 hrs.	Persons	2 hrs.
Agency	2 hrs.	Criminal Law	3 hrs.
		Legal Bibliography	1-hr.
	<hr/> 15 hrs.		<hr/> 15 hrs.

BAR BRIEFS

SECOND YEAR

First Semester		Second Semester	
Sales	3 hrs.		
Municipal Corporations	2 hrs.	Evidence	4 hrs.
Constitutional Law (a)	2 hrs.	Trusts	4 hrs.
Equity (a)	3 hrs.	Constitutional Law (b)	2 hrs.
Wills	2 hrs.	Equity (b)	2 hrs.
Code Pleading	3 hrs.	Negotiable Instruments	3 hrs.
<hr/>		<hr/>	
15 hrs.		15 hrs.	

THIRD YEAR

First Semester		Second Semester	
Trial Practice	3 hrs.	Administrative Law	2 hrs.
Bus. Asso. (a)	2 hrs.	Bus. Asso. (b)	3 hrs.
Conflict of Laws	3 hrs.	Criminal Procedure	2 hrs.
Office Practice	2 hrs.	Court Practice	2 hrs.
Credit Trans. (a)	3 hrs.	Credit Trans. (b)	3 hrs.
<hr/>		<hr/>	
13 hrs.		13 hrs.	

Enrollment: Freshmen and sophomores doing their two years of basic work required for entering on the professional courses in Law are not enumerated in the Law School enrollment. A student is not enrolled in Law with less than Junior standing in college. In 1936-1937 the enrollment was 65; in 1937-1938 it was 64. The continued depression has reduced the number of Law students in North Dakota as well as the rest of the United States.

This spring sixteen men and one woman graduated from the Law School. Nine of them had completed their college education. Two received the Degree of Juris Doctor and fifteen the degree of Bachelor of Laws.

The Order of the Coif is an honorary legal society having for its purpose "the encouragement of scholarship by fostering a spirit of careful study and the development of ethical standards in the legal profession." Election to this Order at North Dakota is restricted to the three seniors who attain the highest rank in their law school work. William J. Holland, James L. Kilgore and Marion Jane Leslie, based on their scholastic records, were elected to the Order this past spring. The Chapter also elected Judge G. Grimson of Rugby as the Honorary member for the year 1938.

Since the University Law School is the only Law School in this state, a unique opportunity is afforded it to cooperate with the State Bar Board and we can report continued helpful cooperation along constructive lines. During its existence, six hundred and thirty men and sixteen women have secured their professional training and graduated.

In closing we suggest that the officers and members of the Bar remain on guard so that present standards of legal education be not lowered. Within the near future they should probably be

raised so as to require three years of college work instead of two, by way of preliminary training and education.

Respectfully submitted,
O. B. BURTNESS, Chairman,
O. H. THORMODSGARD,
CARROLL E. DAY,
S. THEODORE REX,
ROSS MCINTOSH,
OLAF M. THORSEN.

PRESIDENT PALDA: In regards to the report of the Committee on Press and Public Information, I want to say this is an excellent report, but requires no action.

MR. FOSTER: I move the report be filed and printed in the annual issue of Bar Briefs, and not read at this time. Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that the report be filed and printed in the annual issue of Bar Briefs. As the report requires no action, makes no specific recommendations. All in favor of the motion say aye. Contrary the same. The motion is carried and the report will be filed and printed in the annual issue of Bar Briefs.

REPORT OF COMMITTEE ON PRESS AND PUBLIC INFORMATION

Your committee on Press and Public Information beg leave to report:

Upon receiving notice of appointment on this committee in early November, investigation was first made to find what the aim and purpose was in creating the committee as indicated by the resolution establishing the same and by the reports filed by prior committees. The purposes seemed rather indefinite and each prior committee seemed to have been groping for light, attempting some tasks that seemed reasonably relevant, and devoted most of their report to recommendations for the following committee. A similar criticism of the labors and report of the present committee also may be warranted.

The chairman of the committee then summarized former suggestion for each member of the committee, with request that a study of them be made before the committee met to formulate a more definite program and course of action. Letters of similar nature were sent also to leading attorneys in each of the cities having a daily paper and in some other county seats, suggesting that a cooperating committee in each of these centers be created to give local cooperation in carrying out the plans of the Bar Association.

Favorable reactions and many good suggestions were received and at a meeting of the committee held at Minot, on March third, sub-committees were appointed for Fargo, Grand Forks,

Devils Lake, Valley City, Jamestown, Bismarck and Mandan and plans for work, formulated then by the general committee, were relayed in substance to each of these men. It was suggested that each committee should seek and accept every possible opportunity to enlighten and safeguard the public, promote the administration of justice, secure fair press reports of important cases and otherwise serve the purposes of the Bar Association.

For instance, when it was found that the men were soliciting farmers on behalf of the National Nonpartisan League to pay it \$50 per year for services under the Frazier-Lemke Act upon allegations that seemed questionable, the matter was taken up not only with the Secretary of the State Bar Board, but also with Senator Frazier and Representative Lemke to tell them of the methods that were being employed in the field, in the hope that the authors of the law might do something to check the thoughtlessness or greedy enthusiasm of their followers and take such action as might make the Frazier-Lemke Act serve the farmers of North Dakota without extracting from the hard pressed farmers more than was justified for the only service it was possible to render under the law.

Subsequently the important result of the Court decisions on the Frazier-Lemke law were explained to the newspapers of the state so as to give the farmers accurate information as to the powers of the Court and thus protect them against any misrepresentations and promises we now knew could not be fulfilled.

It was also felt that the committee might render a service to the Bar and the people by emphasizing the need and soliciting cooperation for a recodification of our laws but especially to have every attorney and public official in the state scrutinize the laws applicable to their work, to make a note of obsolete sections, and of the inaccuracies and needed changes therein, to the end that when a codification is made, it might become as complete and satisfactory as possible. Considerable correspondence with attorneys and officials all over the state was had and the press urged to participate in the campaign encouraging all to share in such preparatory work.

Your committee recommends to its successor that it should seek to carry out the Bar Association's purposes by concentrating its efforts on the following tasks:

Prepare for the press authoritative statements, in simple language, of new laws, recent decisions and attempted moratoriums that the people should know and understand.

Summarize and explain Initiated or Referred Laws and Constitutional Amendments, deemed to be of sufficient importance to demand or warrant such service.

Maintain such close relations with the press that reports on courts and cases might present correct information and a wholesome interpretation, to the end that high ethical standards of

Bench and Bar might be promoted thereby. Arrangements should also be made for the presentation by radio of similar information and views on vital questions.

Arrange again for the analysis of Legislation introduced during the Legislative session of 1939 to be presented through radio talks by competent men each evening, as was done last session.

Invite the cooperation of every member of the Bar, appoint special committees in each of the cities having a daily paper, and in most of the county seats, to watch trends, discover violations of the ethical standards of Bar and press, and help to give the public correct information and wholesome views on constitution, laws, decisions, procedure and the accepted standards of professional ethics.

Members of the Committee:

R. A. NESTOS, Chairman,
P. D. NORTON,
C. D. AAKER,
ROBERT H. BOSARD,
GORDON G. HANSON,
P. M. CLARK,
H. H. COOPER.

PRESIDENT PALDA: We will now take up the report of the Committee on Municipal Law.

MR. FOSTER: The report of the Committee on Municipal Laws has been filed. This is an off year so far as the Legislature is concerned, and there are very few recommendations in the report, but it is largely to the effect that the incoming Committee on Municipal Law be directed to cooperate with the Legislative Committee of the North Dakota League of Municipalities, and that the committee, if possible, get together to formulate its ideas before the meeting of the North Dakota League of Municipalities, which will be held in Valley City in September. The League of Municipalities has a very excellent, efficient secretary, located at Bismarck, and I believe we would be able to get to the Legislature several remedial laws, laws clarifying the situation on municipal finances, which need a lot of clarifying since the Mohall decision. All this report consists of is a few recommendations along that line and that the new committee cooperate with the North Dakota League of Municipalities. I move that the report be filed and printed in the annual issue of Bar Briefs without reading.

MR. FREDRICKSON: Second the motion.

MR. STUTSMAN: Do I understand the committee is bound - -

PRESIDENT PALDA: No, it says to cooperate with.

MR. STUTSMAN: That will mean that they will meet and introduce a lot of bills in the Legislature. Are we acting anticipatory to that action?

PRESIDENT PALDA: I understand not.

MR. STUTSMAN: All right.

MR. FOSTER: The facts are that the Legislative Committee of the North Dakota League of Municipalities has been, for years, almost the same committee appointed by this Association. It is only in anticipating that there might be some different members. The League will appoint this committee later.

PRESIDENT PALDA: Is the explanation satisfactory, Mr. Stutsman?

MR. STUTSMAN: Yes.

PRESIDENT PALDA: Gentlemen, you have heard the motion. All those in favor signify by saying aye. Contrary the same. The motion is carried and the orders will be carried out.

REPORT OF COMMITTEE ON MUNICIPAL LAWS.

The Committee on Municipal Laws respectfully make the following as its report and recommendations:

There has not been a great deal of work done by the present committee, this being an off year so far as the Legislative Session is concerned. There was an inclination to procrastinate, and none of the members of the committee, including the chairman, have been any too active. However, certain suggestions have been made by the North Dakota League of Municipalities and members of the committee.

In connection with the coming session of the Legislature, your committee recommends that the Legislative Committee of the State Bar Association be instructed to cooperate with the Legislative Committee of the North Dakota League of Municipalities.

This recommendation is made for the reason that the North Dakota League of Municipalities, through its very efficient Secretary, Mr. Myron H. Atkinson of Bismarck, has been quite successful in sponsoring and procuring the passage of laws of a nonpolitical nature, and that the aid of the North Dakota League of Municipalities would be, in the opinion of your committee, of considerable value in obtaining and procuring passage of acts for the correction of changes in procedural matters and matters affecting municipalities in general.

One particular matter has been called to the attention of your committee by one of its members, and that is in connection with the law for removal of public officials.

Your committee recommends that such law be amended so as to require that before any official is removed, petition be filed. The same should require at least 100 qualified voters as signers on it. It should likewise require supporting affidavits setting forth specific charges, and make it open for inspection by the officer sought to be removed.

Your committee believes that the removal power should perhaps be taken from the Chief Executive of the State and that the law should be entirely amended so that all proceedings for removal should be brought originally in the District Courts. However, that perhaps is too much of a change for the present time, and your committee recommends that the incoming committee of Municipal Laws prepare appropriate Legislation to the effect that Section 685 of the Supplement to the Laws of North Dakota for 1925 be amended to at least require the petition and verification of the specific charges as hereinbefore suggested.

It is the opinion of your committee that there should be no difficulty in obtaining the signature of 100 electors for removal and this would eliminate, to a large extent, the removal at the whim of some particular person who files charges, and would at least relieve the Chief Executive of the State from the burden of taking and hearing testimony and removal proceedings where there is really no basis for the charges made.

Of course the entire proposition of removal from offices in municipalities by the Executive is one which should be given serious consideration. Such power vested in an Executive seems to your committee to vest dictatorial powers in the Executive of the State.

Under the present law, although there may be an opportunity for review of the decision of the Governor in the Courts, nevertheless there is nothing to require that his decision be filed within any specified length of time and of course he can keep the official suspended indefinitely if he should so desire.

Further, the burden of an expensive defense may be cast upon the officials who are financially unable to bear such burden.

Your committee believes that the removal power, vested in the Governor, is wrong in principle, but doubts as to whether or not the entire body of the law can be repealed, and recommends that the Legislative Committee give some consideration to the feature of repealing the entire law giving power to the Governor to remove officials, at least so far as City and County officials are concerned.

At the present time, under the laws of this State, it appears that the City is liable for injuries for damages resulting to vehicles upon the streets. No such liability exists as to the State on the highways, apparently.

Your committee recommends that the Legislative Committee give some study to the subject of liability of municipalities for injuries occurring on the streets, with a view of making, at least, some definite limit of such liability, from icy streets or where the streets become dangerous to travel by reason of accumulation of snow and the like.

Where the question of negligence is left to a jury, there is no way of determining, with any reasonable accuracy, whether

any particular injury creates a liability on the part of the City or not.

Another matter that seems to be in a state of hopeless confusion under the present laws of the State of North Dakota is the question of financing and re-financing issues of municipal bonds and municipal warrants. As the law now exists, and in view of the decision in the Mohall case, it is decidedly doubtful as to whether any issue of bonds for re-financing is a valid issue.

There is also considerable doubt in the minds of the purchasers of bond with the result, of course, the sale of bonds has become exceedingly difficult.

Some of the members of the committee, and that includes the chairman, are unable to understand just exactly what the Court means in the Mohall decision.

Your committee recommends that there be prepared for presentation to the next Legislature, and in conjunction with the Legislative Committee of the North Dakota League of Municipalities a comprehensive statute clarifying the law relating to the financing of municipal obligations.

We understand that the League of North Dakota Municipalities will have some data on this subject and some ideas as to contents of such proposed bill.

At the present time it seems to be fully understood that the municipalities have only such authority as is expressly conferred upon them by the Acts of the Legislature. This sometimes makes the Administration of Municipal Affairs quite difficult and your committee believes it is desirable that more home rule be given to municipalities, and the laws should at least be amended so that the powers of the municipalities should not be limited to expressed grants from the Legislature, but that they should have power to do and perform all legal acts which are not expressly prohibited by the Legislature, and your committee recommends that an effort be made in the coming Session to enact a statute along this line, or preferably an entire home rule charter for municipalities, if that is deemed advisable by the incoming Legislative Committee.

The collection of taxes is a question with which we are all greatly concerned. In the past, bond issues have been made and bonds issued on the strength of special improvement levies; settlements have been made with tax discounts, waving penalty and interest, and in some cases even a discount with the result that special assessment discounts in many cities have found themselves in the position where the uncollected taxes in the district can in no way be sufficient to pay the outstanding warrants.

Several cities have set up a plan whereby some person was employed at the expense of the municipality, county and school district to collect taxes.

Members of this committee express some doubt as to the legality of paying compensation to such persons out of the public funds.

Your committee believes it to be desirable that some attention be given to the enactment of the statute permitting the hiring of a tax collector through some cooperative plan by the bodies receiving the tax.

There is, at present, certain statutes permitting contracts to be made with sheriffs for the collection of personal property taxes on a commission basis. While such laws may be valid, the principle seems to be wrong, for the reason that it does not seem that a public officer should be paid an additional sum for discharging the duties imposed upon him by law.

Furthermore, there is an inclination among certain sheriffs to neglect the collection of personal property taxes until such time as the contract is made whereby they would receive a commission for such collection.

Your committee recommends that a bill be prepared, if such bill may be legally enacted, leading toward a more efficient system for the collection of personal property taxes with permission for the municipalities to bear a portion of the expense of such collections.

Considerable interest has been expressed by some of the members of your committee and numerous attorneys representing various municipalities of the State as to the present laws for the regulation of retail and wholesale sale of liquor.

Your committee is of the opinion that the liquor laws are not a proper subject for Legislative proposals of this body, but that such proposals should more properly come from the League of North Dakota Municipalities, the municipality being more vitally interested in liquor control than is the Bar Association.

However, it is believed that there is some need for the establishment of a different system for the handling of liquor, particularly at retail.

It appears that there will be certain measures initiated for this at the coming election and your committee is unable to make any recommendation at this time, not knowing what such measures contain. Therefore the committee does not feel free to make any recommendations at this time as to the liquor question.

Your committee realizes that this report is more or less sketchy and many important matters have not been touched upon. The committee also realizes the difficulties to be encountered in procuring the enactment of laws sponsored by the Bar Association and feels that no laws should be proposed or sponsored which might be construed to be of a political nature, and that such laws should be confined to procedural measures and measures designed to promote a more efficient government in municipalities in general.

Your committee asks that attorneys for the various municipalities prepare such ideas as they may have for submission at the general meeting of the League of North Dakota Municipalities which will be held in September of this year at Valley City, N. D.

Respectfully submitted,

C. L. FOSTER, Chairman,
Bismarck, N. D.,

O. B. HERIGSTAD, Minot,
W. C. CULL, Garrison.

HARRY E. RITTGERS, Jamestown,

J. P. FLECK, Mandan,

J. P. CAIN, Dickinson,

C. C. WATTAM, Fargo.

PRESIDENT PALDA: Now, we have a special order of business. Judge Bronson, this is the time set for your special order of business.

JUDGE BRONSON: I want to present two motions to the Bar Association today. They will be brief, and the subject matter is very brief. Yesterday we heard an interesting talk by Mr. Cupler about the Bar Board and its functions, and the report of the Bar Board. Those two reports cover the field of the initiation of and the province of an integrated Bar, and my talk to you today and the motions concern an integrated Bar. I have in the office some thirty-five annual reports of the Bar Association, and when I go to the meetings of the American Bar Association, and confer with the American Bar Association men, I am able to state that North Dakota was the first integrated Bar in the Union, and that North Dakota led the field in having an organized Bar where every lawyer who pretends to practice has an opportunity to be heard. And when I see how the American Bar Association went forward trying to get an organized Bar of the country, where every lawyer was in an organized Bar, and see now over the United States twenty-four integrated Bars, at home we at least should be very proud of the fact that we led the procession in establishing an integrated Bar, and that we have done something in a forward-looking movement to bring ourselves together in an integrated Bar, and to obviate the complaint, as it is made here and there, and now and then, that the practicing lawyer does not have the opportunity here and there to present his problems, to present Association matters, because of some small representative group that represents the Bar. Now, I want to refer for just a minute to the American Medical Association; I want to refer for just a minute to the American Dental Association, both of whom we organized in the beginning and whose accomplishments so far as organization is concerned is the work of lawyers. The American Medical Association over this country has about 168,000 physicians and 48.5% of them are in the American Medical Association; and tied up to the American Medical Association is every state agency and every district agency, and they don't complain at all about membership in it, paying anywhere from \$13.00 to \$20.00 per year of the total dues they have

to pay. And this further thing is remarkable about the American Medical Association, that North Dakota stands right at the top, the first state in the Union, in the proportion of physicians and surgeons who are in the American Medical Association. Then we step over in the American Dental Association and even a larger percentage of our dentists are in the American Dental Association.

Now to the point: Last year at Valley City mention was made of the effort of the American Bar Association to become representative of all of the lawyers of the country so that the lawyers were at least to be represented in the Bar of the country, and the efforts of the American Bar Association through its new organization is to tie up all of the various Bar Associations so as to give the opportunity to every Bar Association to become members of it. Last year and the year before the President of your Bar Association has been a functioning member of the one thousand delegates which conduct and control the affairs of the American Bar Association. Last year in Valley City you adopted a motion on the proposition of the State Bar Association participating with its entire membership in the American Bar Association and with its dues entirely paid, not by you but by the Bar Association, and the idea in that was this: We have seen, I mentioned yesterday, a fund accumulate in the Bar Board Fund which in 1923 amounted to some \$12,000.00, with the Legislature coming along, wanting the Supreme Court library to be replenished and filled out, and we contributed \$10,000.00 for that purpose. You see from the report made yesterday that the Bar Board Fund has now a surplus of about \$6,000.00. Under the law fifty per cent of that fund now is taken annually for Bar Association purposes. Gradually and slowly that Bar Board Fund is being subject to consideration by the Legislature for a reappropriation again. It was only last winter that it was mentioned, but the fact they didn't know the Bar Board had a surplus of \$6,000.00, was the only reason that it wasn't taken. The point is this. Judge Palda and myself and Mr. McBride at the Bar Association meeting in Kansas City made a presentation to the Board of Governors of the American Bar Association, the gist of which was that they would like to make some arrangement by which the Bar Association of North Dakota and its membership would be brought in its entirety into the folds of the American Bar Association with their dues paid, just the same as you here today are members of the Association with your dues paid. That became an interesting topic of conversation with the Board of Governors. They became very mightily interested in it. It is on their program now to make some arrangement with North Dakota that will be satisfactory, whereby our Bar Association may become affiliated with and have membership in the American Bar Association 100%. Now, some of the difficulties are these: In the first place, how much of a discount would the American Bar Association make provided our five hundred and forty lawyers are satisfactory for membership? Of course, we know the American Bar Association is a little careful on taking

in colored people. We don't have any of those in our state. The main question is how much will those dues be and how can an arrangement be made for joint membership whereby all our members will become members of the American Bar Association under a discount arrangement? That is under consideration. From our standpoint, of course, if we had to pay \$8.00 per member, that would be over \$4,000.00 per year, and we haven't any such funds at all. Before any approach could be made to that sort of proposal of paying joint fees, we would have to secure from the Legislature a little larger authority for disbursement of the accumulated fund and for the disbursement of a larger percentage of your annual license fees.

Now I come to the two motions to be presented, and that is that this fund is for ourselves and is for the advancement of ourselves in Association work and is for a public service. As I see this Association performing its duty here yesterday, today and tomorrow, I see it performing a public service, not only as to what we may do for our own profession as lawyers, but in a larger field trying to do more and more, trying to do things to bring back to the lawyer, to bring back to this country a greater service agency. That is the future aspect of the American Bar Association. Now I come to the idea of looking forward to an attempt to do something of service to our Bar, to preserve our fund and to take ourselves into a sort of leadership that will eventually make us members of the American Bar Association. I want to close along this line: The American Bar Association Journal is sent out to every member of the American Bar Association. As I told Judge Palda and others, I hope we may make a step toward interesting the members of this Association and to get them legally minded in the sense of being Association minded, that every member of our Bar Association should be able, through this big Association, to receive benefits which he would not otherwise receive; and this is the idea that we can become members of the American Bar Association with dues paid. The American Bar Association dues are \$8.00 per year. Out of that \$8.00 per year \$1.50 goes for the publication and distribution to the members of the American Law Journal. Now, without taking any more time, Mr. President, I want to present two motions:

I have a letter from the Secretary of the American Bar Association, received a few days ago, that they gave this matter consideration at the recent meeting at Cleveland and that he will be glad to have the American Bar Association give some recognition to the proposal made by Judge Palda, Mr. McBride and myself before the Board of Governors. I move you, Mr. President, that a committee of the Bar Association be appointed to recommend to the Legislature an attempt to secure a further amendment of our law covering the Bar Association fees so as to permit the State Bar Board to pay annually out of Bar Board funds \$2.50 additional for the purposes of Association work, to aid and assist licensed lawyers in the practice of law, and contribute to the American Bar Association and the local and district Associations, to

advance the legal profession and to aid and assist in American Citizenship work, and for their authority to the State Bar Board to disburse to the State Bar Association additional funds out of available Bar Board funds for any proper purpose of our Association work.

I present also a second motion, and the second motion is that our State Bar Association favors the idea if and as available funds permit, to at least pay for the benefit of every lawyer licensed as such to practice, the American Law Journal and to contribute at least the sum of \$1.50 toward the dues of every lawyer who desires to join the American Bar Association. This would give the State Bar Association a maximum of \$800.00, which is not an excessive amount toward the promulgation of the idea I expressed. It will strengthen our Association. I offer those two as motions, Mr. President.

PRESIDENT PALDA: We will take up the first motion first.

MR. NORTON: Second the motion.

MR. C. J. MURPHY: I am in favor of making some kind of adjustment with respect to the license fee to the end that this Association will have a greater proportion of that fund. You know the amount that has accumulated and we know the danger of that fund. This Association could use it in very fine work that might be done. And so I am in favor of this motion to have the law amended. I am not so sure that the right amount has been mentioned, but that can be worked out with the committee that will be appointed, and the committee may confer with the Bar Board and get its view, and whether it is \$2.50 additional or some other amount, it will be settled by the committee. So I am in favor of the first motion.

PRESIDENT PALDA: Are there any further comments? If not, gentlemen, all in favor of the motion signify by saying aye. Contrary the same.

MR. MURPHY: By the way, something should be done about the fund that has accumulated.

JUDGE BRONSON: I said so in the motions. I want to give it power to do something for us.

PRESIDENT PALDA: You have heard the motion, gentlemen. All in favor say aye. Contrary no. The ayes have it and the motion is carried. Now on the second motion, will you read it again, Judge Bronson?

JUDGE BRONSON: The second motion simply advances the idea as stated in the first motion. The first contained the idea, the second motion is an expression of the Bar Association favoring the idea as stated in the first motion, and also making an appropriation to give every lawyer in the state the American Law Journal.

MR. CAIN: I should like to ask a question. Would this require the Bar Board to turn over \$2.50 per member from the funds that are now allocated to the Bar Board?

JUDGE BRONSON: Yes, it would require that, if available.

MR. CAIN: If it were mandatory there might arise a situation where the Bar Board - - -

JUDGE BRONSON: It wouldn't do that.

PRESIDENT PALDA: You have heard the motion. It has been seconded. All in favor say aye. Contrary no. The ayes have it and the motion is carried. Let the record so show.

PRESIDENT PALDA: Gentlemen, this is the hour at which we will be favored by an address from one of our old friends and associates - - -

MR. NORTON: I have a resolution I would like to offer if I may have a few minutes.

PRESIDENT PALDA: How long would it take?

MR. NORTON: Just a few minutes.

PRESIDENT PALDA: We will have to wait until after this next portion of our program. Gentlemen, it gives me great pleasure to introduce to you at this time one of our outstanding Judges, an old member of our Association, and I might add to that that he has been one of my personal friends since 1893. I have great pleasure in presenting to you at this time the Honorable A. G. Burr, Justice of the Supreme Court of this state. Judge Burr.

TREATIES BETWEEN THE STATES

JUDGE BURR: Mr. President, and members of the Association: You may think the title of my address is a misnomer, or of this paper is a misnomer, but after all it is only a difference of degrees. A treaty between nations is only a contract in its essence. It does not make much difference whether we call it a treaty or a compact, only it sounds better to call it a treaty.

The relationship of the states to the United States is much in the public thinking of today, whether clearly defined or otherwise; but the relationship of the states to each other does not appear to have much consideration.

A colony was not a sovereign and independent state, though separate from the other colonies. It was governed by a charter of some nature, granted by the king or by parliament. However elastic the provisions the overlordship of Great Britain was admitted.

The sense of union was early nascent and its growth steady. The Articles of the New England Confederation of 1643 state

"Wee all came into these parts of America with one and the same end and ayme"

and so the Plantations declare

"that as in Nation and Religion, so in other respects we bee and continue one according to the tenor and true meaninge of the ensuing Articles."

While Franklin's plan of union of 1754, presented to the Congress assembled at the suggestion of the Board of Trade, never went into effect, nevertheless, further limitations were provided, creating a favorable atmosphere for the future. Later, the colonies, still admitting allegiance to Great Britain, entered into the agreements which produced the various Congresses and ordinarily sovereign powers were surrendered to these bodies as the representatives of the colonies as a unity.

Even when trouble with Great Britain was coming to a head, the theory of an absolutely independent colony, with no political duty to another government, was not broached. The "Stamp Act Congress" of 1765 claimed to speak for and on behalf "of the rights and grievances of the Colonists in America" and constantly refers to "His Majesty's liege subjects in these Colonies", "the people of these Colonies", "the essential rights and liberties of the Colonists", etc., though in proper places it referred to "the Colonies."

The Declaration and Resolves of the First Continental Congress, made October 14, 1774, asserts

"The good people of the several colonies * * * have severally elected * * * deputies to meet and sit in general Congress"

and after reciting numerous grievances states

"to these grievous acts and measures Americans cannot submit."

In the "Declaration of the Causes and Necessity of taking up arms" dated July 6, 1775, Congress claimed authority to make and made the declaration as "the Representatives of the United Colonies of North America now met in Congress." This Congress expressly negatives the purpose of independence with the statement

"We have not raised armies with ambitious designs of separating from Great Britain and establishing independent states."

There is a divergence between the historical view and the judicial view as to the effect of the Declaration of Independence. Reputable historians look upon the united efforts of the colonies immediately subsequent to July 4, 1776, as more than a mere alliance of independent nations. They consider the previous as being carried over, that there was a partial surrender of sovereign powers, and this trend continued until permanently embodied in the Constitution. I realize that the judicial view as set forth by some of the judges in the Ware case, 3 Dall, 199, 1 L. Ed. 568, 578, and the M'Ilvaine case, 4 Cranch 212, 2 L. Ed. 598,

is that each colony was absolutely independent of the other and also independent of Great Britain and this view is confirmed by Justice Campbell in his concurring opinion in the *Dred Scott* case.

But the Declaration of Independence claims to be the joint act of the colonies under the name of the United States of America through their representative "in General Congress, Assembled"; not an independent concerted movement of separate states through the Legislatures of these colonies. However tenuous the bond of union, the transition from the status of colonies under charters and owing allegiance to the mother country to states of the union under the Articles of Confederation, was the substitution of the states in place of colonies, and the federal union in place of the king and parliament. There was always a superbody to which the colony or state owed some sort of allegiance, even though thinly defined, and thus some limitation upon the sovereign powers which are naturally the prerogatives of independent nations. While there are numerous references to free and independent states it would appear these meant free and independent of Great Britain and the rest of the world, for each state or colony owed some duty to the others. But this session of the Bar Association need not solve that problem.

The Articles of Confederation of 1777, being the Articles under which the united colonies worked until the adoption of the Constitution, formed a "perpetual union" and contained many more limitations on sovereign powers. A comparison of Article VI, with Section 10 of Article I of the Constitution shows the general trend in this respect.

These Congresses were federal bodies exercising sovereign powers. They waged war, declared independence, drafted the Articles of Confederation eventually ratified by all the states, made treaties and alliances with foreign powers, and on behalf of all the colonies the Confederation entered into the treaty of peace with Great Britain. Either tacitly or explicitly, all colonies recognized some superiority in this Confederation. From then on all movements and proceedings with reference to union dealt with attempts to remedy defects in the federal government by increasing limitations on the powers of the states.

At the time of the Constitutional Convention the relationship of one state to another was a matter of grave concern. It was recognized that further union meant further limitation on sovereignty, and the problem of securing an effective federal union with a minimum surrender of sovereign powers was one of the most difficult to solve. The impassioned utterances of Patrick Henry against the ratification of the Constitution by Virginia were all directed to the question of the further surrender of power on the part of Virginia. Whatever may have been the status of a colony between July 4, 1776, and the adoption of the Constitution, since then the states have not been absolutely independent.

A durable union must make adequate provision for the peaceful settlement of the most prolific causes of international

disturbance. Boundary questions were and are a fruitful source of friction between countries. Tariffs on imports and exports, the regulation of intercourse between the countries, the status of nationals of one country while residing in another country and many other problems give rise to difficulty even today.

The wisest and best writers and thinkers in political science had come generally to the conclusion that the liberty of the citizens was best safeguarded, and local liberties best protected by a separation of the powers of government into three great classes—Legislative, Executive and Judicial.

The separation of the Judicial from the Executive was a matter of comparatively recent origin in Great Britain. As far back as Magna Charta it was recognized that where the Judges were dependent upon the Executive there was danger that rights would be unjustly controlled. The difficulties in Great Britain during the century preceding the Declaration of Independence gave added force to the argument for complete separation. One of the charges against the king, as set forth in the Declaration of Independence, is

“He has made judges dependent upon his will alone, for the tenure of their offices, and the amount and payment of their salaries.”

Congress did not go into specific details and give illustrations. It was taken for granted that the people in Great Britain and the people in the colonies knew the nature of these acts and their effect—in fact this and other charges against the king are taken as the indicia of tyranny. In the light of this situation it was evident the people were not unprepared for the separation of powers and the elevation of the Judiciary to a position of equality with the Executive and the Legislative, and so by Article III of the Constitution the Judicial power is vested in a Supreme Court, etc.

The Constitution provides two methods for settling the difficulties and mutual problems of two or more states—decision by the Supreme Court of the union, and by compact between the states affected.

In *Rhode Island v. Massachusetts* (12 Peters) referring to a boundary dispute, the Supreme Court says

“There can be but two tribunals under the Constitution who can act on the boundaries of states, the Legislative or the Judicial power; the former is limited in express terms to assent or dissent, where a compact or agreement is referred to them by the states, and as the latter can be exercised only by this court, when a state is a party, the power is here, or it cannot exist.”

Article III of the Constitution is unique in this, that the Supreme Court is the international tribunal of the union entrusted

with the duty of resolving the conflicting claims of states considering themselves clothed with all the sovereign powers of independent states except such as were transferred to the union. Such Judicial international tribunal had to be created. The Supreme Court therefore is really more than a court of last resort. It determines judicially questions which, with other countries, would be determined by the rules of international relations.

The Senate was to be composed of the ambassadors from the states, all states being equal. It would be beneath the dignity of the states to permit inferior Courts to entertain original jurisdiction in disagreements between the states. Hence the Supreme Court of the United States is given original jurisdiction in all cases "in which a state shall be party"; and Section 2 of this Article provides that the Judicial power of the federal government shall extend "to controversies between two or more states; between a state and citizen of another state; between citizens of different states; — and between a state, or the citizens thereof and foreign states, citizens or subjects." The eleventh amendment does not affect the topic we have in mind; but the furore which arose over the decision in *Chisholm v. Georgia* shows how jealous the states were of their dignity.

In *Principality of Monaco v. Mississippi*, 292 U. S. 313, 78 L. Ed. 1282, the Supreme Court reviews the conflicting sovereignties of state and nation, points out the status of the different states prior to the union, shows that no state can be sued without its consent, that the states did not surrender the right not to be sued by a foreign power, that ordinarily a controversy between independent powers is settled by diplomacy through international agreements and so far as a state of the union is concerned the negotiations are to be conducted by the federal government as the general agent of all states in international matters.

In *Rhode Island v. Massachusetts*, 12 Peters 657, 9 L. Ed. 1233, 1259, the Supreme Court discusses its status in dealing with these quasi-international relations of the states, saying:

"Those states, in their highest sovereign capacity, in the convention of the people thereof, on whom, by the revolution, the prerogative of the crown, and the transcendent power of parliament devolved, in a plentitude unimpaired by any act and controllable by no authority * * *, adopted the Constitution by which they respectively made to the United States a grant of Judicial power over controversies between two or more states * * *. The states waived their exemption from judicial power * * * as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant this court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority, as their agent for executing

the Judicial power of the United States in the cases specified."

The Court cites as authority *Cohens v. Virginia*, 6 Wheat. 265, 378, 5 L. Ed. 257, 284; and *Johnson v. M'Intosh*, 8 Wheat. 543, 584, 5 L. Ed. 681, 691. In *North Dakota v. Minnesota*, 263 U. S. 365, 372, 68 L. Ed. 342, 345, it is said this status:

"grows out of the history of the creation of the power, in that it was conferred by the Constitution as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force."

All in all, over forty-four such cases have been before the Supreme Court. Further discussion of the Judicial power in controversies between states is not germane to this topic and, need not be continued.

Compacts and agreements between the colonies were a common means of protecting rights and settling difficulties, even before the creation of the federal union.

In 1643 the four Plantations created a superbody composed of commissioners from each Plantation, and by uniting in the New England Confederation for defense against Indians, agreed to limitations on their independent action. We need not inquire whether such Confederation was with the explicit or tacit consent of Great Britain. In Article IX of the agreement it was provided that none of the members of the Confederation

"shall at any tyme hereafter begin, undertake, or engage themselves or this Confederation, or any part thereof in any war whatsoever (sudden exigents with the necessary consequents thereof excepted * * *."

Here we find the germ of waiver of the assertion of sovereign powers without the consent of the superbody.

Prior to 1711, Virginia and North Carolina had a dispute over the boundary line, but no settlement was effected. In 1728 the Governors of these colonies came to an agreement, submitting it to Great Britain for approval, which was given. A survey was required to carry it into execution, and in 1778 these colonies, as states, again took up the question. It was not until 1800 that Virginia approved the line drawn and later, Tennessee, which had been created from part of the territory, entered its approval. A compact between colonies was no new thing.

From the very earliest times the Supreme Court has considered this question. In *Poole v. Fleeger*, 11 Peters 186, 209, 9 L. Ed. 680, 690, the Court through Justice Story dwells to some extent upon the general right of sovereignty belonging to independent nations and how far the different states of the union possess such rights. In this case, involving the effect of a com-

pact between Kentucky and Tennessee entered into in 1820, the Court was required to pass upon matters which arose regarding territory affected by the boundary line, and sets forth that it belongs to sovereignties to "fix the disputed boundaries between their respective territories". This power, though it can only be exercised with the consent of Congress, still resides with the several states.

The Court therein refused to determine whether the provision that no state may enact a law impairing the obligation of contracts was affected by the provision permitting compacts and agreements between states. However, such compact, when entered into with the consent of Congress, is binding upon the people of the several states involved; the Court, in *Coffee v. Groover*, 123 U. S. 1, 30, 31 L. Ed. 51, 63, declaring that

"Settlements of boundary belong to the sovereign power, and cannot be questioned by individuals."

This principle is reaffirmed in *Maryland v. West Virginia*, 217 U. S. 42, 54, L. Ed. 658, and thus possibly disposes of the objection based on impairment of contract.

Probably the method of settling state difficulties by suits in the Supreme Court is the more widely known among our people, but the settlement of difficulties by compromise and arbitration was no new idea. Under international law the latter was the only method whereby independent states could settle difficulties peaceably until the World Court was established.

That sovereign independent states had a perfect right to enter into compacts and agreements with each other was never disputed, and the constitution recognizes this right.

Section 10 of Article I of the Constitution shows two classes of limitations — absolute and partial. Among absolute limitations we find: no state may enter into any treaty or alliance or confederation; coin money; pass a bill of attainder or a law "impairing the obligations of contracts", etc. Among partial limitations we find: no state, "without the consent of Congress", may lay imposts or duties on imports or exports, keep troops or ships of war in time of peace, or do certain other acts which would have a tendency to create friction.

Among these usual rights of sovereignty, prohibited without the consent of Congress, is "no state shall * * * enter into any agreement or compact with another state". This clearly refers to a compact with another state of the union because of the context dealing with compacts with foreign powers.

The purpose of this limitation must be self-evident. Good faith between the states required that no state should enter into a compact or agreement with another without the consent of Congress, the representatives of the entire group; and to prevent sectionalism, no union within the union could be permitted.

It is interesting to note how frequently this right has been exercised, the procedure necessary and the effect of such compact.

But what does the term "agreement or compact" mean? In *Virginia v. Tennessee*, 148 U. S. 503, 518, 37 L. Ed. 537, it is held that all compacts and agreements are not forbidden. The term refers merely to such agreements and subjects "which may tend to increase and build up the political influence of the contracting states, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control" — citing *Story* as an authority. All compacts and agreements which have an international flavor are forbidden without the consent of Congress; but if, as the Court states, Massachusetts desired to transport state goods over the Erie Canal to the World's Fair in Chicago, it would not require the consent of Congress to enter into an agreement with the state of New York for that purpose, nor if Virginia, through some means became the owner of a piece of property in New York and desired to sell it to the state of New York, would it be necessary for the two states to get consent before the sale was valid.

Again quoting *Story*, the court holds

"the consent of Congress may be properly required, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter into any compact of agreement might be attended with permanent inconvenience or public mischief."

The rule is that the compact or agreement is within or without the prohibition of the Constitution according as it

"may lead or not to the increase of the political power or influence of the states affected, and thus encroach or not upon the full and free exercise of Federal authority."

Judge Bruce, writing for our own court in *McHenry County v. Brady*, 37 N. D. 61, 69, 163 N. W. 540, goes into an extended discussion of this subject and shows that so long as the dealings of the state, even with a foreign power, do not in any way encroach upon or weaken the general authority of Congress and are in no way political they do not come within the prohibition against compacts with another state or with a foreign power. There have been at least eleven state compacts never submitted to Congress.

That such agreements or compacts are primarily political in nature is evident by the fact that the consent to enter into such a compact must be given by Congress. Congress is the agent of the union for Legislative action which affects all of the states and, in addition, the Senate is the representative of the states as separate entities. Therefore, when a state desires to enter into a compact or agreement with another, with reference to matters which affect the union and may have some bearing upon its pow-

ers and authority, it is natural that the consent must be given by the body that represents the various states.

In *Rhode Island v. Massachusetts*, 12 Peters 657, 9 L. Ed. 1233, and 12 Peters 755, 9 L. Ed. 1273, the Supreme Court shows that the effect of such consent is to restore the states to their original inherent sovereignty so far as the question in dispute is concerned; and the purpose of such compacts and congressional consent, especially in dealing with boundaries, is set forth.

The language of the Constitution is indefinite as to the time and manner in which the consent of Congress is given. It is self-evident that before Congress can give consent intelligently it must know something about the nature of the controversy to be settled. But as the Supreme Court points out

"The Constitution does not state when the consent of Congress shall be given, whether it shall precede or may follow the compact made, or whether it shall be express or may be implied." (*Virginia v. Tennessee*, *supra*.)

In *Green v. Biddle*, 8 Wheat. 86, 5 L. Ed. 547, 568, the compact of 1789 between Virginia and the people of the district now known as Kentucky, was being considered and the Court held it was not a valid objection that the compact was entered into before the consent of Congress was secured. By thereafter admitting Kentucky as a state, with the provisions of this compact as the basis of the settlement of the claims of Virginia, the compact was complete.

There are many cases where it is quite evident consent could be sought and given before any form of settlement was proposed. Consent to the Columbia River compact between Washington, Idaho, Oregon and Montana, was given in March, 1925, before any of these states had taken action. Commissioners for the Colorado River compact between Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming were appointed from these seven states between February and May, 1921. Consent to have them enter into a compact was granted in August, 1921, but the agreement was not ratified by any of the states until February, 1923.

However, this is not the usual way in which questions arise. Controversies grow and it may well be that after they have reached a stage when they become irritating it may be found advisable to settle the difficulty by means of an agreement between the states rather than judicially. Thus Maryland and Virginia settled a troublesome dispute over fishery rights.

Often, as frequently shown in boundary disputes, no attempt is made to settle the difficulty until after conflict of jurisdiction had arisen in the territory involved and thus the peace of various states and the good feeling which should exist between them are threatened.

The power of Congress is restricted to the giving or withholding assent. Theoretically it cannot amend the proposals or exercise Legislative control over them. Of course Congress may refuse assent because of certain provisions and be willing to grant consent on modified terms, and to this extent may be said to have control over the proposal, for the one whose consent must be secured has a powerful influence; but nothing is said in the Constitution with reference to such power. This is indicated in *James v. Dravo Cont. Co.*, 302 U. S. 134 (1937) and *Arizona v. California*, 292 U. S. 341, 345, 78 L. Ed. 1298, 1299.

So far as manner of giving consent is concerned, Justice Story, in his commentaries points out, that the consent of Congress need not be given expressly. It may be implied; and "is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing them." This is illustrated in the case of *Virginia v. Tennessee*. These two states had finally settled a boundary dispute by compact. No express consent by Congress had been given and certainly could not have preceded the execution of the compact because a line was run and agreed upon before the Legislatures of the two states entered into the agreement to accept that line. Thereafter Congress in various ways recognized the line as the true line. It used this line as the boundary line of federal districts for judicial and revenue purposes, for federal elections, for federal appointments and such action was held by the Supreme Court to furnish

"as conclusive proof of assent to it by that body as can usually be obtained from its most formal proceedings."

Chapter 110 of 43 U. S. Statutes 796 is illustrative of a method of giving consent. Colorado and New Mexico had already entered into a compact concerning the La Plata River and agreed upon certain articles, which included the provisions that the

"compact may be modified or terminated at any time by mutual consent of the signatory States"

and further that

"this compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States."

The statute sets forth

"that the consent and approval of Congress is hereby given to the compact signed by the commissioners of the States of Colorado and New Mexico, etc."

narrates all of the articles, shows that the same had been approved by the Legislatures of the two states and therefore the matter is settled.

But such compact and agreement must not violate any provision of the United States Constitution; and though the compact

be entered into by states in their political capacity, with the consent of Congress, their political representative, nevertheless the Supreme Court is required at times to determine the validity of the compact upon constitutional grounds; (*Rhode Island v. Massachusetts*, *supra.*) for the construction of such compact is a judicial question. *Pollard v. Kibbe*, 14 Pet. 354, 416, 10 L. Ed. 491, 521.

In this respect it is interesting to note that the Supreme Court upholds the binding effect of such compacts. In the *Green-Biddle* case cited, the Court held a Kentucky statute void as violative of the compact with Virginia. In the *Pennsylvania* case (13 How. 518, 14 L. Ed. 249) it is shown no state may violate a compact properly made. In 1921 the Legislatures of Colorado and New Mexico authorized the compact already mentioned. The agreement was drafted by the Commissioners and ratified by the Legislatures in 1923. In 1925 Congress, by the Act already cited, gave its consent. But many years prior thereto Colorado had granted water rights to a certain ditch company and from time to time the property rights of this company had been upheld. Later, the company claimed its rights were infringed by the terms of the compact and brought action in the Colorado Courts to enjoin certain officials from permitting diversion under the terms of the compact. The matter finally reached the Supreme Court of Colorado and in 93 Colo. 128, 131, 25 P. (2nd) 187, the Court held the compact to be unconstitutional as impairing the obligation of contracts, taking property without just compensation and on the theory, in general as stated by the Supreme Court of the United States, that

"it embodies not a judicial, or quasi-judicial, decision of controverted rights, but a trading compromise of conflicting claims."

The Supreme Court of Colorado re-affirmed this holding in 101 Colo. 73, 70 P. (2nd) 849. However, the Supreme Court of the United States makes short disposition of this contention and says

"The assumption that a judicial or quasi-judicial decision of the controverted claims is essential to the validity of a compact adjusting them, rests upon misconception. It ignores the history and order of development of the two means provided by the Constitution for adjusting interstate controversies. The compact — the legislative means — adapts to our Union of sovereign States the age-old treaty making power of independent sovereign nations. Adjustment by compact without a judicial or quasi-judicial determination of existing rights had been practiced in the Colonies, was practiced by the states before the adoption of the Constitution, and had been extensively practiced in the United States for nearly half a century before this Court first applied the judicial means in settling the boundary

dispute in *Rhode Island v. Massachusetts*, 12 Pet. 657, 723-25."

The compact stands even though it may be assumed rights formerly adjudicated to the ditch company are indefeasible so far as concerns the State of Colorado, its citizens, and any other person claiming water rights there. (*Hinderlider v. La Plata River and Cherry Creek Ditch Company*, Decided October term 1937).

It is interesting to note as shown by Messers. Frankfurter and Landis in 34 *Yale Law Journal* there were at least nine colonial boundary compacts prior to independence and four under confederation. I find forty-five compacts entered into thereafter, with express congressional consent. All in all it is a frequent method for settlement of disputes, there being at least fifteen of such compacts dealing with the apportionment of the water of interstate streams alone. The tunnel compact between New York and New Jersey, Kansas City waterworks compact between Kansas and Missouri, port compact between New York and New Jersey indicate some of the other fields.

The Supreme Court of the United States is not jealous of this method of determining controversies between states. In the dispute between Washington and Oregon, 214 U. S. 205, 53 L. Ed. 969, the Court suggested that the settlement of boundaries is generally attended with difficulties and it is wise for adjacent states to adjust their boundaries by boundary commissions and agreements as has been done with the consent of Congress in several instances. In *Minnesota v. Wisconsin*, 252 U. S. 273, 283, 64 L. Ed. 558, 564, the Court deemed it appropriate to suggest that the contending states endeavor, with consent of Congress, to adjust their boundaries. Again, in *New York v. New Jersey*, 256 U. S. 296, 313, 65 L. Ed. 937, 945 — a case involving controversies over sewage disposal on the part of New Jersey — the Court said

"We cannot withhold the suggestion, inspired by the consideration of this case, that the grave problem of sewage disposal presented by the large and growing populations living on the shores of New York bay is one more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the states so vitally interested in it than by proceedings in any court, however constituted."

In the recent case of *Hinderlider v. La Plata River Company*, decided at the October term, 1937, the Court says specifically

"resort to the judicial remedy is never essential to the adjustment of interstate controversies, unless the States are unable to agree upon the terms of a compact, or Congress refuses its consent."

The whole trend in this direction is to preserve the integrity of the states, to prevent them from lapsing into the condition of

glorified counties and to impress upon the people of the states the dignity, the power, the authority of the state itself which has been more or less in eclipse since the disastrous effects of the Civil War on the doctrine of state's rights.

PRESIDENT PALDA: Gentlemen, I am sure we all appreciate this masterly discourse by Judge Burr, which shows a vast amount of study, and I think you should give him a rising vote of thanks.

(Rising vote of thanks given.)

MR. MURPHY: Would it not be a good idea to distribute those pamphlets you have on the stage?

PRESIDENT PALDA: Well, I think it would.

MR. MURPHY: It is too much work for us to walk up and get the copies. That pile doesn't seem to decrease in number. The Secretary hasn't much to do. Somebody ought to distribute those pamphlets.

PRESIDENT PALDA: Well, I see we have some young men present. I was looking at Mr. Bangert, Mr. Murphy and Mr. Price there. I hope they will take the suggestion. Gentlemen, the purpose is that you will take these home and distribute them in your own neighborhood.

JUDGE BUTTZ: I would just like to suggest that if each of us would make it our business to send copies of this to each member of the Legislature from our county, with the suggestion perhaps that a personal word might help.

MR. CUPLER: May I ask for some information? I assume that these circulars have been compiled by officers of the Association.

PRESIDENT PALDA: Well, they have, but the Bar Association is taking no credit for them. They are being distributed on behalf of good citizenship.

MR. CUPLER: Do I understand it is the wish of the chair that we take a pile of these home and distribute them to our clients and that sort of thing?

PRESIDENT PALDA: Yes, sir, that is the purpose, that was the purpose of printing them.

MR. MURPHY: The purpose is to ask for some Legislation.

PRESIDENT PALDA: Now, Gentlemen, we will please come to order. Mr. Norton, of Minot, requests that he be permitted to have the floor.

MR. NORTON: Mr. President, it is a matter which I think should be taken up by this Association, and should have been taken up many years ago.

PRESIDENT PALDA: We will take it up if you present it.

MR. NORTON: Then I will make it very brief. It has reference to the publication known as the Martindale-Hubbell Directory. I have been in touch with that publication for the last thirty-five years and for the last thirty years, in my own opinion, I have considered it a libelous, blackmailing, money-grabbing publication, and whether or not it libels attorneys, as it has frequently done in this state, there isn't any way of reaching it and getting redress. I offer this resolution to meet the situation:

RESOLUTION

It appearing that Martindale-Hubbell Law Directory, Inc., a corporation, organized under the state laws of New York, has not qualified itself to do business under the laws of the State of North Dakota, has for a number of years published a law directory advertised by it to contain a full list of lawyers practicing in the United States and Canada, which so-called directory has been, for many years, generally circulated throughout this and other states;

And it further appearing that said law directory advertises all attorneys rated therein as to ability, skill and experience in the practice of law, and other general recommendations, and has so rated or graded all attorneys therein listed throughout the United States and Canada;

And it further appearing that said corporation is entirely without authority to rate or grade attorneys who are listed in such publication, and that in making and publishing such rating it has mostly rated and listed their ability, skill and experience in a libelous manner;

Be It Resolved that this Association disapprove of the publication and circulation of said Law Directory among the lawyers of this state, and that it be recommended that the Committee on Legislation of this Association prepare and present to the Legislature at its next session a bill for an act prohibiting taking subscriptions for and circulating such law directory within this state.

MR. NORTON: I move the adoption of this resolution.

MR. WEHE: Seconded.

PRESIDENT PALDA: Gentlemen, you have heard the resolution and have heard the motion to adopt, which was seconded. What is your pleasure?

JUDGE BRONSON: I would like to inquire wherein counsel makes the statement that this directory is libelous. I would like to know wherein this directory is libelous.

MR. NORTON: In answer I will say this, gentlemen. I know of my own knowledge for many years that attorneys are under-rated, attorneys who have been practicing here for years in the state, who are of the highest type and character of attorneys, and they are given a B or a C rating. I have been told myself by

solicitors that unless I subscribe for the publication my rating would be lowered, and I know of a number of cases where it has been. I know it has been libelous in particular cases.

MR. POLLOCK: He does not answer the question, Mr. President. He is making general statements.

PRESIDENT PALDA: That seems to be the answer Mr. Norton made, gentlemen.

MR. BANGERT: Mr. Norton, I rise to a point of information. What could we do in North Dakota with a statute prohibiting men in New York from circulating directories in this state? I might send my subscription to New York and they would mail it out to me.

PRESIDENT PALDA: There is nothing that I know of.

MR. BERGESON: As I understand it, the American Bar Association has a committee working on this particular project with reference to lists of various kinds. It seems to me that it would be futile as a local unit here to attempt to deal with a problem which is really national rather than local. I would think it would be more judicious on our part as members of the American Bar Association, and certainly every one of us should be, and do our part there, to leave that to the larger organization. I move that the motion be laid upon the table.

MR. ELLSWORTH: Second the motion.

PRESIDENT PALDA: The motion has been made that the resolution be laid upon the table. All those in favor will signify by saying aye. Contrary the same. The ayes seem to have it. The motion to lay the resolution on the table is carried.

Gentlemen, the next order of business is the report of the Committee on the Unauthorized Practice of Law.

MR. MCBRIDE: Unless the chairman, Mr. Peterson, or some member of the committee desires to read the report I will do so.

PRESIDENT PALDA: You may proceed, Mr. Secretary.

REPORT OF COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

To the State Bar Association Meeting, Devils Lake, North Dakota, July 15th and 16th, 1938.

The Committee on Unauthorized Practice of Law held no meetings during the year.

At the time of the last meeting of the State Bar Association, July 16th and 17th, 1937, there was pending in the Supreme Court the case of Murphy vs. Townley, 274 NW. 875. As is well known the Court decided that alleged illegal practice of law by those giving legal advice without first having been admitted to practice and without having paid license fee, did not come within

the inherent power of the Supreme Court to punish as Contempt of Court.

After the decision hereinbefore mentioned there was considerable activity, in different parts of the state, by individuals who were advising farmers to take advantage of the Frazier-Lemke Act, soliciting business and quoting fees.

However, the members of this committee felt that its activities might as well be dispensed with. It is settled that one who illegally practices law cannot be punished by the Court for Contempt of Court. This leaves proceedings by injunction or criminal proceedings. Some members of the committee are doubtful whether or not proceedings for injunction could be successfully maintained. Injunctions are not ordinarily issued to restrain the commission of criminal offense. There may be some difference in opinion on this question. This committee is not trying to argue the question one way or another. In *Murphy vs. Townley*, supra, the Court said, "If the defendants are illegally practicing law without a license, the statute makes provision for their punishment." The punishment referred to, no doubt, means the punishment imposed upon conviction of a misdemeanor, illegally practicing law without first obtaining a license, so to do being a misdemeanor under Section 811 of the 1925 Supp. as amended by Chapter 143 of the 1933 Session Laws of North Dakota.

The Court also said, in *Murphy vs. Townley*, supra, "in the case of *Cain, etc., vs. Merchants National Bank*, 66 N. D. 746, 268 NW. 719, it is not in any way intimated that an injunctive order will not issue to prevent the illegal practice of law, but "that there is nothing in this record warranting the issuance of an injunctive order". We submit that that case does not settle the question whether an injunction would or would not be issued.

However, there is a remedy by way of criminal proceedings, but there is serious doubt in the minds of the members of the committee whether much could be accomplished by way of criminal prosecution. In fact the committee felt rather discouraged over the situation in view of the decision in *Murphy vs. Townley*, supra, and also the decision in its companion case of *Murphy vs. Crum*, 274 NW. 862. In the latter case the Court said, "if the defendants are guilty of the violation of professional ethics (the defendants in the case being a licensed attorney) there is a method provided for their discipline".

Other than complaints regarding activities in connection with the Frazier-Lemke Act there have been no complaints to be mentioned.

Dated this 10th day of June, 1938.

C. F. PETERSON, Chairman,
CLYDE DUFFY,
GORDON V. COX,

Committee.

PRESIDENT PALDA: What is your pleasure, gentlemen, with reference to this report?

MR. MURPHY: I move that the report be adopted and placed on file. Seconded.

PRESIDENT PALDA: It has been moved and seconded that the report be adopted and placed on file. All those in favor say aye. Contrary the same. The motion is carried.

JUDGE ELLSWORTH: There is a matter I have in mind that I think comes up properly at this time in the consideration of the report of this committee on the Illicit Practice of Law. Now the report has been very astonishing to me. Further than this, the action of the committee appointed during 1937, as reported in Bar Briefs, was quite an astonishment when it reached me. It did not come to my attention until after the meeting at Valley City. At that time, as I remember it, the report was passed over without reading and I had not seen the report. But I understand the committee that was appointed in 1937 at its first meeting decided this, that hereafter when a matter of unauthorized practice of law is brought to the attention of the committee, that such matter be taken up with the President or some officer of the local Bar Association wherein the unauthorized practice is being conducted, that facts be secured from such local Bar Association, or otherwise, as necessary, and that a report might be submitted to the Bar Board of the State of North Dakota for such further action as it may deem necessary; that the committee act as a fact-gathering committee and not as a complaining or prosecuting committee. Now, I have been unable to find the resolution or motion that authorized the appointment of this committee. As Your Honor is aware, this is not a standing committee. It is appointed at each meeting of the Association by motion made at that time. Now the motions made before, directed that the Committee on Illicit Practice of Law, gentlemen, should investigate and gather the facts and employ attorneys and prosecute those actions before the Courts, not that it act merely as a fact-finding committee and lay the facts before the State Bar Board, and I don't think it has ever been the intention of the Association that such action should be taken. Now, as a matter of fact, it is generally known that the illicit practice of law is spreading very widely over North Dakota, it is increasing particularly in these matters arising under the Frazier-Lemke Act. The matter that was submitted to the Supreme Court was disposed of entirely upon a question of practice and the merits of the case were not gone into, and the Court in that opinion, as those of you who have read it and considered it know, stated that a suit by injunction might be maintained. And I want to say that committees of this Bar Association have maintained injunction suits in three cases, one case here in Ramsey County where a justice of the peace was engaged in the illicit practice of law, and he was enjoined by Judge McKenna, of the District Court, and has not resumed practice; another case, when a collection agency at Bismarck was engaged in the illicit practice of law, and on an order

by Judge McFarland an injunction was issued; and in the case of the Merchants National Bank of Fargo, as those of you who have read it know, the Court said that an injunction might issue, but that the facts that had been shown against the Bank were not such as required an injunction in that case. Now it seems to me that the only proper method of prosecution is by injunction. Of course, we can't do it by contempt of court, even in the District Courts, because, as you know, the rule is that criminal contempt is only heard and enforced in a pending action, and it cannot be taken up directly any more than it could be in the Supreme Court in an original action. But these actions should be prosecuted by injunctions in the District Court, and I am going to submit a motion at this time with reference to the appointment of this committee. It is moved that the incoming President of this Association, with the approval of the Executive Committee, appoint a committee consisting of three members for a term of two years to be known as the Committee on the Illicit Practice of Law and Disciplinary Measures. That this committee so appointed be authorized and directed by this Association to investigate and find the facts in reference to any illicit practice of law or offense against the Code of Legal Ethics; that in case it determines facts that show ethical offenses, that it employ attorneys to be paid for their services and expenses from the State Bar fund, as provided by law, to promptly and efficiently prosecute all cases of illicit practice in the Courts of the state arising from such, and to present ethical offenses of attorneys to such State Bar Board for such proceedings as such board may see fit to take. I may say that quite recently there has been brought to my attention certain complaints of ethical offenses which I think should be inquired into. So in making this motion I have somewhat broadened the duties of the committee.

MR. WEHE: Second the motion.

PRESIDENT PALDA: Gentlemen, you have heard the motion.

MR. CASEY: I am very pleased, indeed, to second the motion made by the Judge, and I believe something should be done about these matters. Just what it is it is pretty hard to tell, but I think the resolution presented is a proper foundation upon which to work, with such variations as are thought proper later on.

MR. C. J. MURPHY: Under the law as it stands at the present time the question of violation of ethics or unprofessionalism of any kind by a member of the Bar is subject to the jurisdiction of the Supreme Court, and the method of procedure in such cases is pointed out and well recognized. Complaints are filed with the Supreme Court and the investigations made by the Bar Board, so it seems to me that this, if I may be excused by Mr. Wehe for quoting him, that this motion is unconstitutional insofar as it would extend the power and jurisdiction of the Committee on Unauthorized Practice of Law. We, of course, may pass this motion, but it will be a lost motion.

MR. OWEN: It seems to me that if there were something this Association could do to stimulate intestinal fortitude of the

membership we would not need so many motions and resolutions. If anyone violates the beer law the Regulatory Department takes care of it, and if there are tax violations the Tax Department takes care of it, and various other violations of so-called moral as well as business laws of this state are taken care of by the different departments of the state. Now, it is against the laws of this state to practice law without a license, and it is made a crime. Why should we spend our money investigating a fellow who is practicing law right under our own noses rather than have the nerve, or the guts, if I may put it in plain English, to go over to the States Attorney or the court and file a complaint and have it done in a legal way. Our Supreme Court has told us how we can do it, we really are supposed to know some of the law, and why resolute and have some more committees. I am in favor of the motion, but it is going to cost some money to put it in Bar Briefs. So I am heartily in favor of bringing complaints against ourselves for failure to file legitimate charges which we can prove with the Bar Board and have those hearings and prosecutions made in the regular way. I am sure we have a Bar Board that pays attention to our griefs, and in our own town up there in the northwestern corner of the God-stricken streak we have a little system when we find a fellow practicing law, drawing wills and probating estates and bringing suits in Justice Court, some of us go over and tell him something, and say, "Here, if you don't cut this out we are going to file formal charges", and we find that invariably those fellows have some respect for the profession when we tell them so. That is one way we have of dealing with them, and if he doesn't stop we file complaints.

MR. BANGERT: I hoped I wouldn't have to say anything on the matter of unlicensed practice of law. I have had a rather strenuous time with it myself, but I had hoped that during the next year the proper members of the Association would do the thing which, in my opinion, will stamp out most of the unlicensed practice, and that is to disbar the attorneys who permit their names to be used in that unlicensed practice. That is the thing that ought to be done and I am hoping that the incoming officers of this Association will see that it is done. And I might suggest this: Another very pertinent field for investigation on the question of professional ethics—you might check up on some of our attorneys who have a regular pay check every month, working for the State of North Dakota, engaging in the defense of people who have been complained against by the State of North Dakota. It might be a very fertile field to check into. I notice that considerable has been developing recently. Now I would—in fact, I have supported motions very similar to this one during a number of sessions. I hoped that we would not take any action this year, but that the authorities would take and check upon the attorneys who permit their names to be used and that we try that for a year.

MR. DUFFY: Mr. Chairman, I have served as a member of the Committee on the Unauthorized Practice of Law for the last three years. I have discovered that we are almost helpless in

that field. So far as injunctions are concerned, they are, in my judgment, absolutely impracticable. If we should undertake to enjoin those who are soliciting Frazier-Lemke business, and that is the primary violation of our laws today, we would have to do so on the theory that those who are soliciting Frazier-Lemke business are interfering with our business. Now, by the Eternal Gods, I am not going to go on record that those fellows who are out soliciting Frazier-Lemke business are interfering with my business. I do not believe there is any lawyer here whose business is being interfered with by the solicitors of Frazier-Lemke business, and unless we can show that they are interfering with our business, then no Court in this state has any right to grant an injunction. Therefore, it was my thought that the only remedy was contempt proceedings. I, as a member of the committee, authorized and directed prosecution along that line, and the Supreme Court, contrary to my judgment, decided it could not be done. Now there remains just one thing, and that is what Bill Owens said, criminal proceedings. I want to say that at the convention two years ago Bill Owens and I were the only fellows who agreed, and I am glad to see that we are still in agreement.

MR. OWENS: In view of the fact that I am on the pay roll, I don't want Charlie Miller or Bangert monkeying around with my check. And I don't subscribe to what our friend Bangert says about that, but I believe that what Clyde Duffy said is right. I am convinced that ultimately it will come to that thing. We fight everybody else, and why shouldn't we do a little free work for ourselves. I believe the same old thing is now in the wind that came up, as Clyde said, two years ago, about these various government agencies running around the country and advising and soliciting and working, drawing mortgages and deeds and transfers and all that stuff, which doesn't interfere with my business, except as a general principle of ethical practice of the profession; and so I still insist that if we go on record calling to the attention of the various Bar Associations, the district associations and the local associations, for a united effort we can stamp out all of the interference that is unlawful in our profession.

MR. BANGERT: I just wanted to put Mr. Owens on the pay roll.

JUDGE ELLSWORTH: I think some of the attorneys who have spoken have a misconception of the duty of the Association in this matter. This gentleman makes a suggestion that unless it interferes with his business that he can't claim an injunction. Is that the case? Is this Bar Association not concerned about how the public is affected in these matters? If unlicensed persons can go out and represent themselves as licensed attorneys and attempt to practice law, doesn't that render just as much damage in the community as an unlicensed medical practitioner can do? And isn't it the duty of this Association to see that these practices are not permitted? It is material, I should say, that the Medical Association look after those matters pertaining to medical

matters, and shouldn't the public look to the Bar Association to regulate matters of legal practice, and if we don't do it we get into discredit with the public, properly enough, I think, because we are failing in the duty we ought to undertake.

MR. ADAMS: Personally, I am content that the Executive Committee of the Association handle the matter. I think this resolution is altogether too broad, it is giving too much power. I move that the resolution be laid on the table, with the idea that the Executive Committee will handle this during the coming year.

Motion seconded.

PRESIDENT PALDA: Gentlemen, you have heard the motion that the resolution be laid on the table and referred to the Executive Committee. I do think the Executive Committee would give it serious thought and attention.

JUDGE ELLSWORTH: That is the motion for the appointment of the committee?

PRESIDENT PALDA: No, the motion is made that the resolution be laid on the table.

MR. WEHE: I rise to a point of order. There was a motion made and I seconded it. How can you consider this motion?

PRESIDENT PALDA: You can always consider a motion to lay on the table. You are now voting on the motion to lay on the table. All in favor signify by saying aye. Contrary the same. The motion is carried.

JUDGE ELLSWORTH: I ask for a division.

PRESIDENT PALDA: Gentlemen, all in favor of laying the resolution on the table will rise. All those opposed please rise. There seems to be no question about the result. The motion is carried.

PRESIDENT PALDA: Gentlemen, the next order of business is the report of the Committee on Constitution and By-laws.

REPORT OF COMMITTEE ON CONSTITUTION AND BY-LAWS

Your Committee on Constitution and By-Laws makes the following report:

The Committee upon Constitution and By-Laws for the year 1937 submitted for consideration to the Bar Association at its annual meeting, an amendment to Article V of the Constitution, so that Article V shall read as follows:

"Executive Committee: The Executive Committee shall consist of the President and Vice President of this Association and the Presidents of the several District Bar Associations of the State as such districts are now or may hereafter

be organized, and the President whose term of office expires in the preceding year shall likewise be a member of the Executive Committee for a period until the next annual meeting after the expiration of his term as President of the Association. In the event that any such District Bar Association shall not have a duly elected President, then the President of this Association shall appoint, from the territory covered by said District Bar Association, a member for said Executive Committee. The Representative of such District Bar Association shall serve upon such Executive Committee until the next annual meeting of this Association, notwithstanding the election of a new President of such District Bar Association. The Secretary-Treasurer of this Association shall act as Secretary of the Executive Committee, but he shall have no vote." (All new matter is underlined.)

This recommendation was made for the reason that such committee and this committee believes the experience and knowledge acquired by the person who has served as President of the Association is valuable to the incoming President and to the Association, and that it would be desirable that the Association have the advantage of the knowledge of the affairs of the Association acquired by the outgoing President.

In view of the recommendation of the committee for 1937, and that the proposed amendment was submitted to be considered at the annual meeting to be held in 1938, your committee recommends for the consideration of the Association the within and foregoing amendment.

After careful consideration your committee has no further recommendations in relation to the Constitution and By-Laws of the Association.

Respectfully submitted,

QUENTIN M. BURDICK,
J. J. MULREADY,
L. J. SMITH,
J. A. LINDELL,
C. L. FOSTER,
JOHN J. NILLES, Chairman.

SECRETARY MCBRIDE: Now, Gentlemen, at this time I presume it would be in order to bring up the adoption of this change in the Constitution.

MR. BANGERT: I move you, Mr. President, that we adopt the report and that we adopt the Amendment to the Constitution. Motion seconded.

MR. F. J. TRAYNOR: May I ask how many members that puts on the Executive Committee?

PRESIDENT PALDA: Just one more, the Past President.

MR. OWEN: Mr. President, as I understand the reading of that, if and when passed, it effectively eliminates the small town lawyer, or those outside the metropolitan sections, from ever being drafted for the Presidency or a member of the Executive Committee.

PRESIDENT PALDA: Why no.

MR. OWEN: For this reason: That there are some very large districts and the majority of the Bar membership who control the election of district officers are located in the larger cities. Unless a member of the Bar from the smaller town is active enough to become elected President of the District Association he cannot become a member of the Executive Committee. Is that a correct understanding of the facts?

PRESIDENT PALDA: Well, I think that has always been true. The amendment has no affect upon that at all.

SECRETARY MCBRIDE: The only change in the present section is that portion which is as follows: "And the President whose term expires in the preceding year shall likewise be a member of the Executive Committee." The immediate Past President of the Association in addition to those we now have,—the President, Vice President and Presidents of the various District Associations. All of the rest of the matter I have read has been in your Constitution for a good many years, since you adopted the present system.

MR. OWEN: I am glad of the explanation. I did not have it clearly in mind.

MR. F. J. TRAYNOR: Should not that Amendment read "President of this Association"? Isn't it going to be confusing as to Presidents of the District Associations who are also members of the committee? Is it true that it refers to the President of this Association?

PRESIDENT PALDA: I think that is a correct understanding, at least.

MR. F. J. TRAYNOR: All right.

PRESIDENT PALDA: You have heard the motion for the Amendment of the Constitution and the adoption of the resolution. All in favor signify by saying aye. Contrary the same. The motion is unanimously carried and the Amendment to the Constitution is adopted unanimously.

PRESIDENT PALDA: The next order of business is the report of the Committee on Local Organizations.

REPORT ON LOCAL ORGANIZATIONS

The Committee on Local Organizations submits the following report:

Your committee has been in correspondence during the past year with each County and District Organization. In some coun-

ties where there are only a few attorneys there is no formal County Organization, but the majority of counties in the state have a regular County Bar Association and hold meetings two or three times a year. Some meet more often and four of the County Organizations hold monthly meetings. All of the District Organizations, excepting one, have held at least one meeting during the past year and two have held two meetings.

At these county and district meetings the programs and discussions have included the following topics: Trend of National Legislation, Unauthorized Practice of Law, Report on State Bar Association Committee on Jurisprudence and Law Reform, Recodification of State Laws, Frazier-Lemke Act, New Rules of State Tax Commissioner on Estate Tax Returns. On several of these matters the various organizations have adopted resolutions and forwarded copies of such action to the Secretary of the State Bar Association.

Nearly all of the Local Organizations have furnished speakers for programs or patriotic occasions and one District Organization has sponsored a series of newspaper articles on the One Hundred Fiftieth Anniversary of the Federal Constitution.

The benefits of these County and District Organizations are self evident. Arrangements should be made by the State Bar Association to bring about at least two meetings each year of all district groups with well prepared programs and continued and increased effort should be made by the State Association to urge meetings of County Organizations.

Dated this 11th day of July, 1938.

Respectfully submitted,

L. T. SPROUL, Chairman.

PRESIDENT PALDA: Gentlemen, you have heard the report of the committee. What is your pleasure?

MR. FREDRICKSON: I move the adoption of the report. Motion seconded.

PRESIDENT PALDA: All those in favor signify by saying aye. Contrary the same. The motion is carried.

MR. CUPLER: Mr. President, may I say a word right here along the line of the suggestion of the committee that the county organizations and the local organizations hold regular meetings. The experience of the Cass County Association during the past year along that line, I think, has been very satisfactory and has caused much more interest on the part of the members than theretofore. The Cass County Bar Association has held monthly luncheons since last fall and running up until June. The program committee was entrusted with the duty of preparing a live program, and the meetings started at 12:00 or 12:10 and ended promptly at 1:30. The result has been very satisfactory

attendance,—I would imagine, just from my recollection, that the average attendance at the meetings was twenty-five.

PRESIDENT PALDA: Thank you, Mr. Cupler.

PRESIDENT PALDA: Gentlemen, we have the report of the Committee on Criminal Law and Procedure, which the Secretary will now read. Secretary McBride.

REPORT OF COMMITTEE ON CRIMINAL LAW AND PROCEDURE

Your Committee on Criminal Law and Procedure respectfully reports:

—1—

That in the opinion of your committee our criminal procedure as a whole was built not for a day, but for all time and represented the work of the best minds of experienced jurists and its weaknesses probably can be attributed more to amendments and adjuncts than to the criminal procedure as originally adopted.

—2—

We are aware that a large number of crimes go unpunished in these United States of America. The vice lies rather in our anomalous and archaic police system, rather than in our criminal procedure. We strongly recommend the abolition of the four year term for sheriffs. The system of electing police officers in itself cannot be said to recommend itself to any logical mind. We should have a state constabulary for men who are qualified and who desire to enter that vocation can make it a life service which should be based upon the merit system and civil service examinations. It should be state-wide with state and district superintendents so that there could be coordination and cooperation. We recognize the improbability of abolishing the office of sheriff. We, therefore, strongly recommend the abolition of the term limit.

—3—

We feel that our present Pardon Board system is sadly defective. The Pardon Board should be out of politics. It should consist of men interested and experienced in penal matters who should be fairly compensated and either serve for life, or long terms. It would be advisable that no elective officers serve on this board, but if the Executive must serve, the power of the board should be controlled by members non-elective and out of politics. A reasonable compensation should be paid to men to take an interest in this work to compensate them for the time in study of this subject,

—4—

Our method of selecting jurors is subject to almost every form of criticism. It may be pointed out that under the present system, only too often, jurors are selected from men who desire to serve for the mere pittance received or out of morbid curiosity.

Jurors should be chosen by a non-political, non-partisan board charged with the duty to pick men for jury service on the basis of character and intelligence. In order to forestall choosing of jurors favorable to persons or lawyers a complete set of jurors should be chosen for each year. Regardless of the qualifications of jurors on voir dire, every experienced lawyer is familiar with the fact that local prejudices, local influences of various natures do enter into the trial of lawsuits, and particularly of criminal lawsuits. In every felony case the Defendant should have the right of change of place of trial in order that a fair trial before jurors outside of local interests may determine the case, and we recommend that wherever the Defendant has property that he be required to pay at least a part of the extra expense — say the sum of One Hundred Dollars (\$100.00).

—5—

We feel that the general provision of our statute that cases should not be reversed for technical errors is sufficiently broad and your committee feels that Appellate Courts are right in not reversing in matters that are discretionary, such as to the rulings on leading questions, or calling for the conclusion of a witness, but as to such matters as hearsay of the prejudicial nature, there should be a reversal if the Defendant does not have a fair trial if convicted upon that class of evidence. Your committee does not believe that a Defendant should be deprived of his liberty because of negligence or incompetence of his counsel, where it is plainly apparent that highly prejudicial evidence is admitted without exception. That it should be the duty of the trial Court on its own motion to prevent such evidence from being admitted.

—6—

We do not recommend any change in the form of pleading. Our statute provides that the information or indictment must contain: "a statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended." We feel that that statute is as broad and as liberal as should be adopted. Any counsel with sufficient ability to prosecute a criminal case should, without any difficulty, be able to prepare an indictment or information within the purview of that statute and the Defendant is entitled to know by a sufficiently broad statement of fact what he has to meet in the trial of his case. We live in a pedantic age filled with theories, vagaries and philosophies, but we should not forget that all motion is not progress; that it may be well to move cautiously before leaving a procedure that has proved itself sufficiently comprehensive to meet the ends of justice, both on the behalf of the State and the Defendant.

Respectfully submitted,

FREDERIC T. CUTHBERT, Chairman.

CLYDE DUFFY.

MR. CUTHBERT: I move the adoption of the report.

PRESIDENT PALDA: Gentlemen, you have heard the motion. All in favor will signify by saying aye. Contrary no. Ayes have it and the report is adopted.

PRESIDENT PALDA: Gentlemen, one of the important matters to be submitted to you is suggested by the American Bar Association; it is on the four-point program, and suggested by the Committee on Criminal Law, and I will ask the Secretary to present the matter.

SECRETARY MCBRIDE: Perhaps the best way to present it to you is to read the letter that accompanied the four-point Legislative program. It is from the American Bar Association.

March 19, 1938.

M. L. McBride, Esq., Secretary,
State Bar Ass'n. of N. D.,
Dickinson, North Dakota.

Dear Mr. McBride:

The American Bar Association has gone on record in favor of the four-point legislative program of the Interstate Commission on Crime, and has urged the state and local Bar Associations to give their active support thereto, as shown by the inclosed resolution. See page 113 of the February number of the American Bar Association Journal.

This is a constructive program for the improvement of the administration of criminal justice in this country because it removes many of the handicaps which state boundary lines have previously presented. It has been adopted in whole or in part by twenty-nine states as shown by the attached sheets.

In states in which the program has not yet been adopted in full, it is hoped that state and local Bar Associations will refer the matter to appropriate committees for consideration and report. Associations in the other states may point with pride to the accomplishment.

Yours very truly,

ROLLIN M. PERKINS.

SECRETARY MCBRIDE: Now I will read the four-point program. It is short.

THE FOUR POINT PROGRAM

"RESOLVED, that the American Bar Association hereby goes on record in favor of, and urges the various state and local Bar Associations to give their active support to, the enactment in every State of the Union of the four-point legislative program of the Interstate Commission on Crime of the Council of State Governments, consisting of: First, the act for the fresh pursuit of criminals across state lines; Second, the revised act for uniform extradition; Third, the revised uniform act for the removal of out-of-state witnesses; Fourth, the act for the supervision of out-of-state parolees and probationers; and, finally, the execution of

the Interstate Compact under such last-named act, to the end that our sovereign states may actively cooperate to control crime and protect the citizens; and that a copy of this resolution be sent to the officers of the Section of Criminal Law, and to the Chairman of the Conference of Commissioners on Uniform State Laws, to the Interstate Commission on Crime, and given to the press."

SECRETARY MCBRIDE: It is accompanied by a table showing the enactment in the various states of the Union of any part of this program. If you desire, I shall read it.

AT THE END OF 1937 THE FOUR-POINT PROGRAM
WAS IN EFFECT WHERE SHOWN IN THIS TABLE.

	Fresh pursuit	Extradition	Out-of-State witnesses	Parole supervision
Alabama		1		
Arizona	*	*	*	*
Arkansas		1	1	*
California	*	*	*	*
Colorado				
Connecticut	*		*	
Delaware	*	*	*	*
Florida				
Georgia				
Idaho		1	1	
Illinois				*
Indiana		1	1	
Iowa			1	
Kansas	*	*		
Kentucky				
Louisiana	*		*	
Maine		1	1	
Maryland	*	*	*	*
Massachusetts	*	*	*	*
Michigan	*	*	*	*
Minnesota			*	
Mississippi				
Missouri				
Montana	*	*	*	*
Nebraska	*	1	*	*
Nevada			1	
New Hampshire	*	*	*	*
New Jersey	*	*	*	*
New Mexico	*	*	*	*
New York	*	*	*	*
North Carolina		*	*	
North Dakota			1	
Ohio	*	*	*	*
Oklahoma				
Oregon	*	*	*	*
Pennsylvania	*	1	*1	*
Rhode Island	*		*	*
South Carolina				

South Dakota		1	1	
Tennessee			1	
Texas				
Utah	*	*	*	*
Vermont	*	*	*	*
Virginia	*			
Washington		*		*
West Virginia	*	*	*	*
Wisconsin		1	1	
Wyoming		1	1	
Total	23	19	23	23

Note: The figure 1 means that the state has a statute on the subject, but not in the form finally approved for uniform legislation.

MR. BERGESON: How is North Dakota on that?

SECRETARY MCBRIDE: North Dakota draws a blank. We haven't any of those.

MR. BERGESON: We have one, Mac,—the Extradition Act.

MR. MCBRIDE: Yes, but not in the form approved for uniform legislation.

MR. BERGESON: It was very slightly amended.

PRESIDENT PALDA: Gentlemen, you have heard the report and the suggestions. What is your pleasure? I think a motion that it be referred to the Committee on Legislation and Criminal Law would probably be in order.

MR. TORKELSON: I make that motion.

MR. GARBERG: Second the motion.

PRESIDENT PALDA: There should be a motion that they act - -

MR. ADAMS: That is not a report of a committee.

PRESIDENT PALDA: No, it is a report of the American Bar Association and I think there should be a reference to some committee with instructions to act if you are in agreement.

MR. ADAMS: Let's refer it to the Executive Committee and let them put it where it belongs.

PRESIDENT PALDA: Do you put that in the form of a motion?

MR. ADAMS: Yes, I put that as a motion.

Motion seconded.

PRESIDENT PALDA: It has been moved and seconded that the four-point program be referred to the Executive Committee with instructions to refer it wherever it is proper. All in favor of the motion say aye. Contrary the same. The motion is carried.

PRESIDENT PALDA: Gentlemen, are there any matters of new business to be taken up?

MR. POLLOCK: While some resolutions were being introduced this morning it occurred to me that it would be a very kindly and courteous and proper thing for this Association to do to pass some resolutions of appreciation and commendation for the many years of faithful service rendered to this state, to the lawyers and to the Court, by Miss Emmaline Steele, who has just retired as Chief Deputy Clerk of the United States District Court. She has served continuously since January 1, 1897. I think most of us have come into contact with the office of the Clerk of the United States District Court and in doing so we have met Miss Steele, whom we have always found very interested, very courteous and very helpful. I have no resolution prepared, Mr. President, and I would suggest that the President appoint a committee to draw a proper resolution in order that it may be later placed upon the records of this Association, and a copy presented to Miss Steele.

MR. FREDRICKSON: Second the motion.

PRESIDENT PALDA: I think your suggestion is very good.

MR. GARBERG: Because of my long acquaintance with Miss Steele I want to second that motion.

MR. C. J. MURPHY: I also want to second the motion.

PRESIDENT PALDA: The motion has been made that a proper committee be appointed for the purpose of drawing special resolutions as to Miss Steele.

MR. C. J. MURPHY: I will trust the regular Resolutions Committee.

PRESIDENT PALDA: I think we will too. All in favor of the motion that the proper resolution be drawn signify by saying aye. The motion is carried.

I will refer that to the regular Resolutions Committee and will ask them to act speedily and promptly, and if Mr. Garberg or Mr. Murphy or Mr. Pollock have any suggestions to refer those suggestions to the committee.

JUDGE BRONSON: We have our resolutions all prepared and are ready to report.

PRESIDENT PALDA: Gentlemen, under new business we have the resolutions of two District Bar meetings and I would like to have those presented at this time.

RESOLUTIONS

Passed at the Annual Meeting of the Sixth Judicial Bar Association held in the City of Hettinger, North Dakota, May 20th, 1938.

WHEREAS, the report of the Committee on Jurisprudence and Law Reform of the State Bar Association of this state at its annual meeting in the year 1937 proposed that the present system of selecting juries be changed, that Justice Courts be abolished,

that sessions of the State Legislature be held only once in six years, and that our statutes be revised; now be it

RESOLVED, that the Sixth Judicial Bar Association of the State of North Dakota be placed on record as opposed to any changes in the law governing the selection of trial juries in the state; and be it further

RESOLVED, that the proposal for abolition of all Justice Courts in the state and the substitution of a Court consisting of the County Judge and three triers of fact in each county of the state be disapproved by this Association; and be it further

RESOLVED, that Subdivision (d) of Section VI of the report of that committee as published in the proceedings of the State Bar Association be and the same is hereby approved with the proviso that it apply only to regular sessions of the Legislature; and be it further

(The subdivision referred to reads as follows: "That a constitutional amendment be adopted preventing the Legislative Assembly from meeting oftener than once in every six years.")

RESOLVED, that it is the sense of this Association that the North Dakota statutes need to be revised; and that each member of this Association ought to exert himself to obtain such a revision by bringing his influence to bear on members of the State Legislature and the candidates for the same.

Dated at Hettinger, North Dakota, this 20th day of May, 1938.

THEO. B. TORKELOSON, President.

Attest:

E. C. THOMAS, Temporary Secretary.

PRESIDENT PALDA: You have heard the resolutions. What is your pleasure?

MR. CAIN: I move that the report be referred to the Executive Committee for such action as may be necessary relative to the report just read.

Motion seconded.

PRESIDENT PALDA: You have heard the motion. Are there any comments? If not, all those in favor signify by saying aye. Contrary the same. The motion is carried.

SECRETARY MCBRIDE: The Third District Bar Association at its meeting at Ashley, held recently, passed two motions in reference to revision. Now I might say that these motions were referred to this special committee appointed on Revision by the Executive Committee, but I thought it was well to present them at this meeting because they were sent to me with a copy and a letter from the Association that they be presented at this meeting. The first motion was made by Mr. Kvello.

FIRST MOTION

It was moved by Kvello, that we recommend to the Executive Committee of the State Bar Association, that, prior to the state meeting at Devils Lake, it appoint a committee to prepare a Bill for Revision of the Laws of the State of North Dakota, along the general lines of the Bill lately passed by the South Dakota Legislature; that this Bill provide that the Committee on Revision shall be appointed by the Supreme Court and that the Supreme Court shall have complete supervision of said committee until the completion of its work.

(Motion seconded by Remington and carried).

As you know, that has been incorporated in the report adopted and received here.

The second motion, moved by Mr. Kvello, seconded by Judge McKenna, is as follows:

SECOND MOTION

It was moved by Kvello that the committee to be appointed, either by the Executive Committee or the State Bar Association, prepare the Bill in complete detail and submit it to the lawyers of the state not later than November 1st, 1938, and thereafter to make arrangements to have the same introduced into the Legislature on the first day for the receipt of Bills.

(Motion seconded by Judge McKenna and carried).

PRESIDENT PALDA: That has already been acted upon.

MR. BANGERT: Mr. President, the last motion has not been acted on, as I understand it. I wonder if our funds would warrant the printing of enough copies of the Bill we offered yesterday to get them out to every attorney very soon? I should like to move you that the resolution be referred to the Executive Committee with instructions to send out those copies.

MR. STUTSMAN: Second the motion.

PRESIDENT PALDA: All those in favor of the motion signify by saying aye. Contrary the same. The motion is carried and it is referred to the Executive Committee with the recommendation in the motion.

PRESIDENT PALDA: Are there any other new matters of business that you wish to present at this time?

MR. MURPHY: Mr. President, at this time I move you that this Association give a rising vote of thanks to the Ramsey County Bar Association and the committees and citizens of Devils Lake for the splendid entertainment they have provided for us, and the band.

Motion seconded.

PRESIDENT PALDA: You have heard the motion, gentlemen. I think that probably belongs in the resolutions and will be presented. We will now hear from the Committee on Resolutions.

JUDGE BRONSON: Mr. President and Members of the Association:

Your Committee on Resolutions submits the following:

BE IT RESOLVED, by the North Dakota State Bar Association in convention assembled at Devils Lake, July 16th, 1938, as follows:

When Fred Cuthbert at Valley City last July invited us this year to assemble here in Devils Lake and to partake of its bounteous hospitality, we then were not quite sure that his glittering promises could be fulfilled. We are now sure Devils Lake has made good the promises of Fred Cuthbert. The city has proven to be a wonderful host. The Mayor and his executive force all the way down to the policemen on the beat have been most gracious to us all. The Devils Lake Local Bar, through the leadership of Mack Traynor, have been most kind and courteous. The local ladies have been so hospitable to our visiting ladies. Our diversions have been so varied and many that we pledge support to Devils Lake's pet water diversion. We are happy to express our hearty appreciation and thanks to Devils Lake and its citizens for the courtesies we have enjoyed.

We greatly appreciate the splendid program of fine addresses and entertainment. It was a joy to hear and to know our distinguished Canadian brother of the Bar, the Hon. F. Trafford Taylor, K. C., President of Kiwanis International; also to be afforded the pleasure of hearing the instructive address of Major Lester of the Federal Bureau of Investigation.

Especially are we thankful for the visit and the fine address of our distinguished United States Senator Burton K. Wheeler. With him we join in the highest admiration for that splendid Devils Lake Boy Concert Band, under the direction of C. B. Weimer as director. We commend the versatility of our President, Judge Palda, as a concert leader.

For our brethren of the Bar and Bench we give our thanks to A. W. Cupler, our Past President, for his interesting discussion of the Bar Board and its functions; to Judge A. G. Burr for his scholarly address on Treaties between States of the United States.

To our Secretary, M. L. McBride, we give our appreciation of his faithful attention to duty.

To our retiring President, L. J. Palda, Jr., we render our most sincere thanks. He has accomplished well in small and large activities. He has brought forward our Association into a larger horizon of useful activities in the public service and for the advancement of our Bar. He has presided well and ably. Not soon will we forget that splendid exhibition of keen wit and able repartee displayed at the banquet by P. B. Garberg and Governor Shafer, followed by the beautiful vocal solos by Kathleen Sihler Toomey with the aid of her accompanist, Mrs. Carl Nerhaugen.

We are thankful for the attendance and interest of our Supreme Court Chief Justice and Associate Justices, of the District Court Judges, in proceedings of our Association, and we commend Judge Buttz for the courtesies and the hospitality he has shown to our Bar and its lady guests, in which his wife spells largely.

To the local press, the Devils Lake Journal and World, to the Country Club, to the Hotels Great Northern and Colonial, and to Mitchell's Cafe, we express our thanks and appreciation. Devils Lake is a delightful city. We should like to come again.

In view of the motion presented by Mr. Pollock covering the resolution of this Bar in recognition of the fine, splendid public service that Miss Steele has rendered in this state during the period of her long service as Deputy Clerk of the Federal District Court, we ask to file nunc pro tunc a resolution commendatory of that service and to send the same to the Federal District Court and all of its officers.

Respectfully submitted,

WM. G. OWENS,
HALVOR HALVORSON,
H. A. BRONSON, Chairman.

JUDGE BRONSON: I move the adoption of these resolutions.

MR. POLLOCK: I second the motion for the adoption of these resolutions as a substitute for the motion I made previously, and move that we give effect to it by a rising vote of thanks.

PRESIDENT PALDA: Gentlemen, you have heard the motion as amended. All in favor please rise. The motion is carried, unanimously

JUDGE KNAUF: While we are on the subject of resolutions I would like to present one at this time for consideration which I think, under the existing circumstances over the United States, as well as North Dakota, should be acted upon by this Association.

PRESIDENT PALDA: Very well.

JUDGE KNAUF: Be it resolved that a special committee of this Association, to consist of the new President and two other members to be appointed by him, be had to consider the pardon and parole laws of the State of North Dakota and to prepare and present to the Legislative Assembly such measure as may be found necessary to insure to North Dakota the best possible pardon and parole system. I move the adoption of this resolution.

MR. WEHE: Seconded.

PRESIDENT PALDA: And that this resolution be submitted to the Executive Committee, I presume, for action?

JUDGE KNAUF: That was for the President to act as a member of the committee and to appoint two other committeemen to act with him on the matter.

MR. BURTNESS: I would like to direct a question to Judge Knauf. I do not like to make committees too all inclusive, but I think in connection with the problem of pardons and paroles some considerable thought has also been given by some of the District Judges, and I believe some of the individual members of the Supreme Court, upon the question of sentences, the deferring of sentence until full information is obtained as to criminals. I was wondering if it would broaden the work of this committee—they are really tied up with the same problems,—the problem of the District Court making a sentence, not having information at the time of sentence, and that sort of thing. I know there has been a problem of having complete information with reference to the background of a criminal when the Pardon Board meets. I was wondering if the resolution just given could be construed broadly enough to consider that feature also.

PRESIDENT PALDA: Mr. Burtness, I would suggest that the four-point program resolution that you just passed covers almost every feature you have called attention to, and many more.

MR. BURTNESS: I think that is true.

PRESIDENT PALDA: You have heard the resolution and the motion that it be adopted. All those in favor signify by saying aye. Contrary the same. The motion is carried and the resolution adopted.

JUDGE KNAUF: Now, Mr. Chairman, I desire to offer another resolution, largely in connection with the discussion we have heard here today on the proposition of soliciting business, and particularly under a portion of the Bankruptcy Act which applies to so many people in the State of North Dakota, and under which—or under the system provided in which, many farmers in this state, good clients of yourself and myself, everyone of them have found that the general farming public of this state had been robbed of many thousands upon thousands of dollars, and for the purpose of covering that portion of our law I would like to offer this resolution:

RESOLVED, that our members attending the American Bar Association meeting at Cleveland, Ohio, this year, be instructed to present and request an integrated bar of the American Bar Association after the manner of our Association, or some State Bar Association which has been more successful than ours, and to have the American Bar Association, through the Congress of the United States, secure, if possible, such an Association making all attorneys practicing in the United States Courts and before the bureaus and governmental departments and referees, and every phase of practice in the United States, become members of such association, requiring them from the passage of such enactment, and all those hereafter admitted to practice before any courts or departments or referees, to become members of and pay the regular license fee prescribed in such a proceeding, and that the members of the Association at that meeting be given authority to act on behalf of this Bar.

It was moved from the floor that the resolution be amended to read "become members automatically of such Association." Motion seconded.

PRESIDENT PALDA: You have heard the resolution that delegates of this Association to the American Bar Association, meeting at Cleveland, present the suggestion made by us in the passing of this resolution to the American Bar Association and the proper committee on Legislation along this line.

MR. BANGERT: I have this thought, Mr. President. I call your Executive Committee's attention to the fact that I doubt very much that that ought to go to the American Bar Association. How can Congress tell us how to practice law in North Dakota?

JUDGE KNAUF: That has reference, if the Court please, to more than the State of North Dakota. It would have particular reference to all federal enactments and to federal laws which would be imposed in the state, and under which we would be under federal rule.

MR. BANGERT: As I understood the resolution, it would require every man admitted in North Dakota to become a member of the American Bar Association and under the control of the Federal Courts. I would suggest that you can't do that.

PRESIDENT PALDA: Well, the purpose of the resolution is that the members representing this Association at the American Bar Association meeting present this matter for action.

MR. F. J. TRAYNOR: Is the motion that this be referred to the Executive Committee?

PRESIDENT PALDA: No, the motion is that they be instructed. I do think it ought to be referred to the Executive Committee.

MR. F. J. TRAYNOR: I would like to make a substitute motion or an amended motion that it be referred to the Executive Committee.

MR. BANGERT: Second the motion.

PRESIDENT PALDA: Gentlemen, you are voting on the substitute motion that this resolution be referred to the Executive Committee and not be a direct recommendation to the representatives of this Association. All in favor signify by saying aye, contrary the same. The motion is unanimously carried. The substitute motion prevails and the matter will be referred to the Executive Committee.

JUDGE KNAUF: I move then that the Executive Committee hold a special session and that this matter be then, if the committee sees fit to do so, referred to the men who will attend the American Bar Association meeting this year, because it comes next week or the week after.

PRESIDENT PALDA: The Executive Committee is to meet immediately after the adjournment of this meeting or immediately after the lunch downstairs.

JUDGE ELLSWORTH: I move that we take a recess until one-thirty.

PRESIDENT PALDA: No, we have one more matter of business to be taken up before there is any possibility of a recess. Lunch will be delayed until we finish with the election. Many of the members have stated that they want to get away this afternoon.

The next order of business is the report of the Memorial Committee.

It was moved and seconded that the report be accepted and printed and filed in the Journal without reading.

SECRETARY MCBRIDE: I want to read the first sheet of the report. I desire to make a comment on it.

REPORT OF MEMORIALS COMMITTEE

Your Memorials Committee makes and files the following as its annual report:

Since the last meeting, this Association has sustained losses in its membership, in the passing of the following named members, to-wit:

JOHN J. MURPHY
HON. DAN R. JONES
HON. F. M. JACKSON
E. O. KLEVE
FRED R. STEVENS
WILLIAM A. FLEMING
HON. GUY C. H. CORLISS
CHARLES FREEMONT AMIDON
HON. T. J. MCCUE
C. S. BUCK
LYMAN N. MILLER
LAWRENCE N. TORSON
THEODORE LINDLAND

In referring to the passing of these members of the Bar, we prefer to make use of the word "departure", which is the Christian term, and carries with it the consoling idea—and thought—of a change from one life to another—the beginning of a new life—and we adopt it as carrying with it the hope of a more complete existence after we are done here.

(See Memorials following proceedings)

RESOLUTIONS

BE IT HERE AND NOW RESOLVED, That in the passing of these honored members of our Association, we severally and unitedly express our deep appreciation of them, and of the lives they lived and the services they rendered, not alone in the immediate line of

their work, but as earnest, loyal citizens, and residents of their respective communities; and we deeply mourn their loss and express our profound sympathy for each of the members of their respective families, from whom they are separated for a time.

At our last meeting we reported the passing of ten of our members of the Bar, and from this report it will be noted that we are called upon to report on the passing of thirteen members, and this indicates the fact that as the years come upon us, these losses will increase and that the ranks will be thinned of the older members; but it is consoling to know that, notwithstanding this fact, the general membership of our Association will likely increase, because of the large number of young and promising lawyers coming more to the front; and so this Association will be permitted to carry on its good work, and will gladly and earnestly uphold and sustain the tenets of our profession, because, and as a general rule, lawyers are friendly and sympathetic and appreciate the good they find in their brother members, and we feel and know that it is their desire and their will to emulate the good things which they have observed in the lives of the older members of the profession and to practice kindness and consideration, one for the other, no matter what differences may have existed in the line of their practice and combat with other lawyers, and to cherish in their hearts and minds, the better things which they surely have observed in the lives of those with whom they have associated.

BE IT FURTHER RESOLVED, That a copy of these biographies and these resolutions be sent to the families of the deceased members, and that the originals be filed with the Secretary of the Bar Association, to become permanent records of our Association.

Dated at Grand Forks, N. D., this 17th day of June, 1938.

HIRAM A. LIBBY,

Chairman Memorials Committee.

SECRETARY MCBRIDE: I just simply want to say this: Mr. Libby wrote the Association a letter and said he thought it would be impossible for him to serve any longer as Chairman of this Committee on Memorials. He has served for some thirteen years, has been very faithful and sincere, and has rendered a wonderful service to the Association. He is also the oldest President living left among us, and I thought in view of the fact that he is not very well that it would be appropriate if some member from his county would make a motion thanking him for his years of service, and that the Secretary be instructed to write him about the same. It would be very appropriate.

MR. C. J. MURPHY: I make that motion.

PRESIDENT PALDA: There is a motion to accept the Memorials Committee's report and file it and place it in our records. All those in favor signify by saying aye. Contrary the same. The motion is carried.

MR. BURTNESS: Mr. Chairman, I move that the Bar Association formally extend thanks and its appreciation to Past President Hiram A. Libby for the services rendered by him so faithfully and well for a long period of time as Chairman of the Committee on Memorials, and that the Secretary-Treasurer be requested to send him a copy of the resolution covering that feature.

MR. C. J. MURPHY: Second the motion.

PRESIDENT PALDA: You have heard the motion made by Mr. Burtness, and duly seconded. All in favor of the motion will signify by saying aye. The motion is carried and the Secretary is instructed to send a copy of the resolution and a letter of commendation to Mr. Libby.

PRESIDENT PALDA: Gentlemen, the next order of business is the election of officers. We are now prepared to receive nominations for the office of President.

MR. LANE: I am going to be brief because I understand soup is on. I do not intend to nominate a man, all I intend to do is present his name. I think he has been nominated by pretty nearly everybody in this meeting here today. All of you older members of the Bar know he has never missed a meeting. He knows well the ideals of our Association, and, not only knowing them, I think you all admit that he has practiced them. As for the younger members of this Association, those that may not know it, he is the father of a young lawyer just starting out, and there is no one who can properly appreciate the trials and tribulations of the young lawyer better than a man who has practiced, and has raised a son, and so I wish to present a man for President of this Association that we all know to be 100% a lawyer and 100% a judge. I present the name of Aloys Wartner.

JUDGE BRONSON: Last year when the name of Aloys Wartner was presented at Valley City, when Charlie Murphy was running the show, I wanted an opportunity to second his nomination and they wouldn't give it to me. When George Shafer defeated Garberg playing marbles together in the 1925-26 election, as you say they did, side by side at Bismarck Aloys Wartner was seated with myself, serving in the Senate for two sessions there, not playing marbles but talking about the good democracy we have in North Dakota. Side by side on occasions we walked over to Mandan, back and forth, to see Bill Stutsman there. His service to the state, his service to the Bar are so well recognized, Mr. President, that as an old friend of his for over twenty-five years it gives me happiness to second the nomination.

JUDGE ELLSWORTH: To make the matter a little briefer I am going to move that nominations be closed and the Secretary instructed to cast a unanimous ballot of the Association for the Vice President, Aloys Warnter, for President for the coming year. Motion seconded.

PRESIDENT PALDA: Gentlemen, you have heard the motion that the nominations be closed and the Secretary instructed to

cast a unanimous ballot of the Association for Mr. Wartner for President. All in favor signify by saying aye. The motion is unanimously carried, and, Mr. Secretary, you are instructed to cast a unanimous ballot of this Association for Mr. Wartner as President.

I think we would like to hear from Aloys. Perhaps some of us don't know him. We will call on Mr. Wartner.

MR. WARTNER: Mr. President, Members of the North Dakota Bar Association: I don't know just what I should say to you at this moment. I want to say to you, however, that I appreciate greatly the honor you have bestowed upon me at this time. There is one thing, however, that I do want to impress upon your minds at this time, and that is this: That if I am going to have a successful year as President of the North Dakota Bar Association I will need the aid and assistance of every lawyer in the State of North Dakota, and if I do not have that assistance I know I am not going to be able to do the work that the Presiding Officer of this Association should do. And so I am going to plead with you gentlemen that when you go home you tell the other lawyers of this state that they should take an interest in the business of this Association, and that if we do that a great many things we have been talking about here during this meeting can be ironed out, and that the Association will be looked upon by the people of the State of North Dakota, not only by the lawyers, but by all of the people of the State of North Dakota, that the Bar really means something, that it stands for something, that it stands for good government, that it stands for honesty, that it stands for the Constitution, as was said last evening by the distinguished Senator from the State of Montana. And so I plead with you, gentlemen, that when we adjourn today we shall not have adjourned until the next meeting, but that we will carry on the work that we are supposed to do as members of this Bar Association, so that from year to year we will accomplish things, not only for the lawyers of the state but for all of the citizens of the State of North Dakota, and even for the government of the United States and for the government of all our neighboring democratic nations, that was so well spoken of yesterday by our friend from Winnipeg, the Hon. F. Trafford Taylor; and so, my friends, I thank you from the bottom of my heart for bestowing this honor upon me.

PRESIDENT PALDA: Gentlemen, the next in order is the election of a Vice President of this Association for the ensuing year.

MR. MACK V. TRAYNOR: It is said that the way to get to know a woman is to live with her. I believe also that the way to know a lawyer is to practice law with him. I have had the privilege of practicing law in this community with Clyde Duffy for over twenty years. In all that time I have never known him to break his word. You don't need a written stipulation to practice law with Clyde Duffy, and I tell you, gentlemen, it is a pleasure to practice law with a man of that type. Clyde is an outstanding

lawyer and an outstanding gentleman. He is a man who will maintain and follow the high ideals and high purposes that have been set by these distinguished men who have gone before him in this Association. I am very glad to nominate Clyde Duffy, of Devils Lake, as Vice President of this Association.

MR. LACY: I wish to second the nomination. All he said is true and I can add no more.

MR. GARBERG: I move at this time that nominations be closed and the Secretary instructed to cast a unanimous ballot for Clyde Duffy for Vice President.

Motion seconded.

PRESIDENT PALDA: Gentlemen, you have heard the motion that nominations be closed for the office of Vice President of this Association for the ensuing year and the Secretary cast a unanimous ballot of the Association for Mr. Clyde Duffy, of Devils Lake, for that position. The vote is unanimous and Mr. Duffy is unanimously elected.

SECRETARY MCBRIDE: He forestalled me when I was going to do this when the President was elected. It is customary for the Secretary to arise and cast a vote. And I take great pleasure in casting the unanimous vote of the Association for Mr. Duffy as Vice President.

PRESIDENT PALDA: It is, therefore, a great pleasure to announce the election of Clyde Duffy as Vice President.

MR. FOSTER: For the past three years we have had a Secretary of this Association who has devoted as much or more time to affairs of the Association than any secretary we have ever had. It so happens that his work brings him into Bismarck and he is always on the job and he has Association affairs in mind, I think, almost to the exclusion of anything else. I do not believe this Association could do any better than to retain Mr. McBride as Secretary and I, therefore, nominate Mr. McBride as Secretary for the coming year.

MR. MURPHY: In spite of the fact that he is a Scotchman I take pleasure in seconding the nomination.

MR. BANGERT: I move that nominations be closed and the President appoint a special teller for casting a unanimous ballot for Mr. McBride. Motion seconded.

PRESIDENT PALDA: Gentlemen, you have heard the motion that nominations be closed for the office of Secretary and that a special teller be appointed to cast the unanimous ballot of the Association for Mr. McBride as Secretary. I declare the motion is unanimously carried, and I delegate Brother Bangert to cast the unanimous ballot.

MR. BANGERT: Ladies and Gentlemen, I cast the unanimous ballot of this Association for Mr. McBride as Secretary-Treasurer.

PRESIDENT PALDA: And I declare Mr. McBride duly elected Secretary-Treasurer.

PRESIDENT PALDA: Gentlemen, there is one important matter that I wish to bring to your attention, and that is that under the rules of the American Bar Association the member of the House of Delegates to be elected by this Association is elected for two years. Under the rules of the Association passed at Valley City the incoming President was to be elected as such delegate and, therefore, I have filed my resignation as a member of the House of Delegates and it is up to you at this time to elect Mr. Aloys Wartner as your representative to the House of Delegates.

MR. C. J. MURPHY: I make that motion.

Motion seconded.

PRESIDENT PALDA: You have heard the motion. All in favor signify by saying aye. Contrary no. The motion is carried. I declare Mr. Wartner duly elected to the House of Delegates.

Well, gentlemen, this seems to close our calendar.

MR. WARTNER: Just a moment, Judge. May I again call attention that the Executive Committee will meet immediately after the luncheon. As you know, the Executive Committee is composed of the President, Past President, Secretary, and the President of the different Judicial District Bar Associations, and the Vice President, and I would like to have the meeting right after the luncheon, all of those who are present.

PRESIDENT PALDA: Let's make that one-thirty.

MR. BANGERT: I move that we adjourn. Motion seconded.

PRESIDENT PALDA: Before we adjourn I would like to thank the members of the State Bar Association for their hearty and wonderful cooperation during the past year. I also want to thank, personally, the committee at Devils Lake for the great assistance they have rendered in putting on the program and for the whole of this meeting here in this city. I greatly appreciate it all.

It has been moved and seconded that we adjourn without delay. All those in favor signify by saying aye. Contrary no. The motion is carried.

In Memoriam
