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Proceedings of the State Bar Association, At Its Annual Meeting

John O. Hanchett

PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT ITS ANNUAL MEETING, HELD AT FARGO, NORTH DAKOTA, SEPTEMBER 1-2, 1932

JOHN O. HANCHETT, President, Presiding
Held at Fargo, North Dakota,
September 1 & 2, 1932

PRESIDENT HANCHETT: The meeting will please come to order. I will ask all the attorneys to stand, and remain standing while Rev. Conrad says the invocation.

Invocation by Rev. Conrad.

PRESIDENT HANCHETT: The next number on the program is the address of welcome by the Mayor of Fargo, A. T. Lynner.

MAYOR LYNNER: Mr. Chairman, ladies and gentlemen of the convention: When your chairman of the convention program extended to me the invitation to address you this morning, I cheerfully accepted that invitation, but after he had asked me to be here, he inadvertently added that I should be given three or four minutes in which to talk. After I had hung up the receiver I thought it quite appropriate in my particular case, because I should find no difficulty in telling you all the things I know in that time. Coming down this morning, I made up my mind that I would not be limited to two or three minutes. I am a great believer in the principle of individual liberty, so I decided I would talk until I had finished with the thoughts I had in mind.

One of the most delightful experiences that comes into the lives of mayors is the privilege and duty of extending a welcome and delivering welcoming addresses to all of these conventions, and there are a great number of them that visit Fargo. One of the things I have observed this year, notwithstanding the fact that we have been faced with serious problems, has been that the representatives and delegates were able to see a little silver in the lining of the clouds. They have been optimistic and have been interested in promoting their own welfare, so they have taken the time and trouble and been put to what expense is involved in order to come to the conventions for the purpose of fitting themselves for the business of better serving mankind.

Up until the time I was shouldered with the responsibilities of Mayor of Fargo, I confess to you now that I was not in any humor to admit that the legal profession was a more necessary part to our community welfare than any other; in fact, sometimes I reached the conclusion that about the only way the lot of the legal profession ever touched the every day life of people was merely to the extent of the legal fees which they extracted from them; but since I have been shouldered with the responsibility of the mayorship, I have changed my mind. I have constantly been thrown in contact with the legal profession of this city and many times the city attorney has been compelled to lead us out of blind alleys, with the result that I have a very wholesome respect for the legal profession, because as I think it over, there are very few of the lives of our citizens that are not touched in some manner or other by the legal profession. How helpless we

would be were it not for the fact that we have you ladies and gentlemen of the legal profession to guide us along the grave path of legal procedure. I do not know any group of citizens upon whom rest heavier responsibilities during these times than upon the legal profession. There is so much talk of tax reductions, so much talk of doing away with the unnecessary red tape, finding shorter routes in one way or the other, to guide ourselves in our every day life, that I claim there is a heavier responsibility resting upon the shoulders of you ladies and gentlemen than perhaps any other group of our citizens. You are the legal advisers of your respective communities. Why, every one in trouble has to come to you; even those who want a divorce have to be governed by your recommendations—I don't know whether it is a wise procedure but it is the order of the day. We would be utterly helpless in our legislatures were it not for the legal profession. No one knows that better than we do—it has been my experience at least that you are a very essential and necessary part of our community and our state.

I have sometimes made up my mind that I wished we were priviledged to support candidates for the legislature who would promise that they would not be in favor of the introduction of any new bills. I wish we could see the time in our legislative experience when the legislative candidates would pledge themselves to repeal at least three to five laws for every new bill they introduced. We have so many unnecessary and bad laws which are cluttering up our legal procedure, as I see it at least.

About eighteen years ago there was a gentleman by the name of Gunder Swensrud. He served in the legislature for two terms and I want to tell you something about the bills he introduced to impress you with the fact that there have been a lot of foolish laws on our books. So as to justify his existence as a legislator, this gentleman thought he must secure the passage of a bill. Thirty years ago Gunder served in the legislature in South Dakota. One of the laws he introduced in a session there prohibited a woman from wearing tight corsets. Now the theory of the bill was sound, because a number of you recollect the time when women did wear unusually tight corsets in order to present the appearance that was customary in those days. The intent of the law was all right that it was bad to wear tight corsets. Any way the bill was referred to the committee and it was found to be impractical in that the law could not be enforced once it was placed upon the books. The question arose as to what constituted tight corsets and then the question arose as to who was to determine that, so it was voted that the bill was to be indefinitely postponed because of its impracticability. He introduced another bill and that bill was finally placed upon the statute books. It was recommended by the committee on state affairs this time, making it prohibitive for women to wear long hat pins in their hats. If one went to church, some young lady sitting nearby might turn her head and poke somebody's eye out, so the law was recommended for passage and it was passed on the statute books of the State of South Dakota, and although it isn't needed, it is there just the same.

Well, now that is as far as I am going to go except to say to you, it is a pleasure and privilege to extend to you a hearty welcome to our

city. We are glad indeed to have the North Dakota Bar Association meet with us; we hope you will come back year after year, as long as the Bar Association exists. We are glad to have you with us and we are in hopes the result of your deliberations here will be beneficial to mankind and that they will help you attempt to solve the problems of your respective communities.

Now, I am the only man in the city who possesses the power of pardon, so if you run into the law in any shape or manner, be sure to call the proper office.

PRESIDENT HANCHETT: The next number on the program is an address of welcome by Judge Daniel B. Holt.

JUDGE HOLT: Mr. President, members of the North Dakota Bar Association and guests: The members of the Cass County Bar Association join wholeheartedly in the welcome which Mayor Lynner has just given you. Mr. Soule came to me and told me he was more or less in charge of the program of this meeting and when he announced to me I was to make an address of welcome, he said to me about what he said to Mayor Lynner, "You can have three minutes to do it and possibly four." I was disposed to argue the proposition with him but he seemed to be in a determined frame of mind and said, "Never mind about that, there will be plenty of better speakers here than you are," and that about settled it. I think he must have had in mind, when he referred to better speakers, Judge Nye who will follow our addresses of welcome. I conclude I am wise in not arguing the proposition.

As I look around the hall I see a great many lawyers are here from different parts of the state. Some of you have traveled a considerable distance to be here and in doing so have incurred considerable expense and have incurred considerable sacrifice; in doing so, I take it that this is a measure of your appreciation of the value of these meetings and the help you obtain by attendance upon them.

The relations between the members of the Cass County Bar Association and the Clay County Bar Association have been very pleasant and they have fraternized cordially ever since I can remember, and we therefore welcome to our midst as our guests the members of the Clay County Bar Association, and we hope that they will enjoy the discussions that will be had on the subjects that are on the program for discussion, for they involve problems that concern them as well as us.

Members of the Cass County Bar Association owe a very great obligation to our brothers in pioneer parts of the state for all the hospitality which they have shown us and the good fellowship they have extended to us in times past on occasions similar to this, and we shall do our best to discharge that obligation.

The committee in charge of the program of this meeting has prepared a program which we hope will be amusing and interesting and instructive, and we trust that you will stay through to the end of the program, for one of the best appearances on the program will be the address of Judge Johnson, of Chicago, who has recently been successful in furnishing board and lodging for Al Capone in some of the federal departments maintained in Washington for a certain class of citizens. His address is certainly bound to be interesting and very help-

ful. It will be held in the auditorium of the high school on Friday evening at eight o'clock. I certainly hope you will all stay through and listen to that address.

You will recall that Mark Twain said that most everybody complained about the weather but nobody seemed to do anything about it. We are living in times that are very troublesome and we have a lot of very serious problems to face, but unlike the man who complained about the weather and did nothing about it, the lawyers, the legal fraternity throughout North Dakota and throughout the nation, realize that we are facing these troubles and are doing a great deal about it. The meeting of the Bar Association is an evidence of that fact and you will find on the program which you have in your hand, or which will be given to you, several subjects which follow these problems, and which are up for consideration and discussion. Those subjects are being discussed not only here, but in other bar associations throughout the country.

Another evidence of the interest the lawyers are taking in the problems of today is by noting the institutions they have established, the foundations they have created, and the committees they have appointed to study these problems, to investigate the fundamentals upon which our legal structure is builded, the means by which we put into operation the law, and the fundamental problems which affect our government and constitution and all, and the committee has been successful in securing the presence of some of the gentlemen that are members of these committees and foundations and institutions and who are at the very heart of the discussion of these problems, and they will make addresses to you during the course of these meetings which are bound to be very helpful and enlightening. For that reason also I hope you will take part freely in the discussions that will follow those addresses because it is through exchanging ideas and viewpoints that we broaden our own.

It is not necessary for you ladies and gentlemen to depart immediately upon the termination of these exercises. There are opportunities for amusement here; the next day after we adjourn will be Saturday which you recognize as a half holiday, and of course, none of you will break the law on the Sabbath. There are three golf courses and two tennis courts here available for your use and enjoyment, and across the line, I read that there are 10,000 lakes or possibly more, and I would say that they furnish unlimited means of enjoyment and pleasure. Some of the most beautiful of those lakes are scarcely an hour's drive from the City of Fargo with beautiful roads and splendid opportunities for fishing, boating, bathing and other forms of entertainment. I hope many of you will stay over and participate in the enjoyments that I have mentioned.

Now the Cass County Bar Association joins with the City of Fargo in welcoming you and I assure you the city is yours as long as you favor it with your presence.

PRESIDENT HANCHETT: We have across the river here another city, the City of Moorhead, which will also welcome us. The next speaker will be Judge Nye.

JUDGE NYE: Mr. President, and members of the North Dakota Bar Association: I feel honored that I may come here and say a few words to you this morning. I have had the invitation from your committee to say a few words of greeting to you from the other side of the river here in Minnesota and while we have a very well established rule of agency, which says that the agent cannot exceed his authority and that if he undertakes to do so, that he does not bind his principal, yet I think I can say with all safety, although I have not the express authority from the Minnesota Bar Association, I think I have the implied authority at least to extend to you a hearty and a warm and a fraternal greeting from the members of the Bar of Minnesota, and especially from my own district, the Seventh Judicial District, which comprises ten counties; and I want to say here, lest I forget, that there has always been, so far as I know, a most friendly and cordial feeling existing between the members of your state bar, your Cass County Bar, and those across the river in Minnesota.

I practiced law as a lawyer for twenty years. I have had many courtesies shown me by the bar here, and so far as I know my own bar undertook to repay those courtesies in kind. I hope that is the situation now. Twenty-two years I have been on the bench over there and I have met great numbers of your members, and I have never had anything over there but the most cordial and kindly feeling extended, and I hope that when our members come over here and mingle as they do, that they will appear before the courts here with as much respect and with the kindly feeling that the members of your bar have always shown us.

When your committee honored me by an invitation to say a few words here, I felt rather as if I were an interloper, and yet the committee was very cordial about it—tactful, too. They were careful to say that my remarks should be very short, and I want to make them so. I can't, however, pass up the opportunity without impressing upon you—I have no doubt you are already impressed with the idea—but to me it seems that the members of the bar bear a heavy responsibility. You are public officers, whether you hold a public office or not; you are public servants. You are leaders of the community in which you live and leaders of the state in which you live. The advanced thought both from a political standpoint and from the standpoint possibly of our law and our government are outlined and practically originate in the minds of the profession. We have some tremendous problems confronting us now and others dimly outlined upon the horizon, and to you men, I believe the great responsibility of assisting and solving those problems will be left to a very large extent. Our system of government is all founded upon one principle, in the last analysis, and the one we are aiming at all the time through the courts and through our laws is the individual right of men, individual right of the individual to protection of his life, his property, and the pursuit of happiness. Our whole system, legislative, executive, judicial, all government functions are founded upon that principle; even our army and navy, our foreign relations and all of those matters finally are aimed at the proposition that the individual shall be protected in his rights. There are two things that are assailing us at this time. There are today millions of people who believe that we are not in all respects acting the part of

wisdom in reference to protection of individual rights. Now I don't care whether they are right or wrong. It is not for me to say, but the thought among millions of people is there, and it is important that you should, as leaders in your community and in your state, take notice of that thing. It may not be the things that they think are the trouble, and it may be that there are remedies advanced that are absolutely falacious. I don't say anything about that but even if they are, it is your place because you are better qualified to do it than any one else to set them right on the proposition. They assail us on the ground that it is not a law abiding nation; that we fail in the enforcement of law, and today there are views of people saying that certain classes of people, men who till the soil, work in the factories and mines, and do that line of work, that they are not under the present system receiving the benefits of a liberal form of government, which they should receive, and which the founders of the government in the beginning intended they should. I do not say that they are right in their claim, but it is there, and the difficulty is that it should be regarded. You may call a man a politician, you may call him anything you like, because he pays attention to the howl of the paupers, but nevertheless it is something that should be regarded for what it is worth, and it is evidently worth a good deal.

These complaints are going out and you can probably assist more than any one else in remedying things, if there is anything wrong about the system now. Complaint is made that we disregard the law, that we are a lawless nation. We have done a great deal of boasting and self praise as a nation in times past but I think we have overlooked this one thing.

I noticed this morning something which impressed me and I want to call it to your attention. It was said by Ambassador Brice who, I think, was one of the greatest English statesmen of his time, "The true measure of a people's greatness is their respect for law," and I believe that in a few words, it expresses the truth which should be borne in upon us. The form of government has to some extent, in fact it has changed a great deal. I do not think today with all the boards and commissions and various functions of government, that really the form of government as we find it today was contemplated in all respects by the founders of the government. They had in mind a simple proposition, and the lawyers made that constitution; they signed the Declaration of Independence. If I recollect right, there were 58 members, or 56 signers I believe it was, of the Declaration of Independence, and 28 of those were lawyers, so that although they are charged with being reactionary, charged with being citizens of the commonwealth and community who will not yield on the matter of what is termed "Progressive-ism" to some extent, call it what you will, yet when the time came to act, they did act, and not only that but they acted and bore arms in the conflict, as they have in every other conflict in which this country has taken part.

Now the other thing which is assailing us is a criticism to which I think we should all pay some attention. They say the courts are slow, expensive; that their methods are inadequate; that they fail in the enforcement of law. Those are briefly some of the charges that are made against us. You are the chosen ministers of the law. You

are the important part of every court. Without you and your assistance, the courts would be helpless to do anything, but many people when they criticize the courts, fail to realize the fact that a very large percentage of the law breakers and offenders are never brought to court at all, never see the inside of a court house. Statistics—I will not bother you with them, except to say investigations in cities and populous districts have shown of the major crimes committed, that less than about 81% of those who committed those crimes are never apprehended at all, and when it comes to the less grave crimes, probably the percentage runs higher. There are many things, of course, that we should rectify, and the criticism is just in certain respects, of the courts and what we do. I think myself there is too much time expended usually in the trial of lawsuits. We have weak prosecuting officers; we have weak and even ignorant jurors, and we have weak and inefficient judges. Sometimes they fail by being too lenient upon the wrongdoer after he is committed or after he is convicted; perhaps they have failed to commit him as they should; perhaps they have suspended sentence upon him, or perhaps the pardoning board or the board of parole finally lets him off and he goes practically "Scott free." Of course, there are many of those things that we should take into consideration, and I believe there is no place it can be so well disposed of and so accurately determined as to what should be done in these matters as by the members of your profession.

I greet you with the most kindly feeling. I hope I may see you over there occasionally in court. I hope our members may come here as they have and perhaps will be in the position possibly of the old gentleman who lived neighbor to us in Wisconsin when I was a boy. He was becoming quite aged, growing old gracefully, and some of the neighbors called on him one day and said, "Uncle, you are getting along pretty well in years. You know you have got to think about the hereafter. Do you expect to go up or go down?" The old fellow thought a minute, and replied, "I don't know, I have friends in both places," and so that is the way, while you are here in the City of Fargo, or whether on the Moorhead side, I want you to realize you have friends in both places.

PRESIDENT HANCHETT: We will have a response by none other than our Vice President.

VICE PRESIDENT HUTCHINSON: Mr. President, Mayor Lynner, Judge Nye and Judge Holt: On behalf of the North Dakota Bar Association, I wish to thank you for your very generous words of welcome. Even before we heard these addresses of welcome, we felt your welcome in your very cordial hand shake and your friendly words of greeting. Fargo is especially well situated to entertain a convention of this kind with her many fine hotels, her schools, colleges, her golf courses and this beautiful building for us to meet in, and then we know she is situated close to the gateway to the great state of Minnesota, and where she can call upon the members from Moorhead for advice and counsel and assistance in entertaining us in this convention. Although Fargo is the metropolis of our state, she has not grown so large as to lose her hospitality. Her civic organizations, her professional organizations are all groups of very friendly men.

I am delighted with the program that your committee has prepared for us. We realize the many hours of thought and labor necessary to prepare this program. I am delighted that you are bringing to us at this convention, Dean Bruce, our old friend, and I know we will enjoy meeting him again and hearing the fine address that he will have for us. To my fellow members of the bar, I will say that we know when a housewife has prepared a meal for her guest, that there is nothing that so delights her as to have those guests participate to the fullest extent in that meal, and so I know that there will be nothing that will delight the members of the Fargo Bar, and the people of Fargo who have welcomed us to this convention, quite so much as to have us participate to the fullest possible extent in the program which they have prepared for us, and so I hope that we will attend all of these sessions; that we will take part in the discussion; that we will accept the hospitality and the entertainment which they have so generously provided for us. We come here with high hopes for this meeting, and I am sure when we have finished our convention and we wend our way back to our several tasks, that we will carry in our hearts a little warmer spot for the members of the Cass County Bar and for the citizens of Fargo.

PRESIDENT HANCHETT: The next number on the program is the address by the President. I have prepared a short address which I will now read to you.

PRESIDENT'S ADDRESS

JOHN O. HANCHETT

Long custom has established the proposition that the president, before leaving his office, is expected to deliver an address. He can choose his own subject and make the address short or long, just as he sees fit. This address will be printed in the report of this meeting but no one is required to read it. The regulations do not go that far. If they did, I would not have the hardihood to deliver the address which I am going to deliver now.

I well remember the first meeting of the Association that I ever attended. It was held at Valley City something over thirty years ago and F. H. Register of Bismarck was the president of the association. This Mr. Register has been deceased some years now but he is well remembered at Bismarck and is always referred to as a good lawyer but rather a poor politician. He has a brother living and practicing law in Bismarck at the present time. In some way I heard about the meeting of the Association that was to be held at Valley City and, as as I was then living up at Harvey on the Soo Line, I thought I would run down to Valley City and attend the meeting, as Valley City is also located on the Soo Line. Mr. Register conducted the meeting so well that I came to the conclusion that I would stay in North Dakota and practice law in that state until I became president of the State Bar Association. This was only a secret resolve of my own and not in any manner spread upon the minutes of the meeting at that time.

I well remember that Mr. Lee Combs was also present at that meeting of the Bar Association, representing the local bar of Valley City. I am quite sure that he was the Vice President of the Associa-

tion and was a candidate for and elected at the meeting to the office of President of the Association.

Seth Newman, my former preceptor at Fargo, had at one time been President of the Bar Association and I think was the first President.

Anyway, Mr. Register so conducted his office as President of the Association that I resolved all to myself at that time that I would become president of the association before I quit.

The years ran along and I found myself at the City of Devils Lake in attendance upon a state bar meeting. Somehow there was considerable confusion as the meeting was about to open and I was finally waited upon by a committee of the local bar stating that the reason the meeting had not opened was because the party who was to respond to the address of welcome was not present and that they had concluded to call upon me to respond.

When I first determined to be President of the Association, I also concluded to be present at the meetings of the State Association and would never refuse to take any requested part in the proceedings but I had no idea that I was going to be called upon so shortly to take so important a position in a meeting of the Association with practically no notice. I mustered up my courage and consented to respond. It went off fairly well, but of course I did not deliver anywhere near as fine a response to the address of welcome as was delivered at Devils Lake two years ago by Attorney J. A. Murphy of Grand Forks, but I did get through with it.

Matters ran along for several years until it came to the year when the committee placed John Knauf on the program to respond to a toast to "The Ladies." It so happened that this was during the same year of, or a year or two after, the death of the first Mrs. Knauf. This was too much for John. So far as I know it was the only time he backed out of performing any function for the Association or any of its committees, but he would not, under the circumstances, at that time respond to the toast to "The Ladies."

When I arrived at Bismarck that year for the state meeting I was waited upon by a committee who informed me of this situation and that I had been selected to respond to the toast "To the Ladies." Remembering that I was going to sometime be the President of the Association I felt it my duty to respond on this occasion, so I told them I would do the best I could and I appeared that evening and gave a response to this toast "To the Ladies" as best I could and it went off fairly well.

Several years ago, when I was in attendance upon the state meeting here at Fargo, Mr. Lee Combs, who was on the nominating committee, spoke to me about becoming President of the Association and said it was a fine thing, that I ought to be President as soon as it could be brought about, and asked permission to mention my name to the committee for Vice President.

The following day he spoke to me about the same matter and said he did not know the day before when he mentioned it that they always

made it a practice to select the Vice President from the town where the Association had met and that Fargo had the right to name the Vice President. As soon as he mentioned my name for Vice President, some member of the committee from Fargo said that the Fargo delegation had already selected their man for Vice President and despite the great expectation that had been kindled in my bosom from what he told me the day before, I readily gave in and said that would be all right with me. The man selected from Fargo at that time was the Hon. R. M. Pollock, who later became President of the Association, one of the best it ever had.

Naturally I thought a great deal about this subject thereafter, but I could not bring myself to speak to anybody about it. I had noticed, of course, that they usually selected the Vice President from the town where the meeting was held, but I could not very well expect any meeting to be held at a small town like Harvey, where I was then residing and practicing law. This made it rather clear that my hopes in that regard would have to be abandoned.

When, however, the Hon. Horace Bagley of Towner, was presented and nominated, it became evident that the attitude of the members of the Association had changed. Practitioners from the smaller towns could now really aspire to the presidency.

Matters ran along and I did nothing except to pay my dues and continue my attendance upon the state meetings of the Association. Those were the days when members of the bar were not compelled to be members of the Association and the payment of the dues was a distinct charge amounting to $10 a year. I did not attend all the meetings but did attend most of them and never refused to do anything that I was requested to do. I was appointed to different positions on committees and always served or attempted to serve as such. However, there was seldom any meeting of the committees then, and I was not appointed chairman of any until one day I found myself designated as chairman of the Committee on Internal Affairs. That was a new one on me. I had never heard anyone deliver an opinion on that subject and could not find any such opinion in the books of the Association. So I chose to treat the whole matter as a joke and so reported it in my report at the next meeting.

Just a year or two thereafter, in the year 1926, I found that I was appointed chairman of the Committee on Legal Education, which had been an important committee for several years, dealing largely with the pre-legal education that anyone should have before studying law. Many reports had been made and submitted to the Association on that subject by different committees recommending a pre-legal college education, but these reports had all been turned down at the meetings of the Association.

I had heard the many discussions but had never taken any part in same. The final and clinching argument that always defeated the college men was that if we would establish any such rule it would prevent Abraham Lincoln from being admitted to the bar to practice law in North Dakota. That was the argument that rather clung to my mind. I somehow felt that I was on the Lincoln side of the proposition. Anyway the Lincoln side had always carried the day at the state

meetings and the reports recommending the college education for admission to the bar always had been defeated.

As chairman of this committee, which was to prepare and present a report, I gave the matter a good deal of consideration. The other members of the committee lived in different parts of the state, so I knew there could be no meeting of the committee before the day of the meeting of the Association. I came to the conclusion that with all of the present schools, if there was an Abraham Lincoln who wanted to be admitted to the bar at the present time he would naturally be in some college and could not be precluded therefrom for any reasons existing at this time.

I therefore drew up a report in favor of a bill requiring people who were to be admitted to the bar after a certain year to have certain preliminary education consisting of a two-year course beyond high school, and certain courses in such school, practically the same as the law was finally passed.

I knew that I would not be present at Grand Forks at the time of the state meeting to consider the matter and I therefore sent my copy in to the secretary to have read, expecting that it would be all torn to pieces by the Abraham Lincoln people, but to my surprise, when I returned from my vacation trip I learned that the report had been adopted with one or two slight changes. Finally, in 1931, we had a legislative committee which took the matter up and presented it and succeeded in getting a law passed by the legislative assembly including the provision requiring at least two years study beyond the high school in a university or college. (Chap. 90, Laws of 1931.) The special provisions of this statute relating to applicants for admission to the bar after the year 1936 are the provisions that were contained in the recommendations of my report of 1927.

In December, 1919, I moved from Harvey to Valley City and was located in a place which had once had a State Bar Association meeting and which might of course have another, where I might be eligible to become Vice President and President of the Association.

We got up a movement to invite the State Bar Association to have another meeting at Valley City and went to Minot, the next year, and extended the invitation to the Association to come to Valley City the following year. This invitation was accepted by the executive committee and in 1929 we had the Association meeting there. As President of the local association of Barnes County, I worked in conjunction with Mr. Lewis, the President of the Association, to prepare the program for the meeting of the Association at Valley City in the year 1929.

I was rather expecting to be a candidate for Vice President at that meeting but later I heard there was another very able candidate who was being supported by the bar of our district, Mr. A. M. Kvello of Lisbon, and when I learned of the situation, I withdrew my application for the position and supported Mr. Kvello.

At the Valley City meeting Mr. Bagley was elected President of the Association and Mr. Kvello, Vice President, without a dissenting vote. Mr. Bagley had been elected Vice President at Minot the year

before. The next year, inasmuch as Mr. Kvello had expressed his opinion that that was his year as President of the Association, he having succeeded to the office upon the death of Mr. Bagley, it was apparent that there were to be two people elected, a President and a Vice President. The meeting that year (1930) was at Devils Lake. Mr. Sproul of Valley City, drove over with me to Devils Lake. As soon as I arrived I found also Mr. Wartner of Harvey, and who asked me immediately which I would prefer to be, President or Vice President. My suggestion was that I would much prefer to be Vice President as I thought the Devils Lake people had a man picked out for President. Mr. Traynor of Devils Lake was therefore elected President without opposition. There was quite a little friendly dispute as to the office of Vice President. When the votes were counted on the third ballot it was found that I was elected Vice President of the Association for the ensuing year.

So last summer I went out to Jamestown holding the position of Vice President of the Association and being entitled to be elected President according to all the precedents theretofore establishd. In the meantime I had a serious illness, from which I have not yet recovered, and was not really fitted for any position but I was in direct line to be elected President of the Association at Jamestown last summer and so I simply hung around and thought I would be there on the ground in any event.

When the time came to elect the President I had done nothing to promote my candidacy except to be present at the meeting. Judge Hutchinson presented my name briefly. As soon as he sat down, up rose Tracy Bangs, the old war horse of this profession, and stated that for many years they had always elected the Vice President of the Association as President for the next year and that as I had been Vice President I was entitled to be President and moved that I be unanimously elected president for the ensuing year. This motion was unanimously carried and John O. Hanchett of Valley City was elected President of the Association in the hall on the hill south of the City of Jamestown; and now, in this year of 1932, the 200th anniversary of the birth of George Washington, the first president of this republic, it appears that John O. Hanchett of Valley City is the duly elected, qualified and acting president of the North Dakota State Bar Association.

This President's address has been especially prepared for and is especially delivered to the younger members of the Association in the hopes that some one of them may find in it sufficient to point a moral and adorn a tale.

During all of these years the bar has been on the rise, and the dignity and power of the State Bar Association has risen greatly.

I wish to say a few words further at this time about my position as President of the Bar Association. As you all know I have been quite ill, and as we have a very able Vice President, Judge Hutchinson, I shall, at this time, ask him to preside. Will you kindly take the chair, Judge Hutchinson?

VICE PRESIDENT HUTCHINSON: Members of the Association: This responsibility has been thrust upon me rather suddenly but I will

try and conduct the meetings as best I can. Now I didn't note any particular recommendations in the address of the President so I don't know that there is anything to refer to a committee.

As far as the committee reports are concerned, the Secretary advises me that the reports came in too late for printing in the Bar Briefs. He, therefore, had them printed in pamphlet form. You all have copies now; however, you have not had an opportunity perhaps to study over these reports as completely as you would have if they had been printed sometime ago. I hope that all of you will take your first opportunity to go over the reports so that we may perhaps pass along more rapidly with the meeting. We have a large program here before us and we will have to move pretty fast if we are going to complete it in the two days which we have at our disposal.

The first is the report of the Executive Committee. The Secretary will report for the Executive Committee at this time.

SECRETARY WENZEL: President and members of the Bar Association: The Executive Committee, starting the new administration in the fall of 1931, was faced with the problem of adjusting its expenditures to a reduced income. The reduction had been going on over a period of two or three years and expenditures had been mounting so that the Executive Committee, which came into office following the annual meeting of 1931, was faced with that necessity. It proceeded to adjust its expenditures by cutting the following amounts from the annual budget: Cut $100 from the publication of Bar Briefs; $75 from the publication of the annual proceedings, (the December issue of Bar Briefs); $25 on postage; $60 allowance to the Secretary-Treasurer; $100 for the 1932 annual meeting account; $25 from the miscellaneous account, total $385, which brought the budget within the probable income of the Association. The Secretary-Treasurer's report which will follow the Executive Committee report, will show how it worked out.

Two of the things that were brought about as a result of this cut in the budget were: first, making Bar Briefs a two-page pamphlet instead of four; secondly, making necessary the summarizing and leaving out of some of the speeches of the individual members of the Association in the annual proceedings. It was necessary to do that, and the Executive Committee instructed specifically to make such changes and summarizations.

You will recall that the last annual meeting submitted two matters to the Executive Committee. One of them related to a series of questions submitted by Mr. Lanier as Chairman of his Committee. The Association directed the Executive Committee to refer these matters to the various district organizations. The questions related to the matter of sham defenses, the charging of a jury before argument, the opening statements to the jury by both plaintiff and defendant, and the arrangement to try cases in another county in case there is no jury term within six months. Those matters were submitted to various district meetings and reported unfavorably. I think that there was one district meeting that reported favorably on one item only, but the other

district meetings, so far as the reports have come back to the Executive Committee and the Secretary's office dealt unfavorably with these recommendations. I presume this Association may now take the position that they have been turned down by the district organizations.

There were one or two matters that came before the Executive Committee especially which were turned over to individual members of that committee for special report to the President. One of them dealt with a complaint in the northern part of the state and the other dealt with the possibility of obtaining some of the funds of the Bar Board for the purpose of financing a trial, if a suit was decided upon in connection with the committee on Unauthorized Practice of Law. The opinion of the Bar Board and the Attorney General was that such funds could not be used for such purpose. I think that completes the report of the Executive Committee, except as to routine matters.

On behalf of the Executive Committee I will move that the report of the Executive Committee be accepted and printed.

VICE PRESIDENT HUTCHINSON: It has been moved that the report of the Executive Committee be accepted and printed; is there a second?

MR. ZUGER: Second the motion.

VICE PRESIDENT HUTCHINSON: Any remarks? If not all those in favor of same may signify by saying aye; opposed; it is carried.

SECRETARY WENZEL: The financial statement of the Secretary-treasurer's office was prepared and printed in the pamphlet. That was a tentative statement and did not include items up to date of the annual meeting. Hence it will differ in some respects from the report which is now made.

This report, together with the vouchers, was submitted to the Executive Committee according to the constitution and by-laws. The President of the Association appointed an auditing committee to audit the books and records of the Secretary-treasurer, which were also accompanied by the statement of the person handling the receipts for the sale of banquet tickets last year, the statement of the Dakota National Bank & Trust Company showing the amount of money on deposit as of the 29th day of August, 1932, and the statement of John Steen, the State Auditor, attested by J. H. Newton, Secretary of the Bar Board, showing the amount of monies turned over to the Secretary-treasurer's office. That committee audited the books and records together with those statements, their report being as follows: "We have examined and audited the accounts and report of R. E. Wenzel, Secretary-Treasurer of the N. D. Bar Association and find the same to be correct."

That report was adopted by the Executive Committee and approved. I now move the adoption of that report, and the printing of it in the record.

MR. HALVORSON: Second the motion.

FINANCIAL STATEMENT

Receipts

Balance on hand at time of 1931 report		$ 835.02
Received from sale of 1931 banquet tickets		221.25
		$1,056.27
Expended for 1931 annual meeting (additional)	$487.01	
Paid for 1931 banquet	233.50	
Paid for 1931 reporting proceedings	100.00	820.51
Net Balance to 1931-1932 Administration		$ 235.76
Borrowed at Bank		300.00
Received from State Bar Board, license fees		2,800.00
Total Available for 1931-1932 Budget		$3,335.76

Expenditures

	Budget	Expended	
Bar Briefs	$ 325.00	$ 275.50	
Bar Briefs (Annual Meeting)	350.00	350.54	
Executive Committee	250.00	59.15	
Postage & Printing	100.00	75.00	
President	200.00	69.10	
Secretary-Treasurer-Editor	665.00	665.00	
Unauthorized Practice	100.00	27.42	
1932 Meeting	400.00	12.80	
1932 Reporting	100.00	.....	
Citizenship Committee	75.00	53.75	
Miscellaneous	100.00	112.18	
Bank Loan	300.00	300.00	
	$2,965.00	$2,000.44	$2,000.44
BALANCE			$1,335.32

	Budget Balance	Bills Incurred
Bar Briefs	$ 49.50	$ .....
Executive Committee	190.85	125.00
Postage & Printing	25.00	10.00
President	130.90	40.00
Sec.-Treas.-Editor	.....	.....
Unauthorized Pr.	72.58	379.39
1932 Meeting	387.20	387.20
1932 Reporting	100.00	100.00
Citizenship Com.	21.25	59.71
	$977.28	$1,101.30

Net Balance Available to New Administration on Budget Basis	$ 358.04
Net Balance Available to New Administration Incurred Basis	$ 234.02

Note: Mr. Adams' term on the Bar Board expires in January. It will be necessary, therefore, to have a referendum ballot. This will cost about $75.00. As every budget item except Unauth. Practice and Citizenship took the cut of last year and kept within bounds, and there will be additional needs for next year, some adjustment will be necessary in these two presented accounts.

R. E. WENZEL,
Secretary.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that this report be accepted and adopted and printed. Any remarks; if not all those in favor may signify by the usual sign; opposed; it is carried.

We will take up next the report of the Comparative Law Committee. Mr. Taylor is chairman. Is he here? I believe Mr. Stutsman has prepared the report according to the records. Mr. Stutsman, are there any recommendations in your report?

MR. STUTSMAN: The report was prepared by the different members, each member preparing one subject. Mr. Dullam prepared the report on small claim statutes. Mr. Taylor prepared the original introduction and I prepared the closing section upon the Workmen's Compensation. There are no recommendations on the part I prepared. I haven't read the others so I am not prepared to say whether there are or not.

VICE PRESIDENT HUTCHINSON: What is the wish of this Association, to have this report read or to dispense with the reading of the report.

MR. HALVORSON: I move at this time that we dispense with reading of all published reports, except where the chairman of the committee has some particular part of the report that he desires to call to the attention of the association, or some member, after reading it, desires to have some matter discussed.

MR. KVELLO: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that we dispense with reading of all published reports except such portions as the committee desires read or carry recommendations. Are there any remarks? If not, all those in favor, signify by the usual sign; opposed; carried.

COMPARATIVE LAW

Since the last meeting of the State Bar Association there have been sessions of the legislatures of very few states, so comparatively little new state law has been enacted. The sessions of the legislatures are held during the odd-numbered years. There is a strong sentiment in many quarters for quadrennial sessions, as the people are beginning to feel that they are being over-legislated.

The United States government issues a publication biennially, which is entitled "State Law Index—An Index and Digest." This is one of the few governmental publications that has merit and is of value. Volume I of this index was published in 1928 and covered the years 1925

and 1926. Volume II covered the years 1927 and 1928 and Volume III, which appeared in 1932 covers the years 1929 and 1930. The compilation is made by the Legislative Reference Service of the Library of Congress.

We quote from the Prefatory Note: "Number III of the Index and Digest to State Legislation, covering the enactments of 84 sessions, involved the examination of 21,395 acts and resolutions. Of these 9,254 were considered of a general and permanent interest, 11,360 were excluded from the index as local, temporary or private, and 781 appear only in the digest of laws on administrative organization and personnel. * * * From the local and temporary acts 843 have been reported in the digest of important changes as of current interest.

"Acts applicable to cities, etc., of a specified class have been excluded as local where only one or several units are affected."

The foregoing will give a good idea of the scope of the work referred to.

The Congress of the United States convened December 7, 1931, and adjourned sine die July 16, 1932. An enormous number of bills were introduced, both public and private. There have been passed by the House of Representatives in the first session of the Seventy-second Congress 290 public laws, 168 private laws and 39 public resolutions, 260 House and Senate bills, 11 House and Senate joint resolutions and 134 House resolutions.

The following is a very brief resume of the most important enactments:

"Creation of the Reconstruction Finance Corporation.

"The unemployment relief bill, under which $1,800,000,000 is provided for loans to states, municipalities and other public agencies for relief work and self-liquidating projects and $322,000,000 for federal public works.

"The new revenue act, re-establishing a number of the old nuisance taxes, increasing income tax rates, etc., which it is estimated, will produce $1,118,500,000 in additional revenue during the fiscal year 1933.

"An economy act, providing for the President's furlough plan and other savings, under which governmental expenses will be reduced from $150,000,000 to $180,000,000.

"The annual appropriation bills, making additional savings of approximately $200,000,000.

"Additional treasury subscription of $125,000,000 to the capital stock of federal farm land banks.

"Ratification of the reparations and war-debt moratorium, which expired July 1, but will not become a perplexing problem until the December payments are due.

"The Norris resolution proposing a constitutional amendment abandoning the "lame duck" session of Congress, ratified now by thirteen states.

"An act limiting the use of federal court injunctions in labor disputes, a proposal which first came before Congress in December, 1927."

The Constitutional Amendment referred to will be known as the XX Amendment. It reads as follows:

"Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

"Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

"Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

"Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

"Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

"Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission."

Small Claims Statute

"The settlement of petty civil disputes in an economical and satisfactory manner is of importance to the industrial life of any community. The procedure has remained substantially the same since statehood in North Dakota, and is cumbersome and expensive and unsatisfactory. Some states, such as South Dakota, Massachusetts and Rhode Island, have adopted the so-called 'Small Claim Statute.' These so-called small claim statutes usually provide that contract actions, such as book accounts and notes of $50.00 or under may be sued under it. The procedure is under the direction or supervision of some court of record, such as our District Court. The procedure is simple—the action is initiated by the plaintiff filing a copy of his book account or note, paying a fee of $1.00 to register the action. The summons or notice is prepared by the clerk and by him mailed by registered mail to the defendant, who has the right to answer stating his defense if any. General denials and demurrers are not accepted.

The court has a broad discretion for the purpose of promoting justice. The court may order a stay of execution or may permit or order the judgment to be paid in installments.

No statutory costs are allowed, but actual disbursements such as registration fee, cost of mailing by registered mail and witness fees are allowed and by some of the statutes the court can penalize the party who puts in a frivolous claim or defense.

These statutes operate to the disadvantage of collection agencies, but are of advantage to the merchant doing a credit business, as they reduce his collection costs on petty accounts and notes. They also save costs for the slow debtor.

We believe the people of this state would profit by the enactment of such a statute."

Comparison of the Workmen's Compensation Laws of the Different States

The Committee submits the following brief statement of the various Workmen's Compensation Laws of the United States. Justice cannot be done a subject of this kind in the limits of the space allowed, hence the high points only are touched.

Workmen's Compensation or Industrial Insurance is purely of modern conception. Formerly the employer was liable for injuries occurring to his employees only when he himself in some way was negligent, but the modern viewpoint is to impose the burden of rehabilitating injured laborers upon industry as a whole regardless of the question of negligence. At this time, forty-four states in the Union, and all of the territories and colonies, have compensation insurance of one sort or another. South Carolina, Florida, Mississippi and Arkansas are the only states which have no Workmen's Compensation Act, and in Alabama and Alaska employers' insurance is not required, but in all the other states insurance is either compulsory or elective, and the elective features are such as to practically make the insurance compulsory, that is to say, inducement to elect to carry the insurance is offered by the abrogation of the common law defenses of fellow servant liability, assumed risk, and contributory negligence where the employer rejects the law, and by continuing them in effect where a rejecting employee sues an employer who has accepted it.

There are several methods in which the insurance is arranged for. In North Dakota, Washington and Wyoming the insurance is compulsory in a state fund; in Nevada and Oregon it is elective in a state fund; in Massachusetts and Ohio it is elective in a state fund, or private insurance may be secured; in Colorado, Georgia, Kentucky, Michigan, Montana, Pennsylvania, Vermont, it is elective in a state fund, or private insurance may be procured, or the employer may arrange for self-insurance. In Arizona, California, Idaho, Maryland, New York, Utah and Wisconsin, insurance is compulsory in a state fund, or with private insurance companies, or by self-insurance. In the District of Columbia, Hawaii, Illinois, New Jersey, Oklahoma, the insurance is compulsory but there is no state fund; it must be by private insurance or self-insurance. In Connecticut, Delaware, Indiana, Iowa, Kansas, Maine, Minnesota, Missouri, Nebraska, New Mexico, Rhode Island, South Dakota, Tennessee, Virginia and the Philippine Islands the insurance is elective with private companies or by self-insurance. In West Virginia the insurance is compulsory in a state fund, or by self-insurance. In Porto Rico the insurance is compulsory in a state fund or in a private insurance com-

pany. In Louisiana the insurance is compulsory, but may be either in private insurance companies or the employer may furnish a bond; in New Hampshire the insurance is elective, but may be furnished by a bond or by proof of financial ability. In Texas the insurance is elective and may be in private insurance companies or in a State Employer's Insurance Association. Kentucky and Massachusetts have employees' insurance associations instead of state funds. Tennessee has a state fund for coal miners only. The United States Longshoremen's Act provides for private insurance or proof of financial ability.

Of course, this wide diversity of types of laws is due possibly to a failure on the part of the lawmakers to approach the subject of compensation insurance from the same viewpoint; but more likely it is due to the rapid growth of compensation legislation which has involved the simultaneous enactment of laws in various states, which has operated to prevent the adoption of any one form of law as a type.

So wide is this diversity of types of Workmen's Compensation Insurance that it would seem to be almost a hopeless task to reconcile them, or to direct their drift in such a way that in any reasonable time in the future a uniform system of Workmen's Compensation could be expected.

In all of the states excepting two, Washington and Wyoming, the amount of compensation is based upon the amount of wages, the relation of compensation to wages running from fifty to sixty-six and two-thirds percent.

There is a very wide divergence among the states as to the amount of permanent disabilities and death losses; in North Dakota, notwithstanding the fact that prior to 1925 the sky was the limit and this was reduced to $15,000, yet the allowance for death or permanent disability is still very much higher than any other state, with the possible exception of New York which has no limit; some states like New Hampshire and South Dakota being as low as $3,000 and even states like Minnesota being limited to $10,000, though in a few states a dependent widow would continue to draw her pension until death or remarriage.

Partial disabilities are usually a fixed percentage of the wage loss for various periods of time.

In practically all states there is a so-called "waiting time" so far only as the compensation is concerned. Upon infliction of an injury, medical and hospital relief is at once afforded, but compensation does not begin to run unless the loss of time exceeds a certain period, in most states this period being one week, and in three states being ten days, and in four states being two weeks.

In practically all of the states the provision for compensation contemplates an injury due to an accident either growing out of an employment or received in the course of it, but gradually there has been added compensation for diseases, either those which are occupational or those which have been proximately caused by the employment. North Dakota is unique in having a provision which includes under the term "injury" any disease proximately caused by the employment, though California similarly compensates for any disease "arising out of the employment." The diseases recognized as compensatable in many states are occupation diseases, that is, diseases peculiar to certain employment,

and generally these diseases are listed, so that the statute fixes, or permits the Bureau to fix, the type of disease which shall be treated as compensatable from time to time; that is to say, what may be an occupational disease this year, the Bureau may not regard as an occupational disease next year, and vice versa.

In all states medical benefits are a part of the recovery allowed the person injured in employment; in some states there is a limit to the time during which an injured employee may be hospitalized or given medical care, and in some cases the amount of medical service is limited. In those cases where a limit is placed, it is usually $100.00, sometimes $200.00 or $250.00, and in Maryland and Utah the medical fees may run as high as $500.00 and West Virginia as high as $800.00, but in most of the states there is no limit placed, and in very many instances the actual amount of compensation received by an injured employee is exceeded by the cost of the hospital and medical care that is given him. —W. H. S.

E. J. TAYLOR,
W. H. STUTSMAN,
G. F. DULLAM.

VICE PRESIDENT HUTCHINSON: We will take up the report of the Committee on Constitution and By-laws.

MR. WENZEL: I believe under the constitution and by-laws no action can be taken upon the recommendation of this committee at this meeting. I suggest that the motion be to refer this to the next annual meeting for action.

PHIL BANGS: I think that is proper, and I will make that motion.

MR. ELLSWORTH: Do I understand that motion is pending now?

VICE PRESIDENT HUTCHINSON: I did not hear a second.

MR. HALVORSON: I second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded. The matter is open for remarks.

MR. ELLSWORTH: I would ask that these proposed by-laws or sections of the constitution that are under consideration be read before we act upon the motion in order that we may understand what is under consideration.

TRACY BANGS: There is nothing under consideration. The by-laws of this organization provide that when an amendment to the constitution is proposed, that it be printed in the report, and lies open until the next meeting. There is nothing before this organization now; we have nothing to do. It simply goes over to the next meeting. It is simply a waste of time to attempt to discuss these questions. It will be for the next session to consider.

MR. WEHE: I take exception to that contention, that it is not before this meeting. If there are any amendments to be referred, now is the time to make those amendments. This matter is a very vital thing to this Association. It is an amendment of our organic law. We should discuss those things and see whether we want to refer this, or turn it down at this time.

PHIL BANGS: I would like to rise to a point of order. I would like to have you read Article 10 of the constitution, please.

VICE PRESIDENT HUTCHINSON: The secretary can read the article.

SECRETARY WENZEL: Article 10 reads as follows:

"This constitution may be amended at any annual meeting by a majority vote upon amendments which have been suggested at the previous annual meeting, or amendments which have been suggested at the next preceding annual meeting."

MR. WEHE: We admit that; that is what we claim—this is the time. The committee report is in here, it is before this organization to discuss that report. There is no committee report comes in without we have the right to discuss it. I may want to move an amendment to that report and have that go on the record to vote on at the next annual meeting of this Association. It seems to me that I should have that right.

VICE PRESIDENT HUTCHINSON: I am rather inclined to feel that the purpose of the constitution is to propose amendments and perhaps permit discussion of them. Of course, we can't take any official action upon amendments, but I see no reason why discussion cannot be had upon the committee reports. However, as our time is short, I am going to limit the discussion to three minutes to every man, and Mr. Wehe, I will give you one more minute to present your matter.

MR. WEHE: The reason I object to this amendment is that it aims to prohibit any district judge or any official, whose time is required by the state, and who is a state official and receives pay as such and is required to give his full time in the performance of such duties, from becoming president or vice president of this Association. Now what do they propose there? They propose to eliminate a man simply because he is elected district judge. Last year we elected a district judge as vice president of this organization; I was one of the parties that helped elect him, and I do not think it is very nice to bring up the matter at this time. I want to express my own views on that now. Now what else? We have a secretary; they want to protect the secretary, turn the secretary over to the executive committee to appoint him and not elect him to office. Do we want that? We have only got three elective officers now. We have a secretary here who is just as much a judge of the law in the Workmen's Compensation Bureau; he is devoting all his time to the Workmen's Compensation Bureau; he gets a salary of $2,800 a year. Then why cover up the secretary-treasurer; it says the executive committee can go in and appoint the secretary-treasurer. If we have a law that applies to the president and vice president, why not apply it to all of them. I say if it applies to one, apply it to all. Any official, any one not practicing law, who is not a practicing attorney, should not hold any organic office in this organization would be more nearly being fair.

VICE PRESIDENT HUTCHINSON: Any further remarks?

MR. ELLSWORTH: If I understand the motion now before the Association is to refer certain articles proposed as amendments to the by-laws without reading them before the association; am I right in that?

VICE PRESIDENT HUTCHINSON: That is right.

MR. ELLSWORTH: Now Mr. Bangs has said that there is nothing here for consideration. I differ with him on that point; there is something here for consideration because these proposed amendments may

be considered by the Association at this time before we refer them over to come up for final passage next year, so I move, Mr. President, as a substitution for the motion that has been made, that the proposed amended articles be read to the Association before it considers this matter of reference.

MR. WEHE: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that these articles be read before they are referred to the association for next year. This is a substitute motion; all those in favor of the substitute motion, signify by saying aye; opposed no. I will have to ask all those in favor to rise. The secretary will count them.

MR. WENZEL: Twenty.

VICE PRESIDENT HUTCHINSON: All those opposed.

SECRETARY WENZEL: Twenty-five.

VICE PRESIDENT HUTCHINSON: The motion is lost. Are there any further remarks on the original motion? If not, all those in favor of the motion signify by saying aye; opposed no. In order to get a fair vote, I think I will ask all those in favor to rise.

A VOICE: Please state the motion first.

VICE PRESIDENT HUTCHINSON: The motion is that the report of the committee be referred to the Bar Association for next year for action on these proposed amendments.

MR. STUTSMAN: Before the vote is announced, I desire to rise to a point of order. The constitution provides what can be done. The chair has already ruled the constitution to mean that this matter is open for discussion.

VICE PRESIDENT HUTCHINSON: I didn't know there was any further discussion.

MR. STUTSMAN: I understand Mr. Wehe wants to discuss the matter some more.

VICE PRESIDENT HUTCHINSON: I think he has probably had his time. All those opposed to the motion, please rise. It is carried and it is ordered that the report of the committee be referred to the Bar Association meeting next year for action.

CONSTITUTION AND BY-LAWS

Your Committee on Constitution and By-Laws of the State Bar Association, consisting of Philip R. Bangs and T. A. Toner, of Grand Forks and Clyde Duffy of Devils Lake, respectfully report that after careful consideration of the Constitution and By-Laws of the Association, they have only one recommendation to make, in the form of an Amendment to Article IV of the Constitution, which has reference to the officers in the Association.

The provision in the Constitution of the Association, relating to membership, namely Article III, is identical with the Statute under which the Bar Association was created, namely § 813a1 of the 1925 Supplement and under that Statute, the members of the Association con-

sist of all practicing attorneys who have paid their annual license fees to, and have received their Licenses from the Clerk of the State Bar Board, as provided by law, and all other attorneys who have been duly admitted to practice by the Supreme Court of the State of North Dakota, and by law exempted from the payment of such license fee.

Under the provisions of § 812-Supplement of 1925, it is provided that every person practicing law in this State and acting as an attorney or counselor-at-law therein, except those mentioned in § 793 of the Compiled Laws of North Dakota for the year 1913, shall secure an annual license from the State Bar Board.

The exemption under § 793 of the Compiled Laws of North Dakota for 1913, applies to any member of the Bar of another State actually engaged in any cause or matter pending in any Court in this State. In other words, it has reference to foreign attorneys.

Your Committee is of the opinion that under the provisions of § 812, there is an implied exemption from the payment of the license fee, to persons who have been duly admitted to practice law, but who are not practicing law in this State and acting as an attorney or counselor-at-law therein.

Your Committee is also of the opinion that under the provisions of § 813a1, these same attorneys to whom this implied exemption is applicable, are, by virtue of the Statute, members of the State Bar Association.

Under the provisions of § 813a1, the members of the Association are entitled to all the rights and privileges of said Association, and to vote and to participate in its meetings. This provision does not however, in the opinion of your Committee, prevent the Association from restricting the qualifications for holding office in the Association.

Your Committee is of the opinion that when the Bar Association was created, it was intended that it should be an association of practicing attorneys, resident in this state, and for the benefit of practicing attorneys.

Your Committee is of the opinion that in keeping with the spirit of the Act creating the State Bar Association and in accordance with the spirit and purpose of the organization, namely the banding together of the practicing attorneys of this State, for the welfare and improvement of the Bar of this State, that the officers of this Association should be limited to members who are active practitioners at the Bar in this State and for the purpose of effecting this, your Committee submits the following Amendment to Article IV of the Constitution:

ARTICLE IV.

Officers: The officers of this Association shall be a President and Vice-President, who shall be elected at the annual meetings of the Association and shall hold their offices until the next annual meeting succeeding their election. There shall also be elected, by the Executive Committee of the State Bar Association, at a meeting following the annual meeting of the Association, a Secretary-Treasurer, who shall hold his office until his successor is elected and it is further provided that no member of this Association shall be elected to the office of President or Vice-President of the Association, who is not an active practicing at-

torney. Provided further, that a member of this Association, while he is holding any public office which charges him with the devotion of his entire time to the performance of the duties of such office, shall not be eligible to hold the office of President or Vice-President of this Association.

In accordance with Article X of the Constitution, which provides that the Constitution may be amended at any annual meeting by a majority vote upon Amendments which have been suggested at a previous annual meeting, or Amendments which have been suggested at the next preceding annual meeting, your Committee respectfully submits the foregoing Amendment to Article IV, to be voted upon at the next annual meeting.

Your Committee is of the opinion that in the event of the adoption by this Association, of the above Amendment to Article IV, that then Article V of the Constitution, which has to do with the organization of the Executive Committee of the Association, should be amended to read as follows:

ARTICLE V.

The Executive Committee shall consist of the President and Vice-President of this Association and the President of each of the District Bar Organizations of the State as such Districts are now or may hereafter be organized. The Secretary-Treasurer of the Association shall act as Secretary of the Executive Committee but he shall have no vote. In the event that any such District Organization shall not have a duly elected President, then the President of the Association shall appoint a member from such District. The representative of such District Bar Association shall serve upon such Executive Committee until the next annual meeting of the State Association, notwithstanding the election of a new President of such District Organization.

PHILIP R. BANGS,
THOMAS A. TONER,
CLYDE DUFFY.

VICE PRESIDENT HUTCHINSON: The Committee on Jurisprudence and Law Reform is next. Has there been any official report filed by that committee, Mr. Secretary?

MR. WARTNER: Mr. Chairman, there is no report.

VICE PRESIDENT HUTCHINSON: Is the report of the Committee on the American Law Institute ready?

MR. THORMSGARD: The chairman of the committee requested me to write out a report. I move that this report be printed as part of the proceedings, if it is accepted by the committee.

VICE PRESIDENT HUTCHINSON: You may read the report then.

AMERICAN LAW INSTITUTE

The Tenth Annual Meeting of the American Law Institute was held at Washington, D. C., on May 5, 6 and 7. For the reason of economy, the University of North Dakota did not send a representative to the meeting.

From the official reports of the American Law Institute, the following accomplishments may be noted:

First: The completion of the Code of Criminal Procedure.

Second: The completion of the Restatement of the Law of Contracts, which will be published in book form in September 1932.

Third: The approval of the Proposed Final Draft No. 3 of Conflict of Laws covering the subject of "Wrongs".

Fourth: The Proposed Final Draft No. 4 of Conflict of Laws covering the subject "Administration of Estates" was referred to the committee for minor revision.

Fifth: Tentative Draft No. 8 of the Law of Torts covering the subject of "Negligence" and No. 9 dealing with Invasions of Interest of Exclusive Possession of Land were considered.

Sixth: Mr. Austin W. Scott of the Harvard Law School reported on the Restatement of the Law of Trusts covering the subject of "The Administration of the Trusts."

Seventh: Mr. Warren H. Seavey of the Harvard Law School reported on Tentative Draft No. 7 of the Law of Agency covering "Duties and Liabilities of Agent to Principal" and "Contractual Duties and Liabilities of Principal to Agent."

Eighth: Mr. William Draper Lewis reported on Tentative Draft No. 3 of the Restatement of Business Associations. The subjects considered were "Creation of Shares Transactions Subsequent to Incorporation" and "Post Incorporation Contracts for the Future Creation of Shares."

The two chief defects in American Law are its uncertainty and its complexity. The main purpose of the Restatement of the Common Law is to eliminate the defects of uncertainty and complexity. The research work of the American Law Institute has, to the present time, appealed to the professional judgment and sense of the American lawyers because it is accurate. The Restatements will be of greater value to the practising lawyers and judges when they are annotated to the respective state laws. It is recommended that the legal profession in the State of North Dakota should take an active professional interest in the problem of the State annotations.

P. W. VIESSELMAN,
Chairman.

MR. THORMSGARD: There is no special recommendation.

VICE PRESIDENT HUTCHINSON: Is there a second to this motion.

PHIL BANGS: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that the report be printed in the proceedings,—

MR. THORMSGARD: Mr. Chairman, I am not a member of the committee; they merely requested me to write the report.

VICE PRESIDENT HUTCHINSON: — provided that the committee signs the report as read. Any remarks? If not all those in favor may signify by the usual sign; opposed; carried.

Next is the report of the Committee on Uniform Laws.

SECRETARY WENZEL: That report is in the printed record and it is merely a statement that the committee has nothing to report.

UNIFORM STATE LAWS

Your Committee on Uniform State Laws begs leave to report as follows:

No meeting of the committee was held. Nothing of sufficient importance or value to warrant its report to the Association has come to the notice or attention of any member of the committee, and the committee has no recommendation for submission to the Association, except that the efforts of all for the enactment of uniform state laws should be diligently and continuously exerted.

JOSEPH G. FORBES,
T. L. BROUILLARD,
A. G. PORTER.

PUBLIC INFORMATION AND CO-OPERATION WITH THE PRESS

Your Committee on Public Information and Co-operation With the Press begs leave to report as follows:

When this committee was formed for the current year our beloved friend John Carr was appointed its chairman. Since his passing we of the committee have tried to carry on but find that we miss his fine judgment, solid common sense, and kind guidance. We, therefore, offer this report with a full consciousness that it is not as complete or thorough as it would have been had our chairman lived to present it himself.

In some other and more thickly populated state the work of this committee would be a tremendous undertaking. It is quite a task to attempt to oversee all or even a small part of the information issued to the public concerning legal matters or to attempt to co-operate with the entire press of a state. However, we have been fortunate in having a press in this state that is friendly to the bar and has at all times been more than willing to accept suggestions from the bar.

There is no doubt that there is much misunderstanding in the public mind concerning the bench and bar. The lawyer has a right to a better place and a higher regard among the professions. The ideals, purposes and functions of the lawyers, the relations of the legal profession to the social order, need an interpretation to the laymen. To help bring this about your committee respectfully suggests the following:

That when this committee is appointed next year it shall contact by mail every member of the state bar by a letter explaining the purpose of the committee and asking aid in carrying out that purpose by having each lawyer concern himself as follows:

1. Check his local newspaper for stories concerning lawyers and trials and see that the reports of the same are accurate and not misleading.

2. Check the local newspaper and oppose in the same the printing of items subjecting the law, the judiciary, or the legal profession or the

principles upon which our constitution and laws are founded to ridicule, contempt, or reproach.

3. Report to the attention of the committee immediately all articles appearing in the press of the state which violate the principles of 1. and 2. above.

We further recommend that the State Association furnish the committee with the stationery and postage necessary for this purpose.

EMANUEL SGUTT,
THOMAS J. BURKE.

LOCAL ORGANIZATION

Conditions of the local organization, so far as I am able to ascertain, are fairly satisfactory, considering the extremely bad economic conditions. I have had correspondence with several organizations and find that they have from time to time, met, and the Lake Region Bar Association has kept up its meetings with reduced attendance, but with as much interest.

I am convinced that the committee on local organization should be kept intact and that as soon as economic conditions improve, if that is something we may hope for, that more activity be used, but at the present time, I question the advisability of attempting any great activity with local organizations. If they hold their own, I think they are doing very well.

F. T. CUTHBERT,
A. M. KVELLO,
H. D. SHAFT.

VICE PRESIDENT HUTCHINSON: The committee on Legislation is next.

SECRETARY WENZEL: Mr. President: In addition to the printed report which has been placed in your hands, there has come to the Secretary's desk this morning, the dissent of the third member of the Committee, Mr. Gordon Cox of Bismarck, that reads as follows:

"I do not agree with all the recommendations and wish to dissent as to numbers five and seven. As to number five, I do not believe we should make any recommendations that sound as if we approve the 1923 act that took away from the court the power to direct verdicts. That, in my opinion, was a most serious error, and if we were to make any recommendation, it should be that the court be given the same power to direct verdicts as the Federal Court has.

"As to recommendation seven, I believe the clause as suggested would nullify the effect of the act. Any of our bad check artists would expect to have money on deposit and thus defeat the act. In my opinion a man should not issue a check unless he actually has the money in the bank, and if he hasn't, he should be punished for it. Will you kindly present my dissent along with the report?"

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

VICE PRESIDENT HUTCHINSON: Does any one wish to express a desire as to how it should be considered?

TRACY BANGS: I move that the report of the Committee on Legislation be made a special order of business immediately following the address of Judge Bruce this afternoon.

MR. WEHE: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that this report be made a special order of business to immediately follow the address of Judge Bruce this afternoon. Any remarks? If not, all those in favor of that motion signify by saying aye; opposed; carried.

AFTERNOON SESSION

VICE PRESIDENT HUTCHINSON: I think we better come to order. Gentlemen, if there are any here who have not registered, be sure and do so. We are getting a fine attendance and we want every one who is in attendance to be sure and register. Mr. Secretary, have you any announcements to make before we open the business meeting?

SECRETARY WENZEL: Supplementing what the President has already said regarding registration, I wish to state that the noon list shows 166 attorneys registered, which is the largest registration ever recorded by this Bar Association on the first half day session. No doubt with the increase already shown, we shall probably reach two hundred or more before the sessions have closed. It seems to me it is no more than fitting to give recognition to the work of the committee that is responsible for this attendance. That committee worked under conditions that were absolutely adverse. I do not know of any time when I have heard more complaints from lawyers about their inability to attend, regretting their inability to attend because of financial conditions. This committee has accomplished almost the impossible and credit should go entirely to the Fargo committee, headed by George Soule as general chairman and Frank Van Osdel as publicity manager.

VICE PRESIDENT HUTCHINSON: I am mighty glad to see this large attendance, especially in view of the fact that we have the President of the Bar Association of the State of South Dakota with us. I happened to be down there at their meeting last week; they announced a registered attendance, I believe, of 197 attorneys, the largest meeting they have ever had. I hope that Mr. Knight can take home the report of North Dakota that we had a few more in attendance up here, so I want to have every one registered.

Now we will take up the business where we left it off this morning, and the first committee report is the Americanization and Citizenship Committee. I believe John Knauf is chairman of that committee.

AMERICANIZATION AND CITIZENSHIP

Your Committee on Americanization and Citizenship, beg leave to report:

On the appointment of the committee, we set out with its first work for Constitution Week in 1931, our County Committeemen (barring three counties) each taking the matter of the study of the Constitution, its background, and the fundamentals of government, covering as far as possible. We reached the Town and City schools, then in session, and many of the rural schools later when the schools opened.

Our Committeemen attended many of the Teachers' Institutes over the State and with the County Superintendent, secured the co-operation of fully 90% of the some 4400 rural school teachers, in spreading the story of our Government along plans as laid out in the "Story of the Constitution" by the chairman of the American Bar Association section on Citizenship, copies of which booklet were furnished us by the A. M. B. A. and distributed.

Pageants and celebrations were had in nearly every School District in the State. The various churches, Protestant and Catholic, gave valuable assistance in the work done. In many instances the Ministers consulted with our committeemen on their topics for Constitution Sunday, Thanksgiving Sunday, Washington, Lincoln, Memorial and Independence Sundays. The Superintendents of the various Sunday Schools co-operated most beautifully in the patriotic work.

Your committee and the other members of the Bar assisted the Legion for Armistice Day, the churches for Thanksgiving Day, the George Washington Bicentennial Committee for Washington's Day, the D. A. R. and S. A. R. for Patriots Day and the D. U. V. and Legion and Legion Auxiliary for Memorial Day, and the S. A. R. for Independence Day.

We sought again to co-ordinate the work of all societies doing citizenship work in N. D. and found great pleasure in working in conjunction with the S. A. R., the D. A. R., the American Legion, the Legion Auxiliary, the D. U. V., the various church organizations, the B. P. O. E., the K. of C's, the Masonic service committee, the University, the A. C., the Normals, the Jamestown College and all of the County Superintendents and City Superintendents of schools.

Hon. F. Dumont Smith, Chairman of the American Bar Association section on Citizenship, has been especially generous in supplying us with literature, and the George Washington Bicentennial Committee distributed tons of literature throughout the State. The Women's Federated Clubs have assisted immensely in the work. The Federated Music Clubs, with patriotic musical programs, assisted in measure. We owed much for assistance to Cap. E. Miller, Secretary of the S. A. R. of North Dakota. He has been unstinting in time and literature. We are greatly indebted to Mrs. E. C. Geeland of Enderlin, chairman of the Legion Auxiliary on Citizenship, for the research work made on, and the traces of Communism found and reported, for North Dakota. The report shows too many people in our State who are ready to tear down every vestige of the Fundamentals of our Government.

We co-ordinated in work with the following Associations to a greater or lesser extent, viz: A. C., Legion Auxiliary, State University, Jamestown College, Parent-Teachers Association, N. D. Federation of Women's Clubs, S. A. R., K. of C., Masons, District Judges, D. A. R., Mayville Normal, Valley City Normal, Dickinson Normal, Supreme Court, Board of Administration, Kiwanis and other service clubs, our State Teachers' Association; School of Science, Minot Normal, Training School of Mandan, American Legion, School of Forestry, Elks Club, Rotary Club, Lions Club, W. C. T. U., Ellendale Normal and many other societies who have assisted in a lesser way.

And with their aid, and the aid of the State, County, City, and Village School superintendents and teachers have given, the letters and

reports show that over 8500 pageants, plays, literary entertainments and celebrations in North Dakota on and since September 17th, 1931, conducted under the Bar leadership and in which the Bar has assisted; and arrangements are already in hand for Constitution Week in 1932, with which this Committee will gladly welcome its successors.

We are remiss, indeed, did we not feel to extend thanks to those splendid organizations and persons who have so freely given of their time in assisting in the patriotic educational work over the State.

And make recommendations as follows:

BELIEVING as we do, in the necessity of a better and more spiritual understanding of the fundamentals and institutions of our Government:

1. That the matter of citizenship in N. D. be made of primary importance in the Bar Association activities.

2. That a new committee be appointed to carry on the work from the 1932 Constitution week.

3. That a sum, sufficient for stationery, express, postage, freight, printing, stenographic work, and other necessary expenses of the Committee, be allowed by the Association.

4. That your Committee be discharged.

JOHN KNAUF, Chairman.

VICE PRESIDENT HUTCHINSON: What will we do with the report and the recommendations of this committee? Are there any remarks?

MR. MCINTYRE: Mr. President, I move that the report be accepted and filed and a vote of thanks expressed to John Knauf and his committee. Most of us know, I think, more than the Judge has told us, of the actual work that the committee has done, and that the recommendaiton as to expenditures be referred to the executive committee for action.

MR. TRAYNOR: Second the motion.

MR. SPALDING: The subject covered by that report is to my mind of very great importance, especially at this time. In this part of the country we hear a great deal of discussion and criticism, some of it merited and most of it not, regarding our fundamentals and our institutions of government. We hear it on the street corners everywhere we go; to my mind most of it comes from people wno know nothing about our fundamental principles or the principles underlying our institutions. Let me illustrate and then I am done. Not long ago I was invited to address a certain organization on a certain subject in this state. I accepted the invitation and there was an audience of five or six hundred people, I suppose considerably above the average intelligence. It occurred to me during the progress of my remarks that it might be appropriate to the occasion under the subject to find out how many ever read the Declaration of Independence or the Constitution of the United States. I suspect the majority of these people were among those who were foremost in criticism of our institutions, so I asked this audience to raise their hands if they had read through the Declaration of Independence. How many do you suppose there were? Not

one in ten. Then I asked those who ever read through the Constitution of the United States to raise their hands. To my surprise, as near as I could judge there was a larger proportion had read the Constitution than there was who had read the Declaration of Independence, but to give the benefit of all doubts, there wasn't to exceed one in seven or eight ever read the Constitution of the United States in that audience, or at least those willing to admit it at all. That illustrates to my mind the ignorance and I say this without reflecting on the character or integrity of the lawyers or any of our people, it illustrates the ignorance of the general mass of people regarding our fundamental institutions.

VICE PRESIDENT HUTCHINSON: Any further remarks? All those in favor of the motion signify by the usual sign; opposed; it is carried.

The next report is the report of the Committee on Criminal Law and Enforcement.

CRIMINAL LAW AND ENFORCEMENT

To the Honorable President and Members of the Bar Association of the State of North Dakota:

Gentlemen: Laymen frequently criticize the law because technicalities sometimes cause the defeat of justice. The criminal law surrounds the prosecution with many such technicalities. In most instances they are not only justified but necessary in order that in our eagerness to punish the criminals, we may not do injustice to the innocent. There is one part of our criminal procedure in North Dakota which might be simplified without danger to the security of innocent people. That part of our statutory law which sets forth the procedure pertaining to informations and indictments is somewhat technical and the courts have, on more than one occasion, been reluctantly compelled by the wording of the statute to permit the guilty to escape punishment.

If, therefore, this procedure can be simplified without endangering the security of innocent persons, we can with propriety, consider changing the procedure pertaining to informations and indictments. Your committee on criminal law, therefore, proposes for your consideration an enactment which would do away with technical formalities and would permit the charging of criminal acts in a simple and direct manner.

In order that the rights of the defendant might be fully protected, the proposed enactment provides that a bill of particulars may be obtained amplifying the indictment when the court deems such a bill of particulars necessary to the interests of justice.

In proposing this enactment, your committee has followed closely the pertinent sections of the official draft of the American Law Institute's Code of Criminal Procedure. We therefore submit the proposed enactment to you for your consideration. First, as to the general principle of simplification involved; and second, as an act which we suggest be recommended for the consideration of the Legislature of the State of North Dakota at its next session.

Respectfully submitted:

JAMES MORRIS,
G. A. LINDELL,
Committee on Criminal Law.

Hon. John F. Sullivan dissents.

Proposed Enactment Simplifying the Form and Procedure Pertaining to Informations and Indictments

SECTION 1. DEFINITIONS. In this Act

(a) The singular number includes the plural and the plural includes the singular.

(b) The masculine gender includes the feminine and neuter genders.

(c) The words "person," "defendant" and similar words include, unless a contrary intention appears, a public or a private corporation.

(d) The term "act" includes omission to act.

(e) The word "property" includes any matter or thing other than a person, upon or in respect to which any offense may be committed.

(f) The words "indictment" and "information," unless a contrary intention appears, include any count thereof.

(g) The terms "writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed, or otherwise copied, traced or made visible to the eye.

(h) The term "the court," unless a contrary intention appears, means the court before which the trial is had.

(i) The term "prosecuting attorney" includes the State's Attorney or Assistant State's Attorney of the county in which the offense sought to be prosecuted was committed; the Attorney General of the State of North Dakota or any of his duly appointed assistants, either regular or special, or any attorney at law duly appointed by the Court as now provided by law to prosecute.

SECTION 2. CAPTION—COMMENCEMENT—AMENDMENT. (1) Whenever an objection is made that an indictment or information does not contain a caption or commencement, a caption may be prefixed to, and a commencement may be inserted in, the indictment or information; and any defect, error or omission in a caption or commencement may be amended as of course, at any stage of the proceedings, and shall be in any event cured by a verdict.

(2) It is unnecessary to allege that the grand jurors were impanelled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

SECTION 3. CONCLUSION. The indictment or information need contain no formal conclusion.

SECTION 4. SUBSCRIPTION AND VERIFICATION OF INFORMATION. (1) All informations shall be subscribed by the attorney. Except in cases where the defendant has been held to answer in a preliminary examination, the information shall be verified by the oath of the prosecuting attorney or that of the complainant or of some other person. When the information is verified by the prosecuting attorney, it shall be sufficient if the verification is upon information and belief.

(2) No objection to an information on the ground that it was not subscribed or verified, as above provided, shall be made after moving to quash or pleading to the merits.

SECTION 5. FORM OF INDICTMENT. The indictment may be in substantially the following form:

In the (here state the name of the court) the day of....., 19....., The State of North Dakota vs. A. B.

The grand jurors of the county of.....accuse A. B. of (here charge the offense in one of the ways mentioned in Section 7, —e. g. murder), (assault with intent to kill, poisoning an animal contrary to section 31 of the Penal Code) and charge that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 6. FORM OF INFORMATION. The information may be in substantially the following form:

In the (here state the name of the court) the day of....., 19..... The State of North Dakota vs. A. B.

X. Y. (here state the title of the prosecuting attorney) for the county of.....accuses A. B. of (here charge the offense in one of the ways mentioned in section 7—e. g. murder (assault with intent to kill, poisoning an animal contrary to section.....) and charges that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 7. CHARGING THE OFFENSE. (1) The indictment or information may charge, and is valid and sufficient if it charges, the offense for which the defendant is being prosecuted in one or more of the following ways:

(a) By using the name given to the offense by the common law or by statute.

(b) By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of what offense is intended to be charged.

(2) The indictment or information may refer to a section or sub-section of any statute creating the offense charged therein, and in determining the validity or sufficiency of such indictment or information regard shall be had to such reference.

SECTION 8. BILLS OF PARTICULARS. (1) When an indictment or information charges an offense in accordance with the provisions of section 7 but fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state, the court may, of its own motion, and shall, at the request of the defendant, order the prosecuting attorney to furnish a bill of particulars containing such information as may be necessary for these purposes; or the attorney may of his own motion furnish such bill of particulars.

(2) When the court deems it to be in the interest of justice that facts not set out in the indictment or information or in any previous bill of particulars should be furnished to the defendant, it may order the prosecuting attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts, should be so furnished, the court shall consider the whole record and the entire course of the proceedings against the defendant.

(3) Supplemental bills of particulars or a new bill may be ordered by the court or furnished voluntarily under the conditions above stated.

(4) Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

(5) When any bill of particulars is furnished, it shall be filed of record and a copy of such bill given to the defendant upon his request.

SECTION 9. INSUFFICIENCY, OR INCONSISTENCY BETWEEN INDICTMENT OR INFORMATION AND BILL OF PARTICULARS—EFFECT OF. If it appears from the bill of particulars furnished under section 8 that the particulars therein stated together with any particulars appearing in the indictment or information do not constitute the offense charged in the indictment or information or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may, and on motion of the defendant or of the prosecuting attorney shall, quash the indictment or information unless the prosecuting attorney shall furnish another bill of particulars which either by itself or together with any particulars appearing in the indictment or information so states the particulars as to make it appear that they constitute the offense charged in the indictment or information and that the offense was committed by the defendant and that it is not barred by the statute of limitations.

SECTION 10. NAME OF DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying him is practicable, to state a fictitious name, or to describe him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

(2) If the defendant is a corporation, it is sufficient to state the corporate name of the defendant, or any name or designation by which it has been or is known or by which it may be identified, without an averment that it is a corporation or that it was incorporated according to law.

(3) If in the course of the proceedings the true name of a person indicted or informed against otherwise than by his true name is disclosed by the defendant to the court or appears in some other manner to the court, the court shall cause the true name of the defendant to be inserted in the indictment, information or bill of particulars and record

wherever his name appears otherwise therein, and the proceedings shall be continued against him in his true name.

(4) In naming the defendant, no indictment, information or bill of particulars need further describe him by stating his addition, degree, estate mystery, occupation, title or residence unless such further description is necessary to charge an offense under section 7.

(5) In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney.

SECTION 11. TIME. (1) An indictment or information need contain no allegation of the time of the commission of the offense unless such allegation is necessary to charge the offense under section 7.

(2) The allegation is an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment or information, and within the period of limitations prescribed by law for the prosecution of the offense.

(3) All allegations of the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same time.

SECTION 12. PLACE. (1) An indictment or information need contain no allegation of the place of the commission of the offense, unless such allegation is necessary to charge the offense under Section 7.

(2) The allegation in an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

(3) All allegations in the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place.

SECTION 13. MEANS. An indictment or information need contain no allegation of the means by which the offense was committed, unless such allegation is necessary to charge the offense under section 7.

SECTION 14. VALUE AND PRICE. An indictment or information need contain no allegation of the value or price of any property, unless such allegation is necessary to charge the offense under section 7, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged.

SECTION 15. OWNERSHIP. (1) An indictment or information need contain no allegation of the ownership of any property, unless such allegation is necessary to charge the offense under section 7.

(2) In charging an offense in which an allegation of ownership of property is satisfied by proof of posession or right of possession any statement in an indictment, information or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership.

SECTION 16. INTENT. (1) An indictment or information need contain no allegation of the intent with which an act was done, unless such allegation is necessary to charge the offense under section 7.

(2) An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under section 7.

SECTION 17. CHARACTERIZATION OF ACT. (1) An indictment or information need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand," nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committeed or the act done "burglariously," "wilfully," "knowingly," "maliciously," or "negligently," nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under section 7.

(2) An indictment or information need not contain the words "as appears by the record" or any other words of similar import.

SECTION 18. OMISSION OF UNNECESSARY MATTER. An indictment or information need not state any matter not necessary to be proved.

SECTION 19. ALLEGATIONS OF PLACES AND THINGS. Whenever it is necessary in an indictment or information to describe any place or thing in order to charge an offense under section 7, it is sufficient to describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense.

SECTION 20. NAME OF PERSON OTHER THAN DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying such person is practicable, to state a fictitious name, or to state the name of an office or position held by him, or to describe him as "a certain person," or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or surname and one or more abbreviations or initials of a given name or names.

(2) It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or associations, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

(3) It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designa-

tion by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

(4) In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

(5) If in the course of the trial the true name of any persons, group or association of persons, or corporation, described otherwise than by the true name is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment, information, bill of particulars and record wherever the name appears otherwise.

SECTION 21. PROPERTY DESCRIBED AS MONEY. In an indictment or information in which it is necessary to make an averment as to money, or bullion or golddust, current by custom and usage as money, treasury notes or certificates, banknotes or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof.

SECTION 22. DESCRIPTION OF WRITTEN INSTRUMENTS. Whenever it is necessary to an indictment or information to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy of facsimile of the whole or any part thereof. The description, if in a bill of particulars, is sufficient if it sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense.

SECTION 23. DESCRIPTION OF WRITTEN MATTER. Whenever in an indictment or information an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture. The description, if in a bill of particulars, is sufficient if the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made so as to enable him to prepare his defense.

SECTION 24. MEANING OF WORDS AND PHRASES. The words and phrases used in an indictment, information or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification.

SECTION 25. ALLEGATION OF PRIOR CONVICTIONS. No indictment or information shall contain an allegation of a prior conviction of the defendant unless such allegation is necessary to charge the offense under Section 7.

SECTION 26. PRIVATE STATUTES. In referring in an indictment or information to a private statute or a right derived therefrom it is sufficient to refer to the statute by its title and the day of its pass-

age or in any other manner which identifies the statute, and the court shall thereupon take judicial notice thereof.

SECTION 27. JUDGMENTS. In referring in an indictment or information to a judgment or other determination of, or a proceeding before, any court or official, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or official, but it is sufficient to allege generally that such judgment or determination was given or made or such proceeding had, in such manner as identifies the judgment, determination or proceeding.

SECTION 28. EXCEPTIONS. No indictment or information for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

SECTION 29. ALTERNATIVE OF DISJUNCTIVE ALLEGATIONS. No indictment or information for an offense which may be committed by the doing of one or more of severals acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents or results are charged in the disjunctive or alternative.

SECTION 30. INDIRECT ALLEGATIONS. No indictment or information shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts or circumstances connected with or constituting the offense.

SECTION 31. LIBEL. No indictment or information for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libelled of the defamatory matter on which the indictment is founded.

SECTION 32. PERJURY AND KINDRED OFFENSES. No indictment or information for perjury, or for subornation of, solicitation of, conspiracy or attempt to commit perjury shall be invalid or insufficient for the reason that it does not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same.

SECTION 33. OFFENSES DIVIDED INTO DEGREES. In an indictment or information for an offense which is divided into degrees it is sufficient to charge that the defendant committed the offense without specifying the degree.

SECTION 34. PARTIES TO OFFENSES. Every person concerned in the commission of an offense, whether he directly commits the offense or procures, counsels, aids, or abets in its commission, may be indicted or informed against as principal.

SECTION 35. REPUGNANCY. No indictment or information that charges an offense in accordance with the provisions of section 7 shall be invalid or insufficient because of any repugnant allegation contained therein.

SECTION 36. SURPLUSAGE. Any allegation unnecessary under existing law or under the provisions of this chapter may, if contained in an indictment, information or bill of particulars, be disregarded, as surplusage.

SECTION 37. DEFECTS, VARIANCES AND AMENDMENT. (1) No indictment or information that charges an offense in accordance with the provisions of section 7 shall be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling or improper English, or because of the use of sign, symbol, figure or abbreviation, or because of any similar defect, imperfection or omission. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such defect, imperfection or omission.

(2) No variance between those allegations of an indictment, information or bill of particulars, which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for the acquittal of the defendant. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such variance, to conform to the evidence.

(3) If the court is of the opinion that the defendant has been prejudiced in his defense upon the merits by any such defect, imperfection or omission or by any such variance the court may because of such defect, imperfection, omission or variance, unless the defendant objects, postpone the trial, to be had before the same or another jury, on such terms as the court considers proper. In determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case, and the entire course of the prosecution.

(4) No appeal, or motion made after verdict, based on any such defect, imperfection, omission, or variance shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in his defense upon the merits.

SECTION 38. MISJOINDER, MULTIPLICITY, DUPLICITY AND UNCERTAINTY (1) No indictment or information shall be invalid or insufficient for any one or more of the following defects merely:

(a) That there is a misjoinder of the parties defendant.

(b) That there is a misjoinder of the offenses charged.

(c) That there is duplicity therein.

(d) That any uncertainty exists therein, provided it charges an offense in accordance with section 7.

(2) If the court is of the opinion that the defects stated in subsection 1, clauses (a), (b), and (c) or any of them exists in any indictment or information it may order the prosecuting attorney to sever such indictment or information into separate indictments or informations or into separate counts, as shall be proper. (3) If the court is of the opinion that the defect stated in sub-section 1, clause (d) exists in any indictment or information it may order that a bill of particulars be filed

in accordance with section 8. (4) No appeal, or motion made after verdict, based on any of the defects enumerated in this section shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced in his defense upon the merits.

SECTION 39. AMENDMENT AFTER VERDICT. The defendant and the prosecuting attorney are entitled upon motion made by either after verdict and before sentence is pronounced or the defendant is discharged to have the indictment or information amended so as to state the particulars of the offense, as proved, in such a manner that the indictment or information shall without evidence aliunde be such evidence of the offense charged and its particulars as to bar a subsequent prosecution for the same offense constituted by the same particulars.

SECTION 40. INTERPRETATION OF THE ACT. Nothing contained in this chapter shall be so construed as to make invalid or insufficient any indictment or information which would have been valid and sufficient under the law existing at the date of the enactment of this chapter.

SECTION 41. FORMS FOR SPECIFIC OFFENSES. The following forms may be used in the cases in which they are applicable:

AFFRAY: A. B. and C. D. made an affray.

ASSAULT. A. B. assaulted C. D.

ASSAULT AND BATTERY. A. B. committed an assault and battery upon C. D.

ASSAULT WITH INTENT. A. B. assaulted C. D. with intent to murder him, (or kill, or rob, or maim him as the case may be.)

ARSON. A. B. committed arson by burning the dwelling house of C. D.

ATTEMPT. A. B. attempted to steal from C. D. A. B. attempted to commit larceny of the goods of C. D. A. B. attempted to commit burglarly of a dwelling of C. D.

BURGLARY. A. B. committed burglary of the dwelling of C. D.

CONSPIRACY. A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F., or to rob E. F.)

FORGERY. A. B. forged a certain instrument purporting to be a promissory note (or describe the instrument or give its tenor or substance.)

LARCENY. A. B. stole from C. D. one horse.

LIBEL. A. B. published a libel concerning C. D. in the form of a letter (book, picture, or as the case may be) (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

MURDER. A. B. murdered C. D.

MANSLAUGHTER. A. B. unlawfully killed C. D.

PERJURY. A. B. committed perjury by testifying as follows (set forth the testimony).

RAPE. A. B. raped (or ravished) C. D.

ROBBERY. A. B. robbed C. D.

SECTION 42. DISCLOSING THE FINDING OF AN INDICTMENT OR THE FILING OF AN INFORMATION FORBIDDEN. No grand juror or official of any court shall, except in the performance of his official duty, disclose the fact that an indictment has been found or an information filed against any person for an offense, unless such person is in custody or has been admitted to bail for such offense.

SECTION 43. FILING AND RECORDING OF THE INDICTMENT OR INFORMATION. When an indictment has been presented by the grand jury or an information filed by the prosecuting attorney, it shall be filed by the clerk of the court, and transcribed in a book kept for that purpose. In each case the clerk shall certify in the book that he has compared the transcription with the original and that the transcription is a true copy of the original.

SECTION 44. INSPECTION OF INDICTMENT, INFORMATION AND RECORD. All indictments, information and the records thereof shall be in the custody of the clerk of the court to which they are presented, and shall not be inspected by any person other than the judge, the clerk, the attorney general and the prosecuting attorney until the defendant is in custody or has been admitted to bail.

SECTION 45. INDICTMENT OR INFORMATION LOST, MISLAID, ETC. COPY MAY BE USED. When an indictment or information, filed or provided for in section 43, has been so mutilated or obliterated as to be illegible, or has been lost, mislaid, destroyed, stolen or for any other reason can not be produced at the arraignment or trial of the defendant, he may be arraigned and tried on a copy thereof taken from the clerk's book and certified by the clerk.

SECTION 46. COPY OF INDICTMENT OR INFORMATION TO BE FURNISHED DEFENDANT. Every person who has been indicted or informed against for an offense shall be furnished with a copy of the indictment or information together with the indorsements thereon at least twenty-four hours before he is required to plead thereto, and he shall not be required to plead to such indictment or information if it has not been so furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceeding against the defendant if he pleads to the indictment or information.

SECTION 47. NAMES OF WITNESSES TO BE ENDORSED ON INDICTMENT OR INFORMATION. When an indictment or information is filed, the names of all the witnesses or deponents on whose evidence the indictment or information was based shall be endorsed thereon before it is presented, and the prosecuting attorney shall endorse on the indictment or information at such time as the court may by rule or otherwise prescribe the names of such other witnesses as he purposes to call. A failure to so endorse the said names shall not affect the validity or sufficiency of the indictment or information, but the court in which the indictment or information was filed shall, upon application of the defendant, direct the names of such witnesses to be endorsed. No continuance shall be allowed because of the failure to endorse any of the said names unless such application was made at the earliest op-

portunity and then only if a continuance is necessary in the interest of justice.

MR. MORRIS: This report is signed and concurred in by two members of the Committee. This committee consists of John Sullivan, Mandan; Gus Lindell of Washburn; and myself. Now this report is only a report of the majority committee, Mr. Lindell and myself; Mr. Sullivan disagrees rather strenuously to the suggestion we are making; now due to the fact that our committee was unable to agree, we did not get this report in the hands of the secretary in time for any report to be published for your general consideration here in the publication of the reports. I am going to read you perhaps two or three sections out of the proposed enactment. The whole thing consists of eight and a half closely typewritten pages which would take too long to read here. The proposed enactment is generally this, to simplify the form and procedure surrounding the information and indictment so that crimes might be charged in simple and direct language, avoiding many of the technicalities with which the states attorneys and the attorney general have to contend with in connection with criminal prosecution. Just as an example, for instance, paragraph seven of the proposed enactment is as follows regarding the offense: (reads portion of report). That is valid and sufficient for it charges the offense for which the defendant is being prosecuted in one or more of the following ways: (Reads portion of report). That deals with the charging of the offense and we find Section 38, for instance regarding misjoinder, duplicity and uncertainty. (Reads from report).

Now I realize that in bringing this matter here today without having it printed and distributed, that we would be undertaking the discussion of rather a broad and deep subject, if we undertook to decide all at once whether we were for or against it. In view of the fact, also, that our committee was divided and that one of the members dissents rather strenuously to the adoption of the report, I am not going to make the usual motion for the adoption of this report, but I would not like to see it tabled permanently. I think it is something that should require study, consideration and discussion and so I hope eventually we will be in a position to recommend. Instead of moving for the adoption of the report, I am going to move, Mr. Chairman, that this report be filed and referred to the Committee on Criminal Law and Law Enforcement to be next appointed by this Association.

JUDGE LOWE: I second the motion.

SECRETARY WENZEL: May I suggest that that motion include printing it in the annual proceedings so that it may be available.

MR. ADAMS: Can't we go a step further, wouldn't it be a fine thing for that to go down to the district meetings for discussion.

VICE PRESIDENT HUTCHINSON: I was going to suggest that. I was wondering, Mr. Morris, how that might meet with your approval, of submitting this to different district meetings for discussion and vote and be reported back to our next meeting.

MR. MORRIS: That would meet with my approval, Mr. Chairman, if that action did not preclude it being discussed at our next annual meeting.

VICE PRESIDENT HUTCHINSON: And then refer also the action of the district meetings to the new committee who will bring in a report.

MR. MORRIS: Yes, I would hope that the new committee might give further and considerable study to this matter because it is really one that requires considerable study.

VICE PRESIDENT HUTCHINSON: Then if that motion would include reference to the district meetings for their decision, with further reference to the next committee on Criminal Law and Enforcement, followed by report to our next meeting, would that meet with your approval?

MR. MORRIS: Yes it would if that does not prohibit the discussion at our next annual meeting.

VICE PRESIDENT HUTCHINSON: Is that all right with the second?

JUDGE LOWE: Yes, that is all right.

VICE PRESIDENT HUTCHINSON: The motion is then that this report be referred to the district meetings for discussion and vote and that the result of the vote of the district meetings be communicated to the next committee, and that that committee report the decisions of the district meetings as well as their own views upon this proposed bill. Is there any discussion? If not, all those in favor of the motion indicate by the usual sign; opposed; motion is carried, and that disposes of that.

MR. MORRIS: Just a point of information, does that include the printing of this report in the proceedings?

VICE PRESIDENT HUTCHINSON: Yes it should. This report any way will be printed in the proceedings.

Now the hour has arrived, ladies and gentlemen, for that part of the program which I know will be very interesting to us all, the address of Frederick H. Stinchfield of Minneapolis, and I have requested Lynn Stambaugh of the Fargo Bar to introduce Mr. Stinchfield.

MR. STAMBAUGH: Vice President Hutchinson, and members of the North Dakota State Bar Association: Our Vice President has very aptly likened the attitude of the Cass County Bar Association toward this meeting to that of a housewife who has prepared a meal. I want to take this occasion to express to you the appreciation of the Cass County Bar Association for the manner in which you have received the preparation that has been made for the meeting, for the very unusual and flattering attendance you have accorded the meeting.

We are now about to serve the meat portion of the meal, to which Judge Hutchinson referred. We were unusually fortunate in being able to obtain just exactly what we set out to get in the way of speakers for the meeting. For the first speaker on this afternoon's program, it was the desire of the committee in charge of arrangements to obtain one who would not only be forceful, but who would be peculiarly equipped by reason of his activity and keen interest in Bar Associations to address meetings of this kind. We have the good fortune to obtain the man who exactly fulfills all requirements. Frederick H. Stinchfield, of Minneapolis, is a member of the firm of Stinchfield, Mackall, Crownse, McNally and Mott, a firm that is widely known over this northwest territory for its great success in its practice in our field of

endeavor. He is past president of the Minnesota State Bar Association, having during all of his career as an attorney in the Minnesota Bar interested himself greatly in the affairs of the Bar Association. At the present time he is a member of the General Council of the American Bar Association; he is one of the most forceful speakers that the bar of the northwest has, and it gives me great pleasure to present to you this afternoon Frederick H. Stinchfield of Minneapolis.

MR. STINCHFIELD: May it please the court, Mr. Chairman: From a speaker's standpoint, a compact and intelligent audience has its great defects. It dispenses with that volatility and crowd psychology which often permits the speaker to dispense with thought and use only words. I was asked to deliver an address—I notice it was so specified in your program. I have therefore prepared—I differentiate between an address and a speech; so far as I can ascertain, that with an address it seems to have required some preparation beforehand, while with a speech it requires the work at the time of the delivery, with perhaps very little preparation beforehand. Having done the work on the basis of an address, I now refuse to work over again on the basis of a speech. I shall therefore proceed, gentlemen, as was outlined to me to be in the nature of an address.

LEGAL REFORMS

ADDRESS BEFORE THE NORTH DAKOTA BAR ASSOCIATION, SEPTEMBER 1, 1932

MR. STINCHFIELD

Of late years our profession has been reproached with the charge that we are not keeping pace with civilization; that the laws we apply are not equal to the great advances that our world has made. Even a great and respected judge, yielding to the trend, declared that our criminal law is disgraceful. Ten years ago the American Law Institute began the very ambitious task of restating and somewhat revising the common law. The work originated with a distinguished committee. It continues under the supervision and sustained by the ideals of leaders of the bar and bench. Its declared purpose is to have an authoritative declaration of what is believed to be a proper statement of the law, and of just where conflicts exist. For many years there has been a vigorous attempt to bring into effect, throughout the United States, state laws that are uniform. Judicial councils have been established in many states. Their purpose is to keep an oversight over the laws and procedure. The American Bar Association and the Conference of Senior United States Circuit Judges have recently urged that from the various districts committees be appointed to examine into the administration of law in the federal courts. We have been told that, compared with the English practice, our machinery is archaic and inefficient. They tell us, that, as lawyers we must reform our laws or it will be done for us.

We have listened, on the whole, somewhat apathetically; but many lawyers and judges *have* been influenced and *have* attempted to take steps towards a revision of our laws and their application. Even your speaker has attempted to join in the movement. He has listened to the emphatic, even rude criticisms of the press and laity and indirectly confessed the justice of the reproaches. He has done some considerable work in the Bar Associations of Minnesota; he has attended the

sessions of the American Law Institute and *listened* to the learned discussions; he has accepted a committee appointment in connection with a hoped-for improvement of the administration of the law in the federal courts.

But with him there have been, from time to time, feelings of wonderment and of something approaching resentment at the charges laid at the door of our profession. As lawyers, we have, very properly, a great pride in our profession; we are *bound* to have self respect, without which worth anywhere, in anything, seldom exists. Shall the meek, in fact, inherit the earth? Of course, no one of us may ever be without a desire to improve the profession of which we are a part. But after all it is a very old, a very learned, and a very honorable profession: laws and procedure in their nature are quite static: they do not yield to change readily. There will be growth but it should be well nourished and sound: it ought not to be a mushroom growth. If we are true to our principles we shall never lose our sense of balance nor be hurried into progress, which is only *apparent* and not *real.*

And so, influenced in part, if you will, by pride in the profession and by joy that for hundreds, perhaps thousands, of years lawyers have led and governed the thinking and the justice of the world, it has seemed to me worth while to examine some historical evidences of changes in the law. Our profession has, with the beginnings of civilization, been the bulwark of all societies; it has always been one of, sometimes the only, seat of learning, truth and civilization. With such a history behind us and with certainty in our faith, we are not called upon, we *may not,* in truth abjectly admit that we have entirely fallen from our high estate; but we shall ever maintain that we are today, as always, a main defense of civilization and the great protectors of truth and of reason.

In this connection, we may well bear in mind today, that although history shows what a necessary part we have played in the development of the world, there has never been a time when lawyers have not been reviled, when they have not been charged with the practice of technicalities and with delays of justice. Always have impatient people, whether kings, emperors, churchmen, or business men, felt resentment at the refusal of lawyers to consent to frequent and immediate changes desired by such others to satisfy their own immediate demands. Ever, as an obstacle to the injustice of rulers, has stood the bar: always, interfering with the predatory instincts of successful humanity, have lawyers been ready to be of assistance to those who have been wronged: always, have lawyers stood firm against bigotry: always have they seen that civilization advances, slowly, and that its customs and habits are not to be changed over night. We may not then with propriety be too humble nor confess too readily that innumerable changes suggested to us are for the best, in the end. Nor may we agree that proposals of change prove, by their mere proposal, their worthwhileness. That criticism of us is ancient, you know. Impatient demands on the law fill all history. It was expressed in 1739 by Viscount Bolingbroke. He then said:

"I might instance, in other professions, the obligation men lie under of applying themselves to certain parts of history, and I can hardly forbear doing it, in that of the law, in its nature the noblest and most beneficial to mankind; in its abuse and debasement the most sordid and the most pernicious * * *. There have been lawyers that were orators, philosophers, historians * * *; there will be none such any more till in

some better age true ambition or a love of fame prevails over avarice; and till men find pleasure and encouragement to prepare themselves for the exercise of the profession by climbing up to the vantage ground * * * of science instead of groveling all their lives below, in the mean but gainful application of all the little arts of chicane * * *."

Yet, in spite of that declaration of a distinguished man, we cannot see that the influence of the profession in England has lessened since he spoke in 1739. The lawyers of England before that, at the time, and since, still stand, chief and foremost of the learned and of the protectors of society. Today, the law in England, its virtues, its efficiency, its honor, is held up to us, a youthful country, as an example for us to emulate. It is not good for us to admit, to ourselves, or to others, that we have, as a profession, deteriorated, or that we have sold our heritage of thousands of years for a mess of pottage. We don't believe it. While it is not to be taken literally that "the king can do no wrong," there is an element of truth in the expression as applied to the regal profession of the practice of law. We are entitled to hold that truth close to us, to believe it, to act upon it, always realizing that there are those, as individuals, who will fall short of the goal.

If you will, let us view some historical evidences. There have been in the world's story some reforms in the law, and in its practice, which are outstanding. But what I would emphasize to you is that these have been at *rare intervals,* and only when, in fact, our natural conservatism has been carried to an extremity, and we had, in truth, lagged somewhat behind the advance of civilization, for which advance we ourselves had been in great part responsible.

Will you go back with me to Italy some twenty-five hundred years ago? Roman law is the foundation of most of the systems of law of continental Europe. It is, moreover, the foundation of the law of several of our own states. In addition, it has been woven into all English and American law. Today, therefore, laws which originated 2500 years ago are still a part of our enactments and of our procedure. Out of this Roman law appeared two codes which have had endless fame—the Justinian and the Napoleon Codes. The first appeared about 530, the second in 1803. The first came into existence 950 years after the basic legal structure of Rome was built. The second appeared some 1300 years later still. These noteworthy changes came, then, one after a thousand, and the other after thirteen hundred years of miscellaneous law. Morever, they were not fundamental changes in structure even then. The Justinian Code was a compilation of the laws that had been in existence for a thousand years. The Napoleon Code took as its base the Justinian Code. For all those years empires struggled along and lawyers applied the law without the necessity of believing any extensive reforms to be necessary. I am interested just here merely in illustrating that the profession has maintained its honorable position in the world without the necessity of *constant changes* in the laws or procedure. The fact is to be remembered.

Rome itself seems to have been founded about 750 B. C. At that time it was a power covering but a few square miles of territory. There were no published laws. There was in existence only the customs of the tribe. For three hundred years the law remained merely customs, but about 450 B. C. there was issued a written code. It is known as the Twelve Tables. All Roman law, most continental European law, a

great part of English and American law, trace their foundations to these Twelve Tables of Rome.

Rome had been growing even in 300 B. C. Thenceforth she grew with great rapidity. We can say, even knowing the history of our own country, that never, conditions considered, has there been in the world such a growth as came to Rome—growth in people, in territory, in the arts and in civilization. This comment is not made, lightly. It is made with a full realization of the rapid strides the United States has made since its settlement and its freedom. But after all we have come into existence and have grown under vastly different circumstances than existed when the Roman Empire was building. To remind you—about the beginning of the Christian era Rome embraced the following territory in terms of today: Italy, Spain, France, Asia Minor, all the northern shores of Africa, Egypt, Palestine, Greece and much besides. The extent of that you will appreciate. You will immediately realize how varied were the peoples, the customs, the civilizations, the businesses, the social classes, of the various parts of such a Roman Empire. There could not have been a more heterogeneous mass of people. There were innumerable laws to be applied. In Rome and to Roman citizens the laws were based entirely upon the Twelve Tables. For strangers, those who were not Romans, there were at times applied different laws. In all the subordinate countries there were some Roman law and beside it the customs of the country.

While, therefore, Rome was growing so that she practically embraced the civilized world, while she governed innumerable tribes, kinds and races of people, and while she conducted commerce of every kind and description, she did it all on laws still based on the Twelve Tables issued in 450 B. C.

During the republic there were comparatively few statutory enactments of moment which changed the Twelve Tables. There grew up, however, the custom of prepared comments, in place of statutes, upon the meaning of the Twelve Tables as applied to particular situations. Lawyers became famous by their comments and teachings. The Roman law was not the law of decisions made by courts; it was the law made by lawyers in the form of constructions placed upon the Twelve Tables. Great schools were founded where lawyers taught their own interpretation of the proper construction of the Twelve Tables. The Twelve Tables were so construed, not merely with relation to actual facts and existing differences of opinion, but with relation to any *supposed* situation that a pupil or interested person might suggest to a famous lawyer.

About the beginning of the Christian era the Republic passed and the Emperors of Rome took charge of civilization. With the Emperors commenced a *flood* of enactments, decrees, ordinances. Perhaps Rome and that old great civilization were destroyed by that flood. Too great an anxiety to improve a world too rapidly is perchance not good. I'm not sure it is. In the year 200 A. D. Roman jurisprudence was at its height. It had gone on for 650 years. There were no codes, of moment; there were no published decisions except of the Prætor under the Emperors; there were only the original Twelve Tables and the innumerable comments and constructions placed upon them by famous lawyers. With the first of the Emperors the publication of comments

by lawyers to a very large extent, ceased. They were ordered out of existence. Augustus limited by decree the number of lawyers who were permitted to comment and to publish their views of the law. Then, as in modern times, there arose an objection to the law being entirely controlled by lawyers, and so the great Roman lawyers and their great schools ceased. Rome faded. Perhaps it was a coincidence—perhaps not. For something over 300 years more the Roman law continued without any great changes either in its fundamental character or in its procedure. It was not until 530 that the first attempt at consolidation of the laws and forms and procedure appeared. Roman law had retained its form and practice for nearly a thousand years. That's a long, long time in American terms. In 530 Justinian appointed a commission of lawyers to examine the thousand year old law and procedure. The work of two commissions under this Emperor resulted in the Justinian Code, and in various associated works. The appointed lawyers assembled, beginning with the Twelve Tables, what they considered best out of the innumerable comments and constructions published by lawyers for the first 600 years after the Twelve Tables and out of the enactments and decrees of the Emperors for another 300 years. Generally speaking, all things except what were contained in the Justinian Codes were repealed. What was law thereafter was contained in the Codes. I have nowhere read, by the way, whether the report of this first famous commission was rewritten for public consumption after its presentation to Justinian.

I am not reciting all this for the purpose of giving you a detailed or even meticulously accurate story of the Justinian Code. I am merely attempting to emphasize to you that the greatest power the world has ever known, a power great in business, great in the arts, great in the professions, grew, prospered, conducted its business, and its education for 1000 years without the necessity of any great changes in its laws or its procedure. When we think of a period of 1000 years in the life of a nation, we are perhaps entitled to wonder whether all the criticisms of lawyers, and their practice of the law, call for any *great* concern on our part that our profession is headed for destruction unless changes are immediately and constantly made.

The glory of Rome had begun to fade before the Justinian codes. Rome had first fallen to the barbarian tribes in 476. For the most part for several hundred years thereafter the Western Roman Empire was ruled by the Germanic tribes. They had come down through France. Largely, the Roman Empire thereafter, was the Eastern Roman Empire with its seat of power in Constantinople. We leave Rome for the moment with the glory of her laws, her civilization, her arts, still in our minds, and that that glory was greatest with few changes of law.

The next notable reform in the laws came 1300 years thereafter. The Napoleon Code was made effective in France in 1803. As in the case of Rome, it will be of interest to review the conditions existing before the Napoleon Code came into being.

France had been ruled for many hundreds of years from Rome. She was a part of the Roman Empire. As Rome became effete, France was occupied by the Invaders from Northern Europe. Her territory was, of course, occupied before the Germanic tribes had reached Rome. Later, as you know, there came into existence throughout Europe the

feudal system. Europe was divided into innumerable small territories governed by local self-chosen aristocratic rulers. During the control of the Germanic tribes their numerous and varied customs had been one of the bases of the law. There remained, of course, a great deal of the old Roman law and the two laws were intermingled and applied. In the southern part of France the controlling part of the law was of Roman origin; in the northern part of France the controlling considerations were the laws of the barbarians. The revival of Europe, its renaissance, is commonly dated about 1100. At that time began a true revival of learning, including establishment of great universities and instruction in the law. France had been and continued to be for hundreds of years absolutely littered with laws of innumerable kinds and descriptions. There were the remains of old Roman law, the remains of Germanic tribal laws, the various codes which the Germanic conquerors issued, based somewhat, in form, on the Roman law. There were innumerable laws issued by the church, these laws sometimes gaining complete ascendancy over the laws of the civil authorities. In some portions of France during various periods of invasion by English forces, the English law had precedence. During all of these hundreds of years there had also been coming into existence new customs of particular application to commercial and maritime transactions.

Finally under Charles VII, before 1500, there commenced a reuniting of the innumerable divisions of France. A start was made towards what afterwards became France. The movement gained great headway under Louis XI, son of Charles VII. Louis had often expressed himself as desirous of issuing a code of laws to give form to a legal chaos which had existed for hundreds of years. A writer has said:

"The legal chaos that prevailed in France before the Revolution had engaged the attention of eminent Frenchmen for centuries. A single code for the whole country was the dream of Louis XI * * *."
The legislative body of France for two hundred and fifty years prior to 1800 had voted for a code. They voted for it in 1560, 1576, 1614, and 1789. But nothing resulted. But in 1800 Napoleon appointed a commission to draft a code. They discovered that there were 800,000 judgments or acts of the Council alone. The other legal enactments were practically numberless. No one could calculate their number or quantity. In 1804 the code was adopted. This was eleven years after the outbreak of the French Revolution, one of whose causes has been said to have been a demand for the reformation of the laws. What Napoleon thought of his Code appears in his own statements. He said:

"I will go down in history with the code in my hand. My true glory is not having won many battles: Waterloo will blot out the memories of those victories; but nothing can blot out my civil code—that will live eternally."

Montesquieu, in his book "The Spirit of Laws," had said more than fifty years before, in pressing for reformation:

"No more entails—they interfere with economic progress; no more mortmains—the church is a family which should not grow too rapidly; fewer rent charges and more loans of money; no more serfs because agriculture depends less on fertility of the land than on the liberty of its occupants; no more indissoluble marriages; less formality in pro-

cedure, more conciseness and more simplicity." That really doesn't sound 200 years old.

In the Napoleon Code there were 2281 articles. It was adopted more than one hundred twenty-five years ago. There are still of the Napoleon Code exactly 2281 articles. The amendments thereto have numbered on the average not more than one a year.

Now then to review the situation: France had been ruled prior to the Justinian Code by the Roman law. Then, by that code, thereafter there was mingled with the Roman law, sometimes superseding it, sometimes mixing with it, the various customs or laws of the many Germanic tribes. Then there came the minute division of France and the growth of the laws applied by the innumerable feudal districts. There was the growth of the commercial and maritime and canon law. There were the Middle Ages with all their confusion, poverty and weakness; then the Renaissance when Europe, its learning and its arts, laid the very broad foundation for our modern civilization. Yet, through all that period, there were no great reforms or changes in the law. For more than 1300 years people lived under the laws as they were. Not till 1804 was there the change known as the Napoleon Code.

Let us now consider the situation in England. England had been ruled for a comparatively short time, in terms of history, from Rome. The Roman laws had, to some considerable extent, been effective there, but largely because of a less close association with Rome, its distance from Rome, the laws of the early inhabitants had remained in England. Its laws were largely the laws of custom, the basis of our common law. In 1189 appears the first well known publication of laws in England. Afterwards famous works on law appeared in England; in 1250 by Bracton, in 1482 by Littleton, in 1628 by Coke, and in 1765 by Blackstone. Henry III, prior to 1600, had had the ambition to provide a code of laws for England. He died before his work was accomplished. About 1802, while, as you will remember, the Napoleon commission was working, there arose in England the first organized, emphatic and serious complaints of the laws and their application. As Professor Sunderland has said, the first continuous and emphatic objection to English procedure started with the *Edinburgh Review* in 1802. The *Edinburgh Review* kept at its task for more than fifty years. In 1830 it was said in this magazine: "The all important subject of judicial reform has of late years, happily occupied the almost undivided attention of thinking men in every part of the country." And again, it was said by the same publication: "It has been well observed that all the costly apparatus of government, the crown, the navy, the army, taxes, parliment's powers and privileges, are really of little other use than to maintain the twelve judges in due authority at Westminister." The *Westminister Review* in 1825 said:

"Not a formality is there which serves not as a pretext for charges; and scarcely a moment of delay which is not contrived to minister either to the ease or the profit of lawyers, if not both * * *; every inconsistency, every groundless distinction, leads to uncertainty, and every uncertainty to law suits, accompanied by harvests of fees for lawyers; in short, there appears not a single imperfection in the law by the existence of which lawyers are not in some way or other benefitted." The *London Times* had taken up the battle. It said on December 24, 1850: "If the minds of legal men are to be forever perversely directed to the

past, if they will not purge themselves of old prejudices and accept new views and ideas suited to the genius of the present times, the public must be content with attempts made by laymen to improve a system which cannot longer be permitted to remain in its old and mischievous condition. The law and its administration constitute the crying evil of the day."

Nevertheless, it was not until 1850 that a commission was appointed to inquire into judicial reforms. The Judicature Act was thereafter adopted, in 1873. That is the basis of the modern English procedure which is cited to us as such excellent authority for what we are to do.

Now note here that there was never any great reformation of the laws or procedure in England until 1873; that England had been England under such laws and practice as she had. She had become mistress of the seas; she had become the ruling power of the world; she had become the greatest colonizing nation, except for Rome, in the world; she had developed her greatness commercially and in letters under the conditions with which she labored. It is perhaps difficult to see that in any true perspective England's greatness has increased since the adoption of the Judicature Act.

And now we come to ourselves. We have considered three of the greatest systems of law the world has produced. We have reviewed very shortly the accomplishment of the areas in which these laws were applied. We have seen for how many hundreds of years laws remained without any great changes or fundamental reformations. For ourselves, we have been the heirs of all those changes and reformations. They have had their influence upon us. We have had innumerable legislatures taking over the work of the lawyers and making year by year such changes in the law and procedure as they have deemed desirable. From a dearth of laws, we have changed to a condition where we are flooded with laws. Can we yet say, with only 160 years behind us, that the change is valuable? And today we have the American Law Institute working very wisely and very arduously with the decisions and the common law; we have it also working on a criminal code. We have seen our federal equity practice considered and new equity rules issued. We have seen everywhere the legislatures passing innumerable statutes governing our procedure. Does it seem remarkable that a lawyer may hesitate to become unduly excited or concerned because of a charge that his profession is delinquent in its reformation? We cannot forget the great stories of the world's history and the great accomplishments made under different conditions and with a different view of the necessity of laws and constant changes in them. Perhaps we may sympathize with the words of Professor Maine, written seventy-five years ago:

"There are two special dangers of which law and society, which is held together by law, appear to be liable in infancy. One of them is that law may be too rapidly developed. This occurred with the codes of the more progressive Greek communities, which disembarrassed themselves with astonishing facility from cumbrous forms of procedure and needless terms of art * * *. It was not for the *ultimate advantage* of *mankind* that they did so, though the immediate benefit conferred on their citizens may have been considerable."

Perhaps we may smile at the statement of Lord Ellenborough: "If I did not adhere to this rule, a lawyer who was well stored with these rules would be no better than any other that is without them." We shall not forget that we are the heirs of great lawyers, an heritage handed down to us over many thousands of years. We shall not forget that always in the history of the world the conservators of civilization, the greatest minds of the world, the sources of learning, have been, to a great extent, lawyers and judges. We are not willing to say, today, that that heritage is not to be honored. We may not say that we have surrendered its ideals. We shall go along with civilization but we must know that it *is civilization* and not merely nervous reaction. If laymen find that we are not so volatile as they, if our willingness to change is not so outright, if we wonder whether changes mean progress, we at least know that we have the precedent of the minds and habits and customs of lawyers for thousands of years to justify our attitude. If we often feel that mere movement doesn't prove progress, it is because history and our legal forbears have taught us that lesson. We would keep our ideals; and ideals are not subject to frequent or fundamental changes. We are entitled to our pride; we are entitled to the strength of our opinions. We are surrendering the leadership of thought if, for whatever reason, we are willing to be driven on faster than the evidence warrants. May we always be progressive, but wisely so: may we always permit experimentation, but in so doing ever remember that sometimes, in crucibles of experiment, the very constituents are wholly destroyed. Against that misfortune lawyers must always pledge their minds, their ideals, their heritage of honor! For myself, gentlemen, I tire of being hurried. Sometimes I would sit on this hill-side, watch the procession go by and see who is out of step. Often it's the leaders, particularly if they are self-appointed.

VICE PRESIDENT HUTCHINSON: Ladies and gentlemen, I am sure we have all enjoyed this address that Mr. Stinchfield has brought to us.

Now we have something else in store, but I am going to declare a recess of five minutes. In the meantime I think we can get perhaps a few more chairs as there are a few others who want to come in.

I am happy to announce that we have already gone by the two hundred mark of registered lawyers, and we have some eighty-nine ladies registered besides. We will take a recess of five minutes, and then if you ladies and gentlemen will just come in and get comfortable, we will continue with the program.

The next speaker on the program really needs no introduction—

MR. MCINTYRE: May I interrupt for a moment? I think we have all enjoyed the address of Mr. Stinchfield and I take pleasure in moving that the address be made a part of the minutes of the meeting, and that we do ourselves the honor by creating Mr. Stinchfield an honorary member of our Bar Association.

MR. CUPLER: Second the motion.

VICE PRESIDENT HUTCHINSON: All those in favor of this motion may signify by a rising vote. Mr. Stinchfield, I have the pleasure

of announcing that you have been made an honorary member of the North Dakota Bar Association.

MR. STINCHFIELD: I greatly appreciate this honor, gentlemen, but assure you that it is entirely out of proportion with the effort expended.

VICE PRESIDENT HUTCHINSON: Ladies and gentlemen, as I was about to remark, the next speaker upon the program really needs no introduction. I know he will be glad to receive the greetings, not only from the old boys of the North Dakota Law School over which he once presided, but also from the members of the Court, the great Court of North Dakota, and so I am going to ask first Judge Graham of Ellendale to bring Judge Bruce the greetings from the old home and then Chief Justice Christianson to bring him greetings from the Supreme Court of the State of North Dakota—Judge Graham.

JUDGE GRAHAM: Mr. Chairman, ladies, members of the Bar and visitors: It is indeed a pleasure to be called upon. The only thing I didn't like was the introduction referring to us as old boys; however, going back to the time when I first met Judge Bruce, it was back in the fall of 1904. I well remember my first meeting with him and the interest he took in me, coming in from the country and going to law school. I have remembered all of his courtesies since that time, and then I well remember when I finished law school in 1906, the interest he took when I was going to start in the practice of law. As time went on I had the opportunity of appearing before Dean Bruce, who was then one of the judges of the Supreme Court. The first two or three times I appeared before the court, he disagreed with me and I began to think I hadn't received good teaching from the Dean. However, as time went on sometimes he agreed with me. I have great pleasure in bringing the greetings from all the members of this association, from all of those who had the pleasure and opportunity of going to school to Dean Bruce, and I am sure that they all look back with pleasure to that occasion.

JUDGE CHRISTIANSON: Mr. Chairman, Members of the North Dakota Bar, ladies and guests: Life is just a succession of tasks, pleasant and otherwise. They have assigned to me this afternoon a pleasant task, that of bidding welcome, saying a word of greeting to my old associate, Judge Bruce. Judge Bruce, as you travel through the City of Fargo and through the State of North Dakota, you will doubtless notice many changes; if you come back to your old stamping ground at Bismarck, you will find still greater changes. That building where you labored has ceased to be. That room in which you had the pictures of the Scotchman in kilties—I suppose that is what it was—has passed into ashes. That radiator on which you used to sit those November, December and January days with your fur coat around you, when we had the wind from the northwest, has been hauled away and become part of the old junk pile, but the institution of which you were a part, is still functioning. The decisions which you wrote for the Court of North Dakota still remain a part of the jurisprudence of this state, and the affections and respect which the people of this state had, they still retain for you—it is a reality, it has not passed away, it has grown with the passing years, so Judge Bruce, welcome home!

THE NEW ERA AND THE LAW

JUDGE A. A. BRUCE

You do not know gentlemen, how deeply I appreciate your really great kindness. North Dakota has always been mighty good to me. I will never forget its kindness and the whole-souled comradeship of its people; I will never forget the friendship of my old Law School boys; I will never forget the friendship of the members of the Court; I will never forget the friendship of the North Dakota Bar.

Coming to you, also, as I do from the over-crowded and as yet in a large measure incongruous and over-commercialized City of Chicago, I experience here as I do almost always when visiting our smaller towns and rural communities a genuine sense of satisfaction, for there I find the real America. From the crowded streets and the turmoil of the City of London, the Englishman Rudyard Kipling visioned the expanse of the British Empire and the heroism and self-sacrifice of the British pioneers. He saw them in the Hudson Bay country and amidst the ice and the snow of the frozen north. He saw them on the ice barriers of the antipodes. He saw them battling the storms and the hurricanes of the seven seas. He saw them in the torrid jungles of Asia. He saw them wresting a living from the arid soil of the African veldt. In London he saw what he termed "the little city-bred people that fester and fume and brag" and in the colonies he saw the heroism of self-sacrifice and of achievement. There he saw man grown to man's stature. In the same manner I am often tempted to say and I say now: "What do they know of America that only her great cities know." Our great cities are excrescences, they have grown too rapidly and in them the commercial element is altogether too apparent. In them there is but little neighborliness. In spite of the marvelous civic conscience that is to be found among many of their people, in spite of their marvelous achievements in education, in literature and in art, in spite of their great philanthropy, as yet they have not found their bearings, and money is of more importance than kindliness and human souls. The foundations of America, the real soul and the real character of America is in the small towns and in the rural communities. At any rate, it is good for me to be here, and I appreciate very deeply the kindness that has been extended to me today by my old friends and my old neighbors, and there is a lot of neighborliness in North Dakota. I even forget and forgive the farewell shot that was fired at me by my old associate Judge Robinson when I left the State—you perhaps remember it:

> "The last rose of summer was left blooming alone;
>
> Judge Bruce has left us, I am glad he has gone."

Perhaps I aggravated Judge Robinson unduly. Though somewhat eccentric, he was, after all, a pretty good scout. At any rate, I am to-day among old comrades and old friends.

In speaking to you I am perhaps going to be very bold. I am going to get something off my chest. Perhaps now and then I will express an opinion. If I do so, do not think that I have the big head and think I know it all. I will be merely thinking out loud. How anyone can be an egotist and have the big head is more than I can ever understand. A humorist and philosopher once defined Egotism as "the anesthetic or balm which kind nature has furnished to some men to alleviate

the suffering which it has occasioned them by making them damned fools." I often think of this definition. I, too, am often reminded of an experience I had at Williston a few days after Governor Burke had been good enough to appoint me to a position on the Supreme Bench. Three men were walking behind me and were evidently talking about me. I heard one of them say in that deep, resonant tone of voice which a man always uses when he fervently believes in what he is saying: "Well! He may make a pretty good judge, but he is damned homely." No one, in fact, who knows anything of the tragedies of life and who will think for a moment of his own failures can have the big head, or even think he can teach others. All of us see through a glass darkly. All we can do is to talk with one another and to offer suggestions.

I am to say something of "The New Era and the Law," and, as I said, though I see through a glass darkly and sometimes, perhaps always, my old brain won't function and I cannot see my way across, I will not speak to you entirely as a theorist. I know something of the tragedy of life, of the boy and of the newly arrived immigrant, yes, of the unemployed, for I came to America when only fifteen years of age, absolutely alone, without money and without friends. My enemies say, and perhaps rightly, without any too much sense. For nearly eight years I have been conducting a study of organized crime in the City of Chicago and I can give you a life history of almost every Chicago gangster —a Who's Who in Gangland. I spent nearly eighteen months in a study of our parole system, of our penitentiaries and of our parolees. I made a study of crime in the City of Memphis, Tennessee. I was conected with the Chicago Police Survey and with the Illinois Crime Survey and have been on various crime commissions. Even if a theorist, I know something of the facts. If you want my theory, however, it is that the problem of crime is the problem of adolescent youth; that a reformed criminal code and more drastic penalties will accomplish but little and that the trouble with America, both financial and moral, is its lack of leadership and its social and political philosophy. The trouble with our great cities is that they are too crowded, too hurried, and too money-mad, and that they have forgotten neighborliness. Coming back here to-day to my old comrades, my old neighbors and my old friends, I thank God for the freedom of the prairies and the spirit and the neighborliness of the west. I come from a city where nearly seven hundred thousand people are out of employment and where the taxpayers have gone on a strike and refuse to meet the burdens which must be borne if relief is to come, and I thank God that though in North Dakota and in the country districts the taxes are burdensome, the prices are low and mortgages are being foreclosed, most of you have enough to eat and to drink and your broad acres still assure a measure of hope and of opportunity.

What most impresses me is that we are in an era of re-adjustment; that we must search and analyze our foundations and that we need leaders. We are in the midst, perhaps at the beginning, of an era of change in our governmental, legal and even our personal, social and religious thought. The greatest of all our problems is the problem of unemployment. Unemployment not only involves suffering but discontent and distrust, and discontent and unrest make criminals. Our present depression creates a demand for a change and when a change is demanded there is an urgent need of thoughtful leaders. I agree entirely with Mr. Stinchfield when he suggests that we are perhaps paying too much

attention to the alleged weakness of our technical law and that as far as that law is concerned our common law inheritance is largely adequate. It appears to me that it does not make very much difference whether we have three days of grace or a longer or shorter term. We could change many of our rules of law without affecting human happiness in any way. I am almost bold enough to say that I am not very much interested in the restatement of the common law which has been conducted by Mr. Lewis under the auspices of the American Bar Association and which has been so generously financed by the Carnegie Institute. The rules of the common law are pretty well understood. I do not see that we need any great change in procedure, and I am reminded of the author who stated that if we insisted on electing as our representatives and as our state's attorneys men who had no legal training and whose only qualification was that they could shout long and loud at the hustings, we should not complain if now and then a criminal escaped or an indictment was quashed. What we need today is to make our social and industrial organization function, to promote opportunity and to promote happiness. Above all, we need to take advantage of our social and industrial triumphs and to make them beneficent instead of hurtful.

If the Puck of Shakespeare were once more to flit over the earth he would add new emphasis to his suggestion, "What fools these mortals be." With everything in our hands we have fallen down on the question of government and on the question of administration. Above all, we have failed to utilize our industrial triumphs. Men are in want and are starving and millions of people are out of employment, not because we have produced too little but because we have produced too much. In a large measure, we have fulfilled the hopes of the ages. Instead of a debacle we should have had a millennium. We have harnessed the air and water to our chariots; we can cross the ocean in a few days; by the use of an airplane, in a few hours. Formerly, it would have taken a woman a week to knit a pair of stockings; now she can turn out 100 in a single day. Where one blade of grass formerly grew, we can grow 10. Whenever there is a new mechanical or scientific need, the inventor springs forth and fills it. We have conquered nature; the problem of the future will be to utilize our conquest and to go in and possess.

Few of us realize what the machine and mass production mean. Instead of producing misery and unemployment, they should have produced an abundance for all who would work. In the ages of the past, the struggle of man was for subsistence and for a bare living. Only a handful could have the leisure that was necessary to culture, and all literature was based upon a horrible substratum of human misery and of human slavery. Millions had to toil in order that a few might be exalted. Rome was fed from the harvest fields of Egypt where slaves plowed under the lash and with primitive instruments of agriculture. The handful of scientists and architects and sculptors and poets and scholars of Athens were able to do their unproductive but beneficent and man-ennobling work only because slaves toiled in the quarries and in the fields. Even as late as 1770, the economist and statistician Malthus terrified society by the statement that the earth could never be made to support its teeming millions. Yet the machine and modern science have made this possible and yet, as I said before, we are in want and are complaining of over-production. As a matter of

fact, such a state of affairs cannot last long. There will be a universal demand that science and the machine shall be so utilized as to liberate mankind. Schemes and movements for the solution of the problem will be everywhere advanced. Many of these schemes and movements will be foolish and unwise. Many of them will be ruinous in their consequence. We will need leaders and, above all, lawyer leaders in the great economic advance and lawyers should study something else besides the volumes of the common law.

We must broaden out. Some years ago, while lecturing in the University of California, I met a French professor of history, who had come there from the University of Paris. Frequently, when talking to me he would turn and say, "But you economists would think, etc." At first I was somewhat amused at being termed an economist. Later, I was gratified and, like the Negro who was asked if he could loan a white man $20.00, I felt like thanking him for the compliment. Like the Negro, however, I soon came to realize that I could not fill the bill or furnish the bill. I began to be ashamed. I came to realize that every lawyer in France is trained in political science and in political economy. I began to think that every criminal judge in Germany must serve a sort of internship in the penal institutions so that he may know something of the places to which he will afterwards sentence prisoners and of the treatment that is accorded to them. I was reminded that in the city of Chicago, not one out of twenty of our judges have ever visited the penitentiaries to which they sentence thousands of convicts. I came to realize that if I were not an economist or a sociologist, I should be one. One thing is certain and that is that the most important thing in America is human happiness, human character and human life, that we must step forward to meet the requirements of the age, but that we should meet them sanely and thoughtfully.

We hear a great deal of Mussoliniism in Italy. Yet, to a large extent we have, and must have, a Mussoliniism in America, and perhaps the greatest and most useful Mussoliniism of the ages is that which is furnished by the Supreme Court of the United States. Mussoliniism in Italy was largely the result of the failure of Parliamentary government. The people began to distrust their Parliament and to look upon it merely as an imposer of burdensome taxes, the creator of oppressive bureaus and the reckless expender of public money and as a body without any intelligent comprehension of social and industrial needs. It, on the one hand, exercised no check on the outrages of the Communists and of the syndicalists and, on the other, furnished no employment for the returned soldiers. Parliamentary government in Italy, indeed, went wild and Mussoliniism came into play to check its extravagances and to bring order out of chaos. In a large measure, this duty has been performed by the Supreme Courts of the States and of the nation. In a large measure they have guided our social advance. Yet, our American thought and our American democracy is beneath it all, and in the long run our lawyers have made our Supreme Court decisions and the convictions of the people have ultimately determined their social and economic ideas. After all, all that the Supreme Court does when it declares a statute to be unconstitutional or announces a so-called established principle of the common law is to give democracy the time for a sober second thought and to prevent

unwise and unthought out legislation. Wherever there is a basic need, wherever the needs of the public are clearly expressed and clearly understood, the Supreme Court yields to the public demand and the old law is adapted to the new exigency. Years ago, the common law of England had announced a doctrine of riparian rights and it was universally held that the upper riparian owner could not divert the waters of a stream for more than a temporary use and had to return to that stream and for the use of the lower riparian owners the water in almost its original form and substance. Yet, when the exigencies of the great mining and agricultural northwest had to be met, the common law was modified. There the water of the streams was needed for mining and for irrigation. Men had to use it for something more than for mere drinking purposes or mere purposes of power. Deserts had to be made into gardens. Before the federal courts came to function in California, the miners found necessary and adopted among themselves the theory "the prior beneficial use," that so long as a man beneficially used, he could have, and later on when the cases became matters of litigation the Supreme Courts yielded to their judgment.

Recently, in order to preserve the wealth and productiveness of the oil deposits of Texas and Oklahoma, it became necessary to prescribe some system of pro-ration which would prevent the dumping on to the market of immense supplies of oil at any one time, and therefore to provide that each individual well owner could only pump a certain amount, a day or week. Formerly, the courts had held that the law had nothing to do with prices, that if oil producers wished to sell at a ruinous price it was their business and that the law had no concern with the regulation of the markets. Yet, the exigency was there. So the courts turned to the theory of waste. They had already held that the actual physical waste of oil could be prevented. They, or rather the lawyers, therefore invented the theory that a certain amount of gas was necessary to the extraction of the oil throughout any oil bed and that if at one time any one owner of an oil well pumped out an excessive amount, he disturbed the equilibrium of the common supply of gas, made it impossible to pump, properly utilize, or extract the oil in the whole area, and therefore committed physical waste. By this means and on this theory the pro-ration of the oil supply was made possible and the market price was controlled.

I am merely giving these illustrations to show that in the long run the courts yield to the public necessity and to the public need. That need or necessity, however, has to be formulated and understood and if an attempt is made to distort facts and to claim that to be necessary which is not, the truth should be brought to light. The Aarons, the forensic formulators of our legal and social necessities are our American lawyers. It is they, after all, who make our Supreme Court decisions. The rule of the law in the Dartmouth College case was not made by Chief Justice Marshall but by Daniel Webster, who first argued the theory of the obligation of the contract and of due process of law. It was a lawyer, geologist and physicist who first argued and promoted the theory of gas pressure in the Texas oil fields. It was Justice Brandeis as a lawyer rather than Justice Brandeis as a judge who brought about the recognition of the validity of laws which regulated the hours of labor in our factories and in our mines. It was Justice Hughes as a lawyer rather than Justice Hughes as a judge who

obtained the recognition of insurance as a business that was affected with a public interest.

On no subject does the lawyer need to go outside of the law books and to think more deeply and seriously than on the subject of crime. Everywhere in America we have had a sort of hysteria. We have been talking of a crime wave, and it has been our habit to attribute it to the laxity of our methods of procedure and to the alleged leniency of our law. Judge Cavanaugh of Chicago has enthusiastically advocated the more frequent use of the gallows and the bringing back of the whipping post; and severer penalties, and longer terms of imprisonment have been everywhere advocated and imposed. Recently, a writer in the Chicago press stated that practically every term of imprisonment should be for life. It is time, however, that we should do a little thinking. It is needless to say that the humanity that is among us will never allow us to hang or electrocute all of our criminals and misfits and that life imprisonment for all, or even a largely increased term of imprisonment is economically impossible. Society simply cannot pay the cost of the erection of the jails and penitentiaries which would be necessary. In North Dakota you have a certain advantage in that you can, in a measure, make your penitentiary self-supporting and can keep your prisoners employed either in your twine factory or on your farm. In most states, however, and in Illinois, this cannot be done, and largely because the outside manufacturers and the labor unions will not tolerate the competition of prison labor. We have, indeed, in Illinois the deplorable situation of nearly 83 per cent of our prisoners being kept in idleness or at perfunctory employments which work almost as disastrous results on the morale of the prisoners as does total lack of employment. So, too, our prisons are crowded to overflowing and this is true generally throughout the United States and has been the cause of many of our prison outbreaks. At the Joliet penitentiary in Illinois there are already three men in a cell. Every year there is a new crop of criminals and every year we must release a number equal to the new arrivals in order to make room for them. An increase of but one year on the average term of imprisonment would necessitate the erection of a new penitentiary almost every year. Further lengthening the terms and going to the extreme foolishness of life sentences in all cases would involve the expenditure of tens of millions of dollars. In short, it takes money to house and to care for our criminals. This accounts for many of the seeming brutalities of the past. At the battle of Jaffa in Syria, Napoleon killed all of his prisoners because he had no place in which to incarcerate them and had food and supplies barely sufficient for his own troops. Centuries before and at the battles of Crecy and Agincourt and Poictiers, the victorious English monarch slaughtered all of his prisoners excepting a few who were able to pay high ransoms, and this for the same reason that actuated Napoleon. In the early history of Illinois, and as late as 1827, almost every offense except that which the legislators or the members of the governing element would be liable themselves to commit, such as the embezzlement of public funds, was punishable by death or by the lash. Though this brutal code was perhaps in part due to the barbarity of our early settlers, I am of the opinion that in the main it was the result of the fact that during those early times we had no secure jails or penitentiaries in which to incarcerate our criminals and misfits.

In these later years, however, and in this new era our eyes are being opened. We have discovered that in England and on the continent of Europe the terms of imprisonment are materially shorter than those which are imposed in America and that if there is a relative freedom from crime in England it is not, as has been generally supposed, on account of their severe penalties but because of their free use of probation, their custom of allowing fines to be paid in installments and thus saving the first offenders from the contamination of the jails and penitentiaries which rarely reform and are always schools of crime, and, above all, to the speed and certainty of conviction. Chief, and above all, we have discovered that crime is the problem of environment and of adolescent youth and that if we would solve the problem of crime we must solve the problems of youth and of environment. Last year at least 60,000 boys and 10,000 girls were arrested in Chicago for not petty, but for serious crimes. It is perfectly absurd to think that by increasing penalties and by hanging a few at the top—and as a matter of fact we only detect one out of ten of our criminal offenders—that this flood of youthful crime can be checked. At least 80 per cent of our criminals are between fifteen and twenty-six years of age. Almost every criminal career is progressive and begins with the rowdyism of early youth. Even our gangsters and confirmed criminals generally started with some juvenile misdemeanor. The problem that we must solve is the problem of youth. Why do our kids first break away?

They break away, and severe punishments will not solve the problem, merely because the kid acts upon the impulse of the moment and does not think of the consequences. Ask any army officer what kind of a soldier he would want if a new army was sought to be organized. Ask him whether he would desire the enlistment of veterans of thirty or kids of eighteen. Every time he will answer, "Give me the kid of eighteen." When you ask him the reason, he will tell you that the kid of eighteen has had no experience, that he knows little of suffering, little of death, that he thinks of the present merely, that he acts on the impulse of the moment, that he is reckless of the consequences, that he will dare anything. This is the reason why a young boy makes such a magnificent aviator and such a magnificent athlete. The reason is that he has a child mind and the child mind acts upon impulses. Everyone of us is a potential criminal, everyone of us desires things and pleasure and power. The only thing that prevents us from being criminals is that experience and training, and perhaps suffering, have given us a certain caution and a certain moral break. The problem of today is to furnish that moral break to our children. If we would solve the problem of the crime of youth, we must study and solve the problems and the thoughts and the environments of youth.

I want to go further still and say generally that we must study the child mind because the child mind is found in many of our adults. Especially is it found in the Negro race. Recently, I made a study of crime in the city of Memphis, Tennessee, and I discovered that though the Negroes constitute only one-half of the population, 85 per cent of the murders are committed by them. Although in the city of Chicago there are only about 200,000 Negroes, and they constitute but a very small fraction of our population of three and a half millions, our judges

tell us that they commit at least 40 per cent of our crime. Why are these things true? They are true largely because the Negro in our cities is out of his environment, which should be in the fields and on the plantations, and is not properly taken care of. It is chiefly due, however, to the fact that the Negro belongs to a child and undeveloped race and has a child mind. Although Africa is as old as Asia and Europe there has never been any real civilization among the Negroes of Africa. Though the Negro has the body and the physique and the hatred and the love and the passions of a man and of a woman he has the mind of a child. He acts upon the impulse of the moment; he is reckless of the consequences and he therefore becomes a criminal.

The longer, indeed, that I study the problem of crime, the longer, indeed, that I study the real problems of our social organization with which our lawyers deal, the more I realize that we must get beyond arbitrary law and arbitrary legal principles and we must search the foundations. Law, after all, is but an applied science; it is applied political economy, applied sociology, applied social ethics; in a large sense applied civilization. The lawyer must know something of the foundations; he must know something of the social sciences. I say the lawyer should know these things because the lawyer by his training is, above all others, fitted to lead in our great social advance.

However, what more than anything else has been impressed upon me is that the crime of America, and, I might say even the present economic and financial bankruptcy of America, has been largely due to a false philosophy of life and to a false ambition. I would go further and say that it is due to our lack of a real religious foundation.

We have not been fair to our boys and girls. We have given to them the wrong theories of life and of success. We have taken away their faith, we have taken away their reverence. We are lawless ourselves and we expect them to be law-abiding. We have cast aside the ancient traditions and we have cast aside our old sense of duty and of reverence. Men and women are on the make. They are jealous of one another; they are money mad; they have exalted the thing and the dollar above the idea and the ideal. In their mad scramble for wealth and for power and for pleasure they have forgotten reverence and they have forgotten God. We are lawless because we are irreverent. We are discontented because we know no law and can brook no restraint. We have given to the youngster the wrong theories of life and the wrong conception of America and then we wonder why he breaks away. The trouble with America lies in the moral and the social philosophy of America.

Recently an autobiography, which was written and published by Mr. Clarence Darrow, has been one of our recent best sellers, and being a best seller must have met with much public approval. I wish to protest that approval. It is not, however, Clarence Darrow as a man and as a lawyer that I oppose. It is Clarence Darrow as a philosopher, and in my opinion it is the philosophy of Clarence Darrow and of men like him which has been promotive of much of our crime and much of our breaking away.

There is much that is lovable in Clarence Darrow. Throughout his long and active career he has done many unselfish things. His human sympathy has made him espouse many a hopeless cause, and no

doubt it is his human sympathy which has made him so eminent a criminal lawyer. He has been a good deal of a knight errant. We can forgive him for the guilty criminals whom he has saved from punishment, for his record as a lawyer has not been that of a buyer of juries and much harm is never done to a community by an attorney who in his own conduct of litigation shows competence and ability. Every criminal suspect is entitled to a full and an adequate defense, and if we wish to overcome the evils which arise from the unwarranted acquittals of the guilty which men like Darrow sometimes obtain, we should cease playing the fool with politics and with government and select, or elect, men of equal knowledge and ability as our prosecuting officers. As a lawyer, indeed, Clarence Darrow has been of some social value. But why did he ever attempt to be a philosopher? For as a philosopher rather than as a lawyer he has made and will continue to make life failures and criminals.

Darrow is the apostle of negation and the prophet of despair. He is a fatalist and presupposes a universe of chance. He is a believer in heredity in its most hopeless form and in a cosmic creation of human misery. Not only is our whole social organization wrong, not only is the theory of private property to be condemned, but man is a helpless victim of circumstances with no self-determination, no responsibility, and with no purpose for his being. Darrow's philosophy takes the meaning out of life and the spirituality out of the universe. It takes away self-respect. And when one comes to doubt the value of life and loses his self-respect, it is easy for him to become a criminal. When one comes to deny the right to private property and the justice of our social organization, it is easy for him to become a robber. When a man comes to believe in a universe of chance and comes to doubt his very personality, it is easy for him to throw his life away. He is equally reckless of the lives of others and is liable to become a murderer.

It is unnecessary to say that Clarence Darrow is not that kind of a person and does none of these things. After all, he has a well-trained mind, a large measure of practicality, has known the joy of combat and success and, above all, has possessed an over-mastering human sympathy. He, too, has got a good deal of fun out of life and in his action he is false to his own philosophy. In action he is too big for it. But it is the effect of that philosophy upon the weaker minds of the multitude with which we are concerned. Many persons, indeed, sell poisons which they have the sense, or the selfishness, not to use themselves. Many saloon keepers themselves refrain from the use of intoxicating liquors. Darrow, indeed, in action, is full of human sympathy and regard for human life and human personality, while his philosophy suggests suicide and makes of the gallows and of the electric chair an easy end to one's misery, the ushering in of a peaceful sleep, and a thing to be desired rather than avoided.

Crime is not a cause but a result. It is rooted in just such a philosophy as Darrow teaches. The real cure for crime lies in an added self-respect, in a realization of one's own dignity. The doctrine of chance and of despair, of no reason, no cause, and no Supreme Power, will never save humanity or bring about human kindness or put an end to crime. What is needed today is a gospel of the affirmative.

In the place of the bedraggled rooster who cackles, "What is the use—an egg yesterday, a feather duster tomorrow," we need the chanticleer of the playwright, Rostand, who crowed lustily at the dawn and believed that the rising of the sun and its very splendor was—in part at least—of his own creation and that he himself was a part creator of the universe. We need rightly to appraise ourselves. We need to realize that made of dust though man may be, in him is the infinity of the universe represented; that, in fact, if it were not for him, there would be no intelligible universe. An inanimate universe, being inanimate, knows nothing of its own existence; it knows nothing of distances, nothing of space, nothing of beauty, nothing of its own magnificent symmetry and perfection. Its very being is in the mind of man. He alone can measure the distance of the stars. He alone can appreciate the music of the waterfall. He alone can vision the infinite. Man alone is the interpreter, and man alone gives to the universe the purpose of its being. We need to teach our boys and girls to understand the value of life and to respect themselves. If they really respect themselves, they will not become criminals or throw their lives away.

We need reverence and contentment more than we need a reformed criminal code. We need God more than we need the law.

PRESIDENT HUTCHINSON: Ladies and gentlemen, I hesitate to speak after that splendid address. I know we have all enjoyed the address and inspiration that has been brought to us by Dean Bruce, and we thank him for coming here. That alone will repay us for coming to this meeting.

We will take a short recess of about ten minutes and then we will go on with our meeting. We have a very important matter, you remember, set over as a special order of business. (Recess).

Gentlemen, I think we probably better come to order and complete the business of the day. We have on the program a special order of business this afternoon, the committee report of Mr. Wehe as chairman, and perhaps with the final consideration of that report this afternoon, we can afford to take an adjournment, and I believe, can finish our work tomorrow.

MR. WEHE: Mr. President, since there might be one or two sections that are controversial in our report, I would make the following motion, that the report be received, filed and printed, and that we now proceed to adopt the committee report on legislation, section by section.

MR. BRONSON: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that the report be received and that it be taken up section by section for either adoption or rejection. Any remarks? If not, all those in favor signify by the usual sign; opposed; motion is carried.

MR. WEHE: Mr. President, I now move you that section number one on page 12 be adopted relating to the Uniform Act to secure the attendance of witnesses from without the state in criminal cases.

MR. BRONSON: Second the motion.

VICE PRESIDENT HUTCHINSON: It is moved and seconded that section one of this report be adopted. Are there any remarks?

LEGISLATION

—1—

The Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases

We recommend for legislation an act known as "The Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases." This Uniform Act is recommended by the National Conference of Commissioners on Uniform State Laws, of which Committee on Public Information Judge H. A. Bronson is chairman. This Uniform Act was enacted into law in New York State in 1932, and is known as the Uniform Act for the Compulsory Attendance of Absent Witnesses in Criminal Cases.

The Panel of May-June, 1932, states, "The Uniform Act makes no distinction between felonies and misdemeanors, and if generally adopted would work thus: The Flemington court would issue a subpoena for Mr. Dobson-Peacock in Norvolk (Va.). A court of record in Norfolk would decide whether the crime was sufficiently grave and the witness' testimony sufficiently important to justify ordering him to obey. If the court said yes, the witness would go at New Jersey's expense with witness fees guaranteed, and with immunity from any legal proceedings in transit or in New Jersey. New Jersey's experience in the Lindbergh case should result in the Uniform Act passing in every state in two years." The Uniform Act without the formal heading is as follows:

Section 1. Subpoenaing Witness in This State to Testify in Another State.) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in criminal prosecutions in this state certifies under the seal of such court, that there is a criminal prosecution pending in such court, that a person being within this state is a material witness in such prosecution, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall notify the witness of such time and place.

If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution in the other state, that the witness will not be compelled to travel more than one thousand miles to reach the place of trial by the ordinary traveled route, and that the laws of the state through which the witness may be required to pass by ordinary course of travel will give to him protection from arrest and the service of civil and criminal process, he shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending at a time and place specified in the subpoena.

If the witness, who is subpoenaed as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each

day that he is required to travel and attend as a witness, fails without cause to attend and testify as directed in the subpoena, he shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

Section 2. Witness From Another State Subpoenaed to Testify in This State.) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions in this state, is a material witness in a prosecution pending in a court of record in this state, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is subpoenaed to attend and testify in the criminal prosecution in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state a longer period of time than the period mentioned in the certificate.

Section 3. Exemption from Arrest and Service of Process.) If a person comes into this state in obedience to a subpoena directing him to attend and testify in a criminal prosecution in this state he shall not while in this state pursuant to such subpoena be subject to arrest or the service of process, civil or criminal, in connection with the matters which arose before his entrance into this state under the subpoena.

If a person passes through this state while going to another state in obedience to a subpoena to attend and testify in a criminal prosecution in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the subpoena.

Section 4. Uniformity of Interpretation.) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Section 5. Short Title.) This act may be cited as "Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases."

Section 6. Inconsistent Laws Repealed.) All acts or parts of acts in conflict or inconsistent with the provisions of this act are hereby repealed.

Section 7. Time of Taking Effect.) This act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

MR. TRAYNOR: I haven't had time to look over these reports generally but I did get time to glance at that. I would like to ask Judge Bronson, supposing a witness were being subpoenaed from Chicago to appear in North Dakota, and suppose Minnesota didn't have that law,

suppose the Chicago court should hold that the witness was safe in going through Minnesota, and ordered the witness to go, but the Minnesota courts didn't look at it that way, where would the witness be?

JUDGE BRONSON: Mr. Chairman, I do not pretend to be very wise on this statute as proposed, and in response to the question propounded by Mr. Traynor, my general thought is that it has been considered sometime by our national committee on uniform laws, that the rule of reciprocity protects; that is as far as I can say. Even if Minnesota hasn't this statute now, if it doesn't protect him the witness is in jeopardy, that is all. This statute is workable in the states where it is adopted mutually. I can see your point and I haven't heard it debated yet. It is a point well taken but I want to say on this issue, that it has received the consideration of the National Council on Uniform State Laws for a long period of time. It has been fostered by many of the leading crime investigating agencies in the nation, particularly in New York City. There is a direct need for this sort of legislation. The comment made in this report illustrates the point. I do not think what you say on the question should prohibit the endorsement by this Association of the passage of this act.

MR. TRAYNOR: May I ask what need has developed for it in North Dakota?

MR. BRONSON: Well, I will have to answer that this way. We are seing a new day in North Dakota and we have seen gangsters in North Dakota, plenty of them, in the last year and a half and we have seen the law outwitted in North Dakota by some of the methods that Dean Bruce was talking about this afternoon, and the time is at hand when the Bar must unite in the adoption of uniform legislation. There isn't any question in my mind that we need to give attention to law enforcement and we need all of the agencies that will secure witnesses here at home, when gangsters come without and operate through our state and get away, and witnesses have gone to foreign jurisdiction, so the need of it, I may answer you in this wise, is just as apparent here whether on bank robberies, whether it be on kidnaping, or whether it be on extortion.

H. G. OWEN: May I rise for a point of information—what is to prevent witnesses from going 1001 miles? If you are going to pass a law like this, why not make it possible to bring him from any state in the Union. As this law now stands, it permits a gangster to go from Chicago to Grand Forks, or any where and if we need a material witness who goes to California, this act is useless, and from my perusal of the stories in the newspapers, the gangsters operate out of Chicago, and send their material witnesses to California to rest in the sunshine and enjoy the climate out there. If you are going to pass a measure of this kind why not pass one that is good in every state in the Union?

JUDGE BRONSON: I can only answer that question this way. The underlying thought behind all such laws is that all states will adopt it. The thought is that uniform state legislation is of beneficent purpose, not only for the reason that it eliminates a multiplicity of laws, but it usually, in an indirect way, applies the reciprocity rule, and furthermore operates in furtherance of justice. Now if only five states have

adopted it, true enough, if you want to get a California man, you may be out of luck How do you get him now?

MR. OWEN: We are out of luck now. I am strongly in favor of this but not in favor of setting the limit at 1000 miles. If he is in the State of Washington, we couldn't bring him back, even though Washington had the uniform state law. What is the use of passing a bill that limits us to 1000 miles.

MR. BRONSON: If the majority of the legislators want to amend the law to 2000 miles, that is all right.

MR. OWEN: I am in favor of bringing him from any place in the United States.

MR. BRONSON: I appreciate the point, Mr. Chairman, but 48 states differ and you have got to take the average judgment. You might want 1000 miles, some one else wants 500 miles, some other state 350, 2000 or 3000 miles, but taking the average judgment, or one that will make it the most effective, upon which all would agree for uniform law. If this state at the next legislative session thinks it best in their discretion to have it at 2000 miles, they can make it 2000 miles.

VICE PRESIDENT HUTCHINSON: Any further remarks? Are you ready for the question? The question is on the adoption of section one on the proposed legislation on the uniform act to secure attendance of witnesses from without the state in criminal cases, all those in favor signify by the usual voting sign; opposed; the motion is carried.

—2—

Appeals in Civil Cases Tried Without a Jury

Your committee recommends that Section 7846, C. L. 1913, as amended by Laws of 1919, Chapter 8, entitled "Appeals in Civil Cases Tried Without a Jury" be amended by striking out the last two lines of said section and following the last semicolon, as follows: "Provided that the provisions of this Section shall not apply to actions or proceedings properly triable with a jury;" and inserting in place thereof the words, *and provided, that the provisions of this Section shall apply to all actions or proceedings properly triable with a jury, and in which actions or proceedings a jury trial has been waived and the same are tried by the court without a jury.*

The law, as stands, requires a useless and senseless thing to be done in order to get a review of a civil action properly triable by a jury and which has been submitted to the court for trial without a jury, by requiring a motion for a new trial to be made before the court without a jury before questions of fact can be reviewed in the Supreme Court; in other words, unless a motion for a new trial is made in the court below you cannot obtain a review of questions of fact on appeal in the Supreme Court, as specified under Section 7842.

The law, as it stands, Section 7643, C. L. 1913, as amended by Laws of 1923, Chapter 335, requires a further useless thing to be done in a jury case, where the jury has been waived and the action tried to the court without a jury, and that is, a motion for a directed verdict, and also a motion for judgment notwithstanding the verdict, or in

the alternate form, if denied, that a new trial be granted. It really seems ridiculous to have to make these motions before a court sitting without a jury; and the law should not require a useless thing to be done in order to obtain justice and a review of the evidence on appeal when civil cases are tried to the court without jury. We believe that if the law is amended along the lines suggested that more than fifty per cent of the jury cases will be stipulated and tried to the court without a jury; and, thus there will be a great saving of expense to the county; and, besides this the trial of cases will be greatly expedited. The way the law stands at the present time, it is an obstacle to the submission of jury cases for trial to the court without a jury, as the lawyer always feels that he is liable to overlook protecting his client's rights by making and taking in the record these useless technicalities, which are now essential to protecting his client's rights.

MR. WEHE: Mr. President, I now move you the adoption of Section two, appeals in civil cases tried without a jury, that is in cases where it is stipulated to the court to try jury cases, when the jury is away, it just simply provides that the appeal in those cases will be the same as those in equity cases, and it obviates the motion for new trial, directed verdict, or motion for judgment notwithstanding or in the alternative. We make these recommendations for the further reason it will be an inducement to try cases to the court. It will be a saving during this time of depression.

MR. FOSTER: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that this section two be adopted; are there any remarks?

MR. TRAYNOR: I don't believe this should be adopted without a little discussion. Offhand I am in favor of it. I would like to hear some objections, if there are any, so I might consider them in making up my own mind on it. I want to relate what happened to me in the Supreme Court very recently, to illustrate what I think shows the necessity for this. I had an action on a depository bond. The defendant denied his signature. The question was then to prove whether it was forgery or not. The jury was waived and the case was tried to the court without a jury. The court found that it was his genuine signature and gave judgment for the school district on the bond. There was a change of attorneys. The new attorney moved in the trial court for a new trial. Now it happened that in the trial of the case there were several defendants who had denied their signature and I offered in evidence another bond which one of the defendants admitted he signed, and it was used for comparison of his signature on that bond and on the bond in question, but as to the appealing defendant, it was not really in evidence. However, the trial court inadvertently, in his memo opinion, referred to a comparison with the signatures on the outside bond. Now the outside bond was not in evidence as to this particular appealing defendant. The new attorney made a motion for a new trial before the trial judge, and on that motion for new trial I recited that if this had been tried to a jury, and if the trial court had failed to instruct the jury that this outside bond could not be considered for comparison purposes as against this particular defendant, that that would have been reversible error, but that it was not necessary to consider that outside bond, because this defendant had signed his name

a number of times in court, and those signatures were in there for comparison and the other evidence showed unmistakably that the defendant did sign the bond in question. The trial court took my view of it on motion for new trial and held the evidence was sufficient to sustain. It was appealed to the Supreme Court, and the Supreme Court held, in substance, that the judgment of the trial judge was equivalent to a verdict of a jury, and, therefore, the judge's decision, standing as a verdict, must be reversed. Now, I would like to hear some of the objections to this section, if there are any.

MR. MORRIS: Does this in any way have any effect on whether or not he is entitled to trial de novo in the Supreme Court?

MR. TRAYNOR: I think that is intended.

MR. WEHE: Yes, that is just the same as provided for in equity cases if tried by the court without a jury, and under that section we take it the procedure would be the same.

MR. STUTSMAN: Isn't it a fact that the words "providing that the provisions of this section shall not apply to actions or proceedings properly triable with a jury" were inserted by way of amendment to the original article. My recollection is that for several years, we had the statute without this proviso, and that the uniform holding before that was that upon those appeals, trial de novo could be had.

MR. WEHE: In my research I couldn't find any provision that provided for what you state.

MR. STUTSMAN: I am speaking of the proviso you ask to strike out, you are asking to strike out the proviso in the existing statute. I am asking if that proviso was not inserted subsequent to passing of the original statute?

MR. WEHE: Well, we propose to strike that out and insert in place thereof, the words, "And provided, that the provisions of this Section shall apply to all actions or proceedings properly triable with a jury, and in which actions or proceedings a jury trial has been waived and the same are tried by the court without a jury."

MR. STUTSMAN: My recollection is that wasn't in the original article and it was inserted afterwards.

MR. TRAYNOR: Do you recall any reason for inserting it, Mr. Stutsman?

MR. STUTSMAN: Yes, the very reason they have now, to do away with trial de novo in Supreme Court.

MR. TRAYNOR: That, of course, would increase the cases of trial de novo.

MR. STUTSMAN: Judge Spalding, don't you recall that?

JUDGE SPALDING: I am not clear on it, but it seems to me that is correct.

MR. STUTSMAN: This proviso was put in about ten years afterwards and it was changed at least twice, I think.

VICE PRESIDENT HUTCHINSON: I presume that amendment was made for doing away with trial de novo.

MR. TRAYNOR: I should like to ask why it shouldn't be done?

MR. STUTSMAN: I am with you to sustain this amendment, I think it should never have been put there.

VICE PRESIDENT HUTCHINSON: I was trying to get at whatever objections there may be.

MR. STUTSMAN: I am not for this section, I think that should be stricken out.

VICE PRESIDENT HUTCHINSON: Any further discussion If not, we will vote upon this question. All those in favor of adopting Section two signify by the usual voting sign; opposed; the motion is carried; Section two is adopted.

—3—

Exemptions in Garnishment

We recommend that Section 7580, C. L. 1913, be amended by requiring the defendant, who defends in a garnishment proceeding upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, by requiring: *the defendant at or before the time fixed for appearance or answer in the garnishee summons to serve and file with his answer a schedule of all his personal property made and sworn to as provided in Section 7733, C. L. 1913.*

The law as it stands, is very confusing, and is an inducement to concealment, fraud, and perjury, as the Supreme Court has held in the Jangula vs. Bobb, 55 N. D. 279, that,—"Where a defendant in the garnishment proceedings defends under Section 7580 upon the ground that the indebtedness of the garnishee is exempt, it is not necessary that he set out in his answer or by schedule a statement of the other personal property owned by him as required by Section 7733." The Court held, further, that,—"The right of a debtor to claim additional exemptions as defined by Section 7731, C. L. 1913, as amended," may be asserted either under 7580, by answer in a garnishment proceeding, or under Sections 7733 and 7738, as amended, by claim or demand and schedule after levy on execution or under warrant of attachment. These two methods asserting the right are wholly independent of each other. In order to have conformity when exemptions are claimed, Section 7580 should be amended.

By amending this Section, in District Court procedure relating to garnishments, it will also conform to Section 9068, relating to claim of exemptions in Justices' Code, which requires that if a defendant desires to defend the garnishment proceedings on the ground that the indebtedness or property is exempt from execution, said defendant shall at or before the time fixed for appearance or answer in the garnishee summons, file or cause to be filed in the Justice Court a schedule of his personal property made and sworn to as provided in Section 7733. The procedure, as it stands now, in the District Court in garnishment is in conflict with the claim of exemptions required to be made under

execution and attachment proceedings, and also with a Justice Court procedure; and this defect should be remedied to have unification. In the garnishment in the aid of execution the defendant is required to serve and file a schedule of all his personal property in making his claim for exemptions, notwithstanding the construction that has been placed upon Section 7580. The writer believes that the construction placed by our Supreme Court upon that Section is wrong, when construed in connection with all other sections relating to how exemptions may be claimed; and the only way to remedy this confusion is to amend the law.

MR. WEHE: Mr. President, I now move you that we adopt Section three relating to exemptions in garnishments. The garnishment law as it now stands, is very confusing. In the justice court it is required that you file prior to your answer, or with your answer, a schedule of your exemptions of all your personal property. In the district court garnishment procedure there is a lack of words.

VICE PRESIDENT HUTCHINSON: Any second to this motion for adoption?

MR. KEOHANE: Second.

VICE PRESIDENT HUTCHINSON: Any other comments? If not, we will vote on this motion. All those in favor of the adoption of this section, signify by the usual sign; opposed no. Well, I will call for those in favor to rise; all those opposed rise. I can see the motion is carried. We will take up the next section, number four.

—4—

Appeals Under the Workmen's Compensation Act

We recommend that the Workmen's Compensation Act be amended providing for the right of appeal to the District Court and the right of review by the Supreme Court from all decisions or awards of the Bureau involving the substantial rights of a claimant for compensation. The Supreme Court has just handed down two decisions (July, 1932) in the cases of Frank S. Ethen vs. N. D. Workmen's Compensation Bureau, and Elias Lillefjeld vs. the N. D. Workmen's Compensation Bureau; and, in each case the Court held emphatically and unequivocally that a claimant had no right of appeal from an order or decision of the Bureau either under Section 396a17 or under Section 396a18, 1925 Suppl., whose claim has been once allowed and some compensation has been awarded no matter how small an amount, and then further compensation denied either in the form of temporary compensation or for permanent disability compensation as provided by the schedules of the Act itself. In short, the Supreme Court has held that the Act is purely and simply a creature of the legislature and that the legislature has decreed that no appeal shall lie, except in those cases denying a claimant's right to participate in the Fund at all. The writer prosecuted the appeal in the Elias Lillefjeld case to the Supreme Court.

The decisions of the Supreme Court seem far fetched in holding that, "the determination of whether such an injury is temporary or permanent is one wholly within the jurisdiction of the Bureau, and where

the Bureau determines the injuries are temporary rather than permanent no appeal lies fom such determination." In other words, our court has held in effect that although you and I can see that a man has a permanently mangled and crushed foot, or a useless arm, or a stiff leg, and is and ever will be incapacitated from performing of manual labor at which he formerly gained a livelihood, and the Bureau allowed and paid him only temporary disability during the healing period, and finds and orders as a matter of fact that he has suffered only a temporary disability and that no permanent injury has resulted from the injury, and thereby denies him further compensation and permanent disability which he is entitled to under the schedules of the Act and closes the case. The Court has held in that case that the legislature had decreed that the claimant has no appeal or redress to the Courts, and that the Court itself is impotent to grant the right of review in any way, shape, or manner under its powers as granted it by the constitution. Now since the Court has spoken in definite terms of construing the Act, the Act should be amended without fail this coming session of the legislature.

We recommend that Section 17 of the Act be amended to read as follows:

A BILL

For an Act to Amend and Re-enact Section 17 of Chapter 162 of the Session Laws of North Dakota for the Year 1919, Known as the Workmen's Compensation Law, as Amended by the Session Laws of North Dakota for the Years 1921 and 1923.

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

Section 1. That Section 17 of Chapter 162 of the Session Laws of North Dakota for the Year 1919, known as the Workmen's Compensation Law, as amended by the Session Laws of North Dakota for the years 1921 and 1923, be and the same is hereby amended and re-enacted to read as follows:

Section 17. The Bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final, except as hereinafter provided. That in case the final action or decision of the Bureau shall deny the right of the claimant to participate at all in the Workmen's Compensation Fund, on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any ground going to the basis of the claimant's right, or on the ground that the final action or decision of the Bureau denies the right of the claimant to receive from the Workmen's Compensation Fund compensation as provided by the act, and provided further that in case the Bureau has allowed any compensation and thereafter denied the claimant the right to further participation in the Fund according to the schedules and provisions of the Act, the claimant must first apply to the Bureau by motion as provided by Section 18 hereof to review the final action or decision of the Bureau and if denied again an appeal may be taken therefrom as hereinafter provided, then the claimant within thirty (30) days after receipt of the final action of such Bureau, may by filing his appeal in the office of the Clerk of the District Court for the coun-

ty wherein the injury was inflicted and the service of his notice of appeal upon the chairman of said Bureau or any of the commissioners thereof be entitled to a new trial in the District Court to which the appeal is taken by the Court without a jury, as prescribed by law in equity and court cases. In such trial the Attorney General of the State shall represent the Workmen's Compensation Bureau. That no undertaking on appeal shall be required of the appellant on his appeal from the decision of the Bureau to the District Court.

Within thirty (30) days after filing and serving his appeal, the appellant shall file and serve his complaint in the ordinary form against such Bureau as defendant, and further pleadings shall be had in said action according to the rules of civil procedure in civil actions tried by the court without a jury, and the court shall determine the right of the claimant; and, if it determines the right in his favor, the court shall fix his compensation within the limits prescribed in this act; and any final judgment so obtained, or order or decision rendered therein directed to the Bureau as a defendant therein, shall be paid by the Workmen's Compensation Bureau out of the Workmen's Compensation Fund in the same manner as awards are paid by such bureaus. All the evidence and records made and introduced before the Bureau, and upon which the Bureau's final action or decision is based, and from which the appeal was taken, shall be entitled to be received and introduced in evidence when offered by either party. The cost of such an appeal and new trial in the District Court including a reasonable attorney's fee to the claimant's attorney shall be fixed by the trial judge, shall be taxed against the unsuccessful party.

Either party may appeal to the Supreme Court of the State of North Dakota from the decision of the District Court, such appeal to be taken and prosecuted as the ordinary appeals in civil actions tried without a jury.

That nothing in this Act shall be construed as denying the right of the claimant or aggrieved party to have the final action or decision of the Bureau reviewed by writ of certiorari as provided by law; provided, that the Bureau has exceeded its jurisdiction and there is no appeal, and the claimant or aggrieved party has no other plain, speedy and adequate remedy of review.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

MR. WEHE: Mr. President, your committee now moves the adoption of Section four relating to appeals under the Workmen's Compensation Act. Until the last two decisions were handed down by the Supreme Court, Frank S. Ethen vs. N. D. Workmen's Compensation Bureau and Elias Lillefjeld vs. the Bureau, the question was very indefinite whether the claimant had the right of an appeal at all from a Workmen's Compensation Bureau decision, if any compensation had been allowed, no matter how small. There was a recent opinion in July stating clearly and unequivocally that there is no appeal from a Workmen's Compensation Bureau decision either under Sections 17 or 18 of the original Act where compensation has once been allowed no matter how small.

MR. BURTNESS: I am glad to see that both men have changed their minds. In 1919, I recall very distinctly as a member of the legislature, on both questions of law and fact, without any such additional provisions as are put in here with reference to attorneys' fees or anything of that kind, but we were turned down very definitely at that time. One question occurs to me whether it is wise for the Bar Association to approve a detailed statute here on a proposition as technical as these including provisions, for instance with reference to attorney fees and so on, or rather to simply provide the principle that appeals be permitted both on questions of law and fact from these decisions.

TRACY BANGS: I think so far as a detailed statute is concerned, I believe this organization ought to be as competent as the judiciary committee of the Senate or House.

SECRETARY WENZEL: May I be permitted to speak to the Bar Association on this question? It seems to me it would be very appropriate in the consideration of any matters affecting the procedure of any particular department to at least give some measure of voice to that department; at least it should be consulted in consideration of these matters. I am very free to admit that rumors afloat in Bismarck today concerning changes in the Compensation Act may place me in the position of a private practitioner. For that reason this particular change in the statute might help my personal business a little bit. I am not concerned about that, however. I am concerned about the effect this legislation is going to have. My original attitude favored an amendment which would permit appeals on all questions of fact. But I went further, and said, "If you are going to permit an appeal on all questions of fact, you ought not to stop with the claimant, you ought to permit an appeal on questions of fact to the man who pays the bills as well as to the man who receives the benefits." If you are going to base it upon a proposition of fairness, why don't you consider that feature, why limit your appeals to an appeal by the claimant and leave the employer as he is today and has always been, absolutely unable to defend any case in which the Bureau has awarded too much money. It is true this Bureau may err occasionally, but the opportunity has always been present, and is today, for the claimant to come in any time and show an error has been made. And the record of the past four years discloses that the errors are usually favorable to the claimant. The people of the state are already burdened by reason of the fact we have a high schedule of benefits. Men are coming every day and saying, "We can't run our business and pay these bills." Consider one case which was taken up on appeal and see what the record discloses. I will read it: "Compensation allowed claimant, $286; award for medical expense, $210; cost in District Court, expert witness, $10; only two witnesses examined; other witnesses, $2.10; clerk fees, $5; attorney fees, $150; costs in Supreme Court before argument, $5; argument, $5; clerk fee, $2; expense on brief, $50; a total judgment of $1,032.50," against which an attorney's lien for $882.50 was filed. Now that is a record to take into consideration. When you come to pass amendments providing for appeals in all cases, just remember what has happened in the past. You are talking about depressions; you are talking about the hardships you are going through and the business in the State is going through; you are talking about the amount

of taxes people have to pay. Who in the last analysis, I ask you, pays these bills? The employer pays the premiums in the first instance, but they come right back to you and me as tax payers in the State of North Dakota, and we pay this expense bill. So, when you enter upon a program of amending special legislation, don't you think some consideration ought to be given not only to the viewpoint, but to the experience of the men who have charge of such special administrative measures? We have had no such opportunity prior to the time of presentation of this amendment and report.

TRACY BANGS: What we want is to arrive at a decision that is right and proper. This Bar Association meets only once a year. We have a committee that has been appointed to submit to us proposed legislation. It doesn't seem to me it is up to this Bar Association to pass up a report of this committee simply because we are a little short of time or because there is a banquet in the evening. Here is a question that has to do with the rights of the individual workman who because of some accident comes before the Workmen's Compensation Bureau for an allowance of compensation for injury that has occurred to him, and for us as attorneys to attempt to shirk the responsibility of passing upon that question, or passing it on to a meeting that meets a year from now, is for us to say that our personal likings and our desire for a banquet is of more importance to us than the rights of the men who are working in these different institutions and in the factories throughout the state. I say that it is for us as attorneys, if we have any regard for the condition of the people who are working to pass upon this question and settle it one way or the other regardless of our stomachs. Now I do not believe that this body of lawyers has a right to say that we are going to pass by the decision of this question because we are short of time.

Now in answer to Mr. Wenzel, for whom there is no one has any higher regard than I, I want to say that notwithstanding the magnificent action of this Board of Workmen's Compensation Bureau in some time taking up a case that has dragged for some few years, that we should not say to John Jones and to Bill Smith, that you have got to depend upon the magnanimity of this Compensation Bureau to know whether your rights are going to be properly cared for or not, but these men should have a right to go from this Bureau to a Court. Every man, I don't care who he is, should have a right to his day in Court, and it should not depend upon the condition of the mind or the stomach of the members of the Workmen's Compensation Bureau. John Jones' case may come before my friend Stutsman or my friend Wenzel or the rest of the Bureau some morning when cucumbers haven't set right on their stomachs the night before, and then it would be all day for the poor devil whose case comes up then, but I say, he should have legal rights, not rights dependent upon the mental movements of these gentlemen who occupy this position at this time. We are going to change administration here and these men may not continue as members of the Workmen's Compensation Bureau. This law proposed by this committee is right and I want to say to you, Mr. Chairman, that when Laureas J. Wehe and I agree, my God, who can disagree? I know that the membership of this Bureau, as now constituted, are always ready to do everything in their power to render every aid to any man who has a case come before them. That is not the

question. It is the question of the man whose case comes before them, having his rights protected, so that he can demand that his case be heard before a Court constituted as a court. Every political body and every member of every political body has the same idea that my friend Wenzel has, that there must not be any power above that political body. I have been brought up with another idea. I have always been taught that the Courts of the land were the highest tribunals to which we could appeal, and when the people step out and elect men as judges of a Court, they were selecting a man who was to be above all questions of policy or politics, and that his tribunal was one to which every man could turn with an assurance that his rights were to be dealt with honestly, fairly and according to the law of the land. That is all this proposed law does, it gives every man the right to take his case before a Court.

A VOICE: After listening to the excellent arguments of these men, one cannot help but be impressed with their sincerity, but I am just wondering if the Courts or judges ever eat cucumbers?

GEORGE BANGS: Mr. Chairman, I think the last remark is quite appropriate, indeed; we have listened to some splendid eloquence during the last five or ten minutes. May I make one or two observations because you are dealing here with a subject that is not one usually accountable in courts. The Workmen's Compensation Law works a very radical change in the relationship of master and servant, one of the greatest evolutions, I think, that has taken place in the law during our generation, and for perhaps a good many generations prior thereto. The theory of that change was that there should be created something in the nature of an insurance society and this Workmen's Compensation Bureau fixes the liability of the insurance society. It is quite a long story to attempt to tell the theory of the thing, but it was intended to take away from the courts—I have thought that underlying the entire theory of the Workmen's Compensation law was to avoid further litigation with respect to the right of compensation and the amount of compensation, to take that away from the Courts really, and put it in the hands of a statutory bureau that was created to administer the law itself, and the idea of an appeal in any event is something against the form and in contradiction of the theory of the Workmen's Compensation Bureau law. It so happens that in this State our Workmen's Compensation law was enacted at the time when there was some considerable political excitement. The Workmen's Compensation law is a law that applies peculiarly to industrial conditions. It is an industrial device; it has been wrenched and I use the word advisedly, it has been wrenched from the industrial community, the law of the industrial communities has been brought out here and made applicable to industries in the State of North Dakota, and gentlemen, our State here is an agricultural State. You have your railroad employees excluded from the Workmen's Compensation law; you have domestic employees excluded; you have agricultural employees excluded, and when you go and sift it down, you have got it applied here to a variety of employments, that to which it really ought not to be employed or applied, and the compensation has been made so great, and it has been so liberally construed, that there is not a single industry in the State of North Dakota, but that when it is protected, goes outside of the State and enters into competition of the products of other States.

Your Workmen's Compensation rates in the State of North Dakota are higher because of the great benefits that are given to the employees than in any other State than there is, I think, in the United States, and gentlemen of the Bar Association, you know that this Workmen's Compensation law of ours gives to the employees of the industries in this State, compensation greater than in any other State, other than the state of New York. Take Ohio, take Minnesota, take Illinois, take all those states and compare the amount of compensation, which must necessarily control the rate, and the compensation and the rates both are grossly less than in North Dakota. The result is that the burden is laid upon our industries here. It is utterly impossible for them to carry on and do business. I wish I could explain to you how foreign to the Workmen's Compensation act is appeal to the courts. Do what Mr. Wenzel says and give the right of appeal also to the employer so there will be some sort of a brake placed upon the premiums that must be paid by the industries in this State. The premiums are not paid by taxes; they are paid by the industrial institutions of the State, and every time you increase the compensation to the workmen, you increase the burden that is placed upon the industries of the State. Those are all things, my friends, that ought to have very serious and careful consideration. I don't think this amendment here ought to be adopted as a result of heated argument or comment on the floor. We are dealing here with a subject that goes right to the heart of the theory of the Workmen's Compensation law. I heard it suggested here on the floor that this matter ought to be left to the jury, which is still more foreign and against the theory of the Workmen's Compensation law. I think that under our law particularly when we have compensation so excessive as it is here, that the determination ought to be with the tribunal created by the law in accordance with its theory, and that that determination ought to be final.

TRACY BANGS: I have always looked upon Brother George as being quite invincible, but we are dealing today not with the question of whether a man is to receive from the Workmen's Compensation a certain allowance; we are dealing with the question as to whether if he is not allowed that amount that he believes he is entitled to, he shall have the right to appeal to the Court. If John Smith loses a leg and the Compensation Commission refuses to allow him more than $50 for that leg, what difference does it make to him if they had a limit that was only exceeded by that of New York? He should have some place to go to determine whether or not that was a proper allowance. Now I believe, and I have been brought up to believe, that the Courts were the proper places to go for redress for our wrongs, and I can't help but still believe that the Courts are the proper places to go. I believe this proposed amendment is one that simply protects the rights of the laboring man, and I am for it and certainly hope that this organization will vote for it.

A VOICE: I believe we should do away with the Compensation Bureau entirely and have it the way it used to be. I believe it would mix things up too much, and put too much work on the Courts if we allow it.

MR. STUTSMAN: I just want to say, Mr. Chairman, and fellow lawyers, after the first of January I will be right along side of Mr.

Wenzel trying these Workmen's Compensation cases. It would be money in my pocket, I don't doubt, to support this amendment, but in honesty and fairness to you gentlemen, I think you should know something of the facts, something of the situation, before you undertake to determine the merits of this proposition. The Workmen's Compensation Bureau is a legislative body, legislated into existence by the Legislature, for an express purpose. Mr. Bangs talks a great deal about the day in Court. This gentleman over here expresses the idea that this Bureau is a Court, it should pass upon the merits of all that is in controversy. Aside from the question of eating too many cucumbers, and that sort of thing, the members of the Bureau must be given the same credit for exercising discretion as the three Federal judges. Those three chairs up there are provided for, as you gentlemen know, for three Federal judges, who upon certain occasions may be called upon to determine a vital question involved in a case. The three members that sit in the Workmen's Compensation Bureau sit there administering the law under the administrative mandate, and I want to say to you gentlemen, frankly, that they are expert in the administration of the law and in all true justice and courtesy to the members of the Court who are here, I want to say, Mr. President, for I am one of the members on the Bureau, we feel we can determine matters of law and fact or questions that come before us just as well as any court. I want to tell you a lot of lawyers, including Mr. Bangs, don't know what is in the Workmen's Compensation statute. They do not know that when a man loses a leg the statute says how much he can get for it, the Bureau has nothing to do with it. What the Bureau decides is what a man with a weak back gets. We had four or five cases come up there one week with weak backs, suffered through lifting poles, and so on. We undertake to determine how much compensation he is entitled to, how long he is likely to be ill as a result of the weak back. All of the 35,000 cases before this Bureau in the last 15 years would be in court. There are hundreds of these cases passed upon every month; some of them involve the loss of life, some involve loss of leg or arm or a weak back. It is immaterial whether we are biased or prejudiced; we are the same kind of people that are judges on the bench. They are elected to be judges; we are appointed. The only thing under the statute, we are not called judges, we are called administrators of the law. Yet you lawyers would undertake to administer this law judicially rather than as an executive, so that if you are familiar with the facts, and if you know that nine out of ten of these cases are cases where they have not been entitled to any great consideration but get the same consideration as any court could give them, yet you want to go into Court and appeal. Mr. George Bangs explained to you why the rates are high. They are excessive because the legislature decided it so. There is nothing the Bureau can do about the rates. The Bureau is busy all the time collecting premiums in order to pay benefits so that if every dissatisfied claimant before this Bureau is permitted to appeal to the Court because he doesn't think he got enough for a weak back, the fund won't last five years. It is easy to pile up a bill of costs for $800 on a $400 bill. I am simply telling you that from the source of information that I have. I am not interested one way or the other, because as I say after the first of January I will be appealing these cases myself.

VICE PRESIDENT HUTCHINSON: I don't want to limit the debate but I guess I will have to declare an adjournment unless you want to vote on the question. (Question called for.) We will take a vote on the question then; all those in favor of approving this Section four with reference to appeals from the decisions of the Workmen's Compensation Bureau, signify by the usual sign; opposed no. I will ask those in favor to rise; all those opposed to rise; the motion is lost.

We will now stand adjourned until 9:30 tomorrow morning, and the first order of business will be to consider the balance of this report.

(Note: The discussion of this matter developed a number of misconceptions of what the Workmen's Compensation law is, what may be done under it, and how it compares with other laws. For illustration, note the statement to the effect that a man might lose a leg and the Bureau might allow $50. Such a thing could never happen. If a man loses a leg, the law, itself, says that he shall be paid for 234 weeks if the loss is at the hip, 195 weeks if the loss is at the knee, and 136.5 weeks if the loss is at the ankle. The maximum and minimum amounts are governed by the wages earned. It is only where the permanent disability is less than total [usually, in cases of ankylosis of joints or back injuries] that difficulty occurs. There, however, it is purely a medical question, and the reason difficulty occurs, and the lawyers get excited, is because they do not understand that the percentage of loss of use must be determined from the anatomical and functional findings of the doctor, and not from what some layman thinks or what the claimant says he feels in the way of pain. In the course of the last three years more than 18,000 cases came before the Bureau. About 300 were dismissed, and about 25 reached the courts. The trouble with the whole program of wide-open appeals on questions of fact is not that costs may be increased through additional payments to claimants but that costs will be increased through expenses of litigation. It is a rather impressive commentary to state that the Federation of Labor and the Associated Manufacturers of Missouri joined hands three different times to prevent the same change in the Missouri law. It is also worth while to note that one Court's allowance of $700 for attorney fees was deemed insufficient by the lawyer, and he deducted about $3,400 additional from an award for permanent total disability amounting to $10,000.)

FRIDAY, SEPTEMBER 2, 1932

Forenoon Session

VICE PRESIDENT HUTCHINSON: Gentlemen, we have a good deal of business ahead of us and I think we better get going. We left off the consideration last night of the Legislative Report and will take up this morning the matter of finishing that report. I believe Section five is the next section for consideration.

MR. WEHE: Mr. President, I move you that Section five of the Legislative Committee's report be adopted.

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When Civil Action May Be Dismissed, Without a Final Determination On Its Merits

We recommend that Section 7597, C. L. 1913, sub-section 3, which reads as follows, that an action may be dismissed,—"(3) By the Court, when upon the trial and before the final submission of the case the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action or right to recover," be amended and re-enacted to read as follows:

"(3) By the Court, when upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action or right to recover; *provided, that when at the close of the testimony any party to the action moves the Court to dismiss the action, or to direct a verdict in his favor, and the adverse party objects thereto, such motion shall be denied and the Court shall submit to the jury such issue or issues, as provided for by Section 7643 of the Compiled Laws of 1913, as Amended by Chapter 335 of the Session Laws of 1923.*

By adding this amendment to that Section, it will make the two acts consistent and uniform, as was intended by the Legislature, and carry out the legislative intent as expressed in the Law of 1923 amending Section 7643.

MR. WEHE: Now we had this matter up once before and here is what Mr. Stark said in regard to that. He was chairman of the Legislative Committee. It was thought that this law passed in 1923 met all requirements, but there was another section of the law that was passed in 1905 that was overlooked. He gives this explanation: (Bar Briefs, annual number of 1929, at the bottom of page 43.) (Reads.) I now renew my motion.

MR. HILDRETH: Second the motion.

MR. SPALDING: I desire to say that I wish to submit a motion to this effect, that this section of the Committee's report be again referred to the Committee on Legislation with instructions, if necessary to prepare a new bill for an act, which they shall see is introduced in the Legislature to repeal the provisions in the statute prohibiting the directing of verdicts so as to leave the law in effect, that the Court may, when there is no competent evidence either in support of the plaintiff or defendant's defense, that the Court may direct the verdict taking it from the jury.

MR. STUTSMAN: Second the motion.

MR. SPALDING: Now I won't take more than a couple of minutes. In some states it is well known that the jury is judge of both law and facts; in this State the functions of the Court and those of the jury are supposed to be entirely distinct and separate; one is the judge of the law and the other of the facts. The question of whether there is any evidence to sustain a case or defense is a question of law and belongs to the Court to determine. This takes from the Court that power and attempts to do it and confers and puts it to the jury; instead of doing as suggested in the present statute. In the remarks that have been made, it works right to the contrary; instead of decreasing litigation

under the present law, it increases it, it increases the number of appeals without a doubt, and the situation, it seems to me ought to be met by putting the law back where it was so as to permit the Court to perform the functions that belong to it, and not, as may be in some cases, duck the question that belongs to him and put it over to the jury to determine whether there is any evidence, when there is none to sustain either a complaint or answer.

VICE PRESIDENT HUTCHINSON: Any further remarks on the substitute motion as offered?

MR. STUTSMAN: I agree with what Judge Spalding says. We had a law originally in the early days where the Court did not hesitate to take the case from the jury and direct a verdict. This act was passed which deprives them of that right and it has been amended several different times since then. The situation now is that all a defendant need to say, or a plaintiff, who has submitted his evidence, is "I object," and the case then goes to the jury. However, our Supreme Court has decided notwithstanding this, and in the face of it, where there is no evidence to make out a case, the Court shall take it from the jury and direct a verdict. This provision here may make it uniform with the law in other places, but the law is wrong the way it is and should be repealed. I agree with Judge Spalding in his position that the Bar Association should take a position upon the question and instruct the Committee to prepare a bill.

MR. LOVELL: I desire to support the motion of Judge Spalding. A point that is lost sight of by lawyers is the fact that the law as it now stands effects a delay in arriving at the determination of the litigation. The Court has the power after a verdict is rendered in all cases to set aside that verdict, so that to deny the courts power in the first instance, only increases the length of time over which the litigation lasts.

MR. JACOBSEN: I may not understand the matter but it does not appear to me that this substitute motion would be necessary to secure the desired results because after the verdict of the jury is in, the party can then renew his motion, and then if the Court feels it can be granted, the Court can give judgment notwithstanding the verdict; then if you appeal to the Supreme Court and they say the trial court is in error, you have to try it over, whereas, should the Supreme Court say they are not in error, then you have a complete record without trying it over, but it will accomplish, as I see it, the same identical thing under the law as proposed.

VICE PRESIDENT HUTCHINSON: Any further remarks? The question then is on the substitute motion.

MR. SPALDING: In response to Senator Jacobsen's remarks, let us suppose a case where the plaintiff entirely fails to make out a case, and the defendant moves for directed verdict at the close of plaintiff's evidence, under the law as it stands now, if it is taken literally, the court would have no right to direct a verdict for the defendant. The result is that instead of ending the case at the close of the plaintiff's evidence, the defendant is put to the expense and trouble of putting in a defense entirely unnecessary, and involves the case in further

litigation, and in motions for directed verdict, or for new trial, or judgment notwithstanding the verdict, when it is entirely unnecessary.

VICE PRESIDENT HUTCHINSON: The question then is upon the substitute motion, which in effect is that this section be referred back to the Legislative Committee with directions to prepare a bill to amend this law so as to do away with the requirement that the law has at present, that requires the trial judge to submit the matter to a jury. All those in favor, signify by the usual sign; opposed no; the ayes have it and the substitute motion has been carried. I think that takes care of that section.

We will pass to Section six, the Unauthorized Practice of Law. I am wondering, Mr. Wehe, if we could not pass up Section six at this time, as we have a committee report on the Unauthorized Practice of Law, and take it all up at the time that Committee makes its report.

MR. WEHE: That will be satisfactory.

VICE PRESIDENT HUTCHINSON: We will pass then to Section seven, the Bad Check Law. That is rather embarrassing to the Chairman, especially after last night's program.

MR. WEHE: Mr. President I move you the adoption of Section seven of the Legislative Committee's report relating to bad checks and post dated checks, so that the law will conform to the decision of the Supreme Court and not make criminals out of all.

—7—

Bad Check and Post-Dated Check Act

We recommend that the Act relating to the drawing of checks without sufficient funds, Laws of 1931, Chapter 128, should be amended to conform to the decision of the Supreme Court in the case of State vs. Schook, 58 N. D. 340, so that Section 9971 al, 1925, Suppl., reads as follows:

Drawing Check or Draft Without Sufficient Funds or Credit; Penalty. Any person, firm, company, co-partnership, or corporation who makes or draws or utters or delivers to any person any check or draft upon a bank, banker, or depositary for the payment of money, at the time of such making, drawing, uttering, or delivery, has not sufficient funds in or credit with such bank, banker or depositary, to meet said check or draft in full upon its presentation, OR WITHOUT HAVING A REASONABLE EXPECTATION OF HAVING FUNDS IN THE BANK WHEN THE CHECK OR DRAFT SHALL BE PRESENTED FOR PAYMENT, shall be punishable by a fine of not exceeding $100.00 or by imprisonment in the county jail for not to exceed thirty days, or by both such fine and imprisonment.

The words capitalized have been added to the Act as the proposed amendment. It is doubtful whether the Act is constitutional or not. South Dakota has held a similar act unconstitutional in the case of State vs. Portwood, 238 N. W. 879 (S. D. 1931) and also State vs. Nelson (S. D.), 237 N. W. 766, 76 L. R. A. 1226. Then again Kansas has held a similar act as constitutional, principally because it creates a new and distinct offense apart from those consequent on fraud, in the case of State vs. Avery, 111 Kansas 588, 207 Pac. 838.

The South Dakota Act, which is a copy of the Kansas Act, was held unconstitutional on the ground that it is a debt-collecting law, in violation of its constitution, because the penalty is for failure to make satisfaction. Our Act may not be subject to the same constitutional objections since under it the misdemeanor is complete as soon as the check is issued. In other words, our Act makes every one a criminal the moment he issues a check, whether postdated or not, if the funds are not in the bank to meet it at the time of the issuance of same. Our Supreme Court construed the old Act in State vs. Schook, Laws 1915, Chapter 52, that a person who makes and draws a check does not violate the statute in the following cases: (1) If he has funds in the bank sufficient to meet the check in full upon its presentation, or (2) If he has made arrangements or has an understanding with the bank, banker, or depositary, that the check will be paid, or; (3) If he has reasonable expectations of having funds in the bank when the check shall be presented for payment. The law as it stands is a nuisance, and the State's Attorney's office is being used as a collection agency to force the collection of private debts. Numerous unscrupulous persons have taken possession of the enforcement of the law against all parties without discrimination as to the right and justice in the matter; and many innocent people are being persecuted and prosecuted who have no intention or intent of doing any wrong. Collectors and collection agencies are using it to collect bad debts by obtaining postdated checks in the payment of same and then prosecuting the makers if not met when presented for payment.

VICE PRESIDENT HUTCHINSON: Your amendment makes it a little more lenient?

MR. WEHE: Yes.

VICE PRESIDENT HUTCHINSON: I should be in favor of that.

MR. HILDRETH: Second the motion.

H. G. OWEN: May I move a substitute motion, that the North Dakota Bar Association recommend the repeal of Chapter 128 of the 1931 Session Laws of the State of North Dakota.

NELS JOHNSON: Second the motion.

VICE PRESIDENT HUTCHINSON: Any remarks upon the substitute motion?

MR. OWEN: As a state's attorney, whose office has been used as a strong arm collection agency, or rather attempted to be used as such, I believe I can bring to the association a few points. I don't care how you word that law, I don't care how you change it, it will still remain merely an auxiliary to the strong arm collection methods that are in use in the State of North Dakota. I have an average of probably ten checks a day come to my office from so-called responsible business concerns. Now the state's attorneys of the various counties have important duties and functions to perform. I have in my office at the present time at least 200 checks that are taken from irresponsible transients, that come from we know not whence and going to the same destination, and instead of making officers of the law guardians of various individuals' and corporations' business, it is very nearly time that the business people require some identification, the same as the

bankers require. Let the various business concerns exercise a little sound discretion in accepting checks, and then not have them come to the state's attorney's office and ask us to put the county to expense. A responsible business concern in Grand Forks took a check of $5 from a Minot, North Dakota, resident. That check was returned marked not sufficient funds; that was under the old law that read the same as they now desire to have it read. I had to send to Minot at an expense of $105, and after we had all the costs in the case taxed, the man could not pay the $5 check. He was a man 65 years old, and where is the man that could take and put him in jail for $5, for a period of 80 days and 50 days additional if he did not pay the fine? He would have to be pretty hard headed. Now we had the law in accord with the Supreme Court decision and after the Supreme Court interpreted that law, the interpretation became the law of the State of North Dakota; so they went down to Bismarck and changed the interpretation of the Supreme Court of the State of North Dakota. It is an endless circle.

MR. HILDRETH: I support the substitute motion of the gentleman from Grand Forks. Really, Mr. President, I can't understand how any lawyer in this State, or any other State, would want this kind of law to protect them. It would be exceedingly embarrassing, I should say, frequently. As the gentleman has well said, it is the business of the business man to make their collections and to exercise sufficient common sense to find out when a check is presented to them, whether a man who has delivered the check, has funds to meet it. Now we have loaded down our statutes in this State with a great many unnecessary laws. This is one of them. They have turned the state's attorney's offices of 53 counties in this State into a collection agency. I would say it would not be a foolish, unnecessary law, but I would say it is a law of great hardship and certainly one that takes funds from the taxpayers that should be used in other and more important matters. Let this business be taken care of by the business men and not by the taxpayers through the state's attorney.

MR. REMINGTON: I want to support what the gentleman from Grand Forks and my friend has said regarding this law. I don't know whether the issuance of bad checks is a habit or not. I confess in this matter I am greatly interested, because it happened to be my good fortune to be the attorney who induced the Supreme Court to hold as it did in the case of State against Schook. Now the use of the worthless check as a lever for collection has been pushed further than it was in the Schook case, pushed further than has been intimated here. There are men who have unsecured claims or debts against a man and they go out and induce him to give a check, and then they say, "Now, we have got a lien upon you, you have given us a check." That is exactly what happened in the Schook case. They went out to see this man; he said, "I am harvesting, I haven't any money now." They said, "Give us a check." He said, "I haven't any money in the bank, I can't give you a check." Well, they said, "Give us a check and we will hold it until after threshing." And Monday morning they had him arrested and the Court directed a verdict of guilty.

MR. BOTHNE: As state's attorney of Eddy County, I have also had considerable experience with these bogus checks. I have come to

the conclusion that the bad check law is the biggest fool law we have on our statute. I have been cussed, damned and despised because I wouldn't collect bad checks by criminal procedure. The man who accepts the check is ten times more guilty than the one who gives it; he is guilty of extortion within the meaning of the law. I had a check sent to me from St. Paul with instructions to collect the check by criminal procedure, if necessary, but I sent it back and said we did not handle them. In some instances, I have had the man come to my office, and had him plead guilty, impose a small fine on him and turn the fine into the county. The result has been that they do not come up to my office, or have complaints sworn out, because they know they can't get their money; the money is turned into the treasury, but now if we are to adopt this amendment, and in view of the hard times and depression, I should think about 95% of the lawyers would be in favor of that amendment, because if you adopt the amendment, the law would not be worth a damn. It says, "If you have reasonable expectations of having the money in the bank when the check is presented," why he isn't guilty. Why all the defendants would come in and say, "I did have some reasonable expectations to have the money, but it so happened my expectations didn't materialize," and he would get by. It is ridiculous to adopt anything like this, so I say let us wipe out that bum check law we have on the statute book and get back to sense.

VICE PRESIDENT HUTCHINSON: I think we will call for the question because we have much to consider yet. However, I think much good has come out of the discussion so far.

MR. WARTNER: I would like to have that motion read, that is, the substitute motion.

VICE PRESIDENT HUTCHINSON: I think in substance, the substitute motion provides that the Legislative Committee be instructed to draft a bill doing away with the bad check law entirely.

All those in favor of this motion, signify by the usual sign; opposed no; carried. There is some good at least has come out of the entertainment last night. We will now pass to Section eight.

MR. WEHE: I now move you the adoption of Section eight of the Legislative Committee's report relating to Sham Defenses.

VICE PRESIDENT HUTCHINSON: Any second to this motion?

—8—

Sham Defenses

We recommend that a law be drawn up and presented to the next session of the Legislature doing away with and preventing sham defenses in civil actions and proceedings; and that Section 7451 be amended so as to put teeth in the law by making it a misdemeanor for anyone to interpose a false, fictitious and sham answer, such as the setting up as the sole defense therein a general denial, and most always made on information and belief. This has become a nuisance in the practice of this State, and is a hindrance in the quick and due administration of justice. The Hon. B. F. Spalding has requested that our committees make some such recommendation. We submit herewith that Section 7451, relaing to sham defenses, be amended to read as follows:

Section 7451. Sham Defenses. Penalty. Sham and irrelevant answers and defenses may be stricken out on motion and upon such terms as the Court may in their discretion impose; and provided, further, anyone who is a party to, or aids and abets the putting in of sham and irrelevant answers and defenses to any civil action or proceeding commenced or pending in the Courts of this State shall be deemed guilty of a misdemeanor, and shall be punished as provided by law.

VICE PRESIDENT HUTCHINSON: Any second to the motion on Section eight?

MR. SPALDING: I second it.

VICE PRESIDENT HUTCHINSON: The motion is seconded. Any discussion? All those in favor of the motion——

MR. STUTSMAN: I would like to make a substitute motion myself but I am not prepared to outline it. I am heartily in sympathy with the purpose of this provision but it makes it a crime to interpose a sham defense. There ought to be some way to penalize the parties to a lawsuit and to affect the procedure in the action. Just to bring it before the house, I move that the motion be amended by striking out all that portion of the paragraph of Section 7451, relating to Sham Defenses, following the word "impose" just before the semicolon on the fourth line.

SECRETARY WENZEL: In order to find out whether we are right on this, you mean that Section 7451 shall read as follows: "Sham and irrelevant answers and defenses may be stricken out on motion and upon such terms as the Court may in their discretion impose."

MR. WEHE: That is the present statute as it stands. The other has been added to it.

MR. STUTSMAN: My proposition is that you add to that provision, "That upon motion the Court shall require the defendant to set out in detail his defense and not permit or require the plaintiff to wait six months or a year until the case is reached for trial to find out what this sham defense is. In California they have a provision that on interposition of a general denial, plaintiff may upon motion require the defendant to set out in detail under oath enough of the facts of the defense so that the Court may determine then and there whether it is a sham defense. In Minnesota, we have a provision whereby the question of whether a defense is a sham defense or not can be determined upon affidavit, but now under the Act as it stands today, is the Court going to determine if it is a sham defense or not? There should be some provision in this Act which would provide for getting the details whereby the question of a sham defense could be determined. Of course, the idea of making it a criminal offense to interpose a fictitious or sham answer, I don't see that it gets us any place.

MR. STAMBAUGH: We have a provision in the statute whereby the defendant may be called for examination before trial, and upon the examination before trial, of course, it is within the power of the Court, if it appears his defense is sham, to dismiss or strike out his answer. However, the Supreme Court has held that a general denial may not

be stricken out as a sham defense, so it would seem to me that the difficulty could be corrected if it was recommended that the statute be passed changing the law as so established by the holding of the Supreme Court, including general denials in the definition of sham defenses.

MR. SPALDING: Just a word. I agree with Mr. Stutsman that the difficulty in the case is to determine when a defense is sham and when it is not, to get the evidence before the Court without having a trial of facts, that should go to a jury. It occurs to me that the only feasible method of deciding the question, the only practical one, would be to provide in the statute that if at the conclusion of the trial, it should develop it is a sham or fictitious defense, that substantial costs should be imposed upon the party that interposes the defense, or if it was not a fictitious or sham defense, to proceed as in the usual manner.

VICE PRESIDENT HUTCHINSON: The question is on the adoption of the motion to approve this report. All those in favor signify by the usual sign; opposed no; it is lost.

Well, we will take up Section nine, the last one of this report for present consideration.

MR. WEHE: We now move the adoption of the section providing for amendment to the Bar Board Act reducing the license fees. This amendment just simply provides for the reducing of the fee from $10 to $6, and the fee be divided equally between the Bar Board and the Bar Association.

MR. TRAYNOR: What about the Bar Association, do you think they will have enough, do you think the Bar Association can function on $3.00?

MR. WEHE: Yes, I think so; before we used to have fees of $5 and we got along on that; we didn't have any more members then.

VICE PRESIDENT HUTCHINSON: Any second to the motion?

MR. LAWRENCE: Second the motion.

—9—

AMENDMENT TO BAR BOARD ACT REDUCING LICENSE FEE

We recommend that Section 811 as amended be amended, cutting the annual license fee required of attorneys to practice law in this State from $10.00 to $6.00; and that the fee be equally divided between the State Bar Board and the State Bar Association. The license fee of $10.00 now charged has proved more than sufficient to carry the expenses of the administration of both the State Bar Board and also the Bar Association; and for that reason the amount of the fee should be reduced to $6.00, which is sufficient to carry on the expenses of the two organizations. During these hard times especially this reduction should be made, and the attorneys relieved of this excess burden of accumulating a fund, which is not necessary in the enforcement of the law.

MR. BANGERT: I would like to move a substitute motion, that the word "cutting" be substituted therefore by the word "raise" and the

figures $6 to $15 and that the additional fund be used as a special fund for the prosecution of those unlawfully engaged in the practice of law.

MR. REMINGTON: Second the motion.

MR. BANGERT: I anticipate there will be a good deal of discussion on the prosecution of unlawful practice of law in this session, and the excuse is going to be that we have no funds to prosecute fellows engaged in that business. I would like to see a fund created so we wouldn't have that excuse.

TRACY BANGS: By the examination of the report of the Secretary-treasurer, I think you will all discover that we are barely pulling through on our half of the $10 fee, and if the fee is reduced to $6 it will leave the Bar Association with insufficient funds to function as a Bar Association. There isn't any theory about it. The report of Mr. Wenzel shows the exact condition. We must have the money or we lack the funds to carry on the Bar Association and it would seem to me that would establish the fact that we should retain this fee at $10. When we have a meeting such as we had this morning and such as we had yesterday, it is worth retaining the $10 fee to be able to carry on, so that the Bar Association may have meetings such as we had yesterday and today. I trust the matter will be voted down, both the substitute motion and the motion itself. So far as the unlawful practice of law is concerned, that matter will come up later and there will be plenty of discussion, I suppose.

VICE PRESIDENT HUTCHINSON: I will have to limit the discussions, I believe.

MR. WEHE: One word, we have made a recommendation here under the unauthorized practice of law for taking care of the expenses, and it is mandatory when it is passed upon the state's attorney and attorney general to enforce the act and to relieve us from all liability. We looked after that and we have got a law here we recommend.

MR. MORRIS: That last remark brings us back again to a very interesting section that is not really up for discussion. I imagine that there will be considerable to say regarding the idea of creating the state's attorneys' offices and the attorney general's office as a policeman for the bar. This report mentioned by Mr. Wehe attempts to shift to the State generally the burden of policing the bar. For the present, we should retain the fees which we have and the funds which we might have. If any change is made at all regarding fees, it should be one which would make the money in the hands of the Bar Board available for prosecution of the unauthorized practice of law rather than to reduce either the Bar Board's fees or Bar Association fees to the point where the efficiency of either one of those organizations might be impaired.

VICE PRESIDENT HUTCHINSON: All those in favor of the substitute motion, signify by saying aye; opposed no; it is lost.

All those in favor of the original motion upon Section nine of the report, signify by saying aye; opposed no; it is lost.

That completes, I believe, the consideration of this report except the Section relative to the unauthorized practice of law, which will be considered whenever the Committee takes up that part of the report.

I think it is only fitting to thank this Committee for bringing up so many interesting problems for the consideration of the Bar.

TRACY BANGS: Yesterday, Section four was up and disposed of, so that there is no idea on my part to again call it back, but firmly believing in the right of every citizen to have the question of the protection of his right and redress of wrongs in the Courts of the land, and believing that the question of a possible increase in premium rates is not of the same importance as the protection of the rights of the injured employee, I am going to move you that the matter of appeal from the Workmen's Compensation Act be referred to the incoming Executive Committee, leaving them to investigate and determine as to whether appeals should be granted, whether one can be worked out that will protect the fund of the Workmen's Compensation Bureau. I have talked this matter over with Mr. Wenzel and perhaps understand a little bit better today than I did yesterday the situation with respect to the administration of that fund, so that I am willing to leave the matter to the incoming Executive Committee and trust to their fairness, and I make a motion that that matter be referred to the incoming Executive Committee.

VICE PRESIDENT HUTCHINSON: Any second to the motion?

MR. CRUM: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that the matter of appeals from the decision of the Bureau under the Workmen's Compensation Act be left to the incoming Executive Committee to make such report for such consideration as they see fit this coming year. Any remarks? If not, all in favor signify by saying aye; opposed no; the motion is carried.

Now at this time I want to appoint a Resolutions Committee. I will appoint Judge McKenna, Chairman of that Committee, of Napoleon; Mr. Mackoff, of Dickinson; Mr. Mack Traynor, of Devils Lake. I thought perhaps it would be well not to appoint any Grand Forks attorney upon that Committee because I didn't know whether they would want to say anything good about Fargo or not.

Now I think perhaps we better take up the address that is scheduled for this morning, and at this time I might inquire is Prof. Hall present? Very well, I think Professor Hall needs no introduction and we will now give him the floor.

LAW AS A SOCIAL DISCIPLINE*

By JEROME HALL**

Regardless of what may happen to lawyers or any system of law, or indeed any institution, legal, political or economic, men will always be concerned with justice. The most profound hopes, wishes and dreams of the human race are inextricably interwoven with justice. Ever since the curtain rose in the fascinating drama of human struggle, competition and achievement, the ideal of justice has been the goal of an unbounded ambition. That most distinguished scientist, Dr. A. J. Carlson, concluded a speech on *Science and the Supernatural,* at the University of Chicago, by saying ". . . there remains the endeavor towards understanding, the hunger for beauty, the urge for justice, these three,

*Address delivered at the annual meeting of the Fourteenth District of the Minnesota State Bar Assn. at Warren, Minn., on May 2, 1932.

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and the greatest of the three is justice."[1] But I do not wish to invite any invidious comparisons with the arts and sciences. The artist has brought beauty and grace into being and has enriched us all; the scientist has courageously penetrated into dark recesses with no little danger to himself, and has been the benefactor of all humanity. Indeed it is impossible to separate the various intellectual and artistic activities into air tight separate compartments. It is no more accident that Einstein is an accomplished violinist; that Goethe was an outstanding scientist of his day; while Leonardo da Vinci remains a great, universal genius of all time. The scientist when he conceives of a new theory or law is at the same time an artist; the artist who translates his bounding imagination into a particular medium becomes perforce a scientist. Can anyone doubt that Justice Oliver Wendell Holmes, or indeed, any great jurist is both artist and scientist? It is all a matter of creation, whatever the medium be.

Accordingly if you ask me why I am concerned with law as a social discipline, I answer simply, that in my opinion, the social disciplines provide the most fundamental approach to an understanding and attainment of justice. But I am immediately concerned with law, and law does not mean, nor does it always coincide with justice. Law is organized coercion put forth by the group on behalf of one or more individuals and against one or more individuals. By social discipline I mean social science in its broadest sense, using the term as it appears in the Encyclopedia of the Social Sciences.[2]

If I be asked just exactly what field does law as a social discipline include, I shall be at a loss to answer. So would the sociologist, the political scientist, and even the exact scientists, with reference to their fields. Many political economists have of late become mathematicians who have carried out the postulates of the classical school to their logical limits. Newer and presumably more significant developments have turned other economists to psychology and history and towards the construction of a realistic, institutional economics. The political scientist was long ago interested in psychology, law and philosophy. In the more exact sciences, biologists have long been chemists, among other things. There is no pure and certainly no simple chemist; they have all become physicists to some extent, and the physicist, alas, that former pillar of solidity (note that I do not say stolidity) bids well to become metaphysician. Ben. Smuts[3] and others have carried the thought farther, making it clear that in their minds the implications from the principle of uncertainty, the relativity and quantum theories are that no permanent demarcation exists between the animate and the material worlds. I leave it to each one to decide for himself whether this be science, hope or hallucination.

It does seem reasonable to conclude that the long interaction between the various social sciences will in the near future eliminate existing classifications. Each researcher will be armed with a knowledge of all the methods and techniques in every field and may invent new ones. He will also have a specialized knowledge about particular data and will be interested in certain problems.

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[1] *Science and the Supernatural*, in the Feb. 27, 1931 issue of Science.

[2] Now being published by The Macmillan Co.; several volumes have already appeared.

[3] See his *Scientific World-Picture of To-day* in Science, Sept. 25, 1931.

In law, practically all of the social science techniques are being used on data having jural significance. The case method introduced by Langdell of Harvard is still the basic method of instruction though numerous departures from it are being made in many places. Familiarity with this method and his entire training make the jurist-social scientist unquestionably the most fitted to use it with proper discrimination. The value of statistics is becoming more and more appreciated. The questionnaire and the survey are being used chiefly in criminal investigations. Psychoanalysis is being used only to a minor extent in the criminal law. The historical approach has of course, long been in vogue.

Let us examine in a most general way, as permitted by our time, the relationship between some of the social sciences and law. With the very dawn of man's social life, law appeared. The most primitive tribe has need for order as it has need for the preservation of life. Accordingly just as the geologist can write the history of the earth from an examination of various natural phenomena, so should it be possible for the anthropologist to examine various bodies of laws and make deductions regarding the sort of group, the time, the organization of the group into families or otherwise, etc. Anthropology is valuable because of the light it casts upon the nature of law itself. Whereas it was long fashionable to identify law with a political organ, i.e., the state—and indeed, the entire analytical school of jurisprudence is founded upon this consideration—the anthropologists notably Malinowski[4] and Lowie,[5] have shown that primitive groups which are not sufficiently organized to have what we call a "state," nevertheless have definite, conscious, organized methods for enforcing group rules. It is a sufficiently demarked and conscious type of social control to be termed "law." In other directions the work of the anthropologist is extremely valuable. With reference to personal and real property, and the possession, ownership and descent of it, valuable contributions have been made. Marriage and divorce, the custody of and authority over children have been made significant. Primitive rules of barter and exchange, promises involved and the ways of sanction are important to a full understanding of our own history and law of contract.

With regard to all of these questions, sociology also has made valuable contributions. The work of Kohler[6] and Eugen Ehrlich[7] in Germany, and Pound,[8] Oliphant,[9] Llewellyn[10] and others in this country stands out in this connection. In sociology the idea of social control is perhaps the concept of major importance for law. In a sense, all law is a type of social control. Here the jurist is concerned equally with the

[4] CRIME AND CUSTOM IN SAVAGE SOCIETY, (1926) Harcourt, Brace & Co.

[5] THE ORIGIN OF THE STATE, (1927) Harcourt, Brace & Co.

[6] PHILOSOPHY OF LAW, Vol. XII in the Modern Legal Philosophy Series.

[7] GRUNDLEGUNG DES SOZIOLOGIE DES RECHTS.

[8] See the last chapter in his INTERPRETATIONS OF LEGAL HISTORY; his article, *The Scope and Purposes of Sociological Jurisprudence* in Volumes 24 and 25 Harv. Law Rev.; and other articles by Pound too numerous to list here.

[9] See, for example, his Introduction to Rueff's FROM THE PHYSICAL TO THE SOCIAL SCIENCES, (1929) The Johns Hopkins Press; and *Facts, Opinions and Value-Judgments,* (1932) 10 Texas L. R. 128.

[10] *The Conditions for and the Aims and Methods of Legal Research,* (1929) Vol. 6 The Am. Law School Rev. 670-678.

sociologist in studying the relationship between mores and folkways, and law. In this connection the work of Ross[11] and more especially that of Sumner[12] is of great importance. The relationship between these fields and the origin and development of morals is suggestive. For one thing it leads the observer to understand the functions of and limitations upon the various methods of social control. The influence of public opinion is obvious. Certain things are frowned upon and discouraged by the parent, the teacher, the minister, the press, and the courts. It is a nice problem to comprehend the value of and limitations upon each type of social control. One of the commonest mistakes is to look to law as though it were the only form of social control. Anti-social conduct is due much more to limited training, family disorganization, economic want, a disinterested or unintelligent public opinion, and failure of churches to keep abreast of the times, than to the law. I am not suggesting in the least any criticism other than the objective comment that law is only one form of social control. The husband who will not permit his wife to join the local bridge club; the boy who copies in examination; the business man who abuses his employees; the college boy who refuse to wear a hat—all of these must be controlled by methods other than legal ones.

Other important contributions from sociology that come to mind are—studies of family disorganization; studies of the gang and of the factors that cause delinquency, particularly that of children, are of the utmost importance in law, especially in the work of the juvenile courts. The juvenile court, in many ways the outstanding contribution of the United States to the administration of criminal law, is based upon entirely unique conceptions, the outgrowth, largely of progress in the social sciences. The juvenile is not charged with the commission of a crime at all. (I am speaking here of the juvenile court as it is organized in the large cities). The child is brought into court only after some social worker has attempted to adjust the delinquency through contact with teacher and parent. The judge in the court is usually a broad minded kindly individual, sometimes a woman, for in juvenile court work the woman lawyer is especially valuable. The social worker gives a history of the case; there is frequently a psychological test and if necessary a psychiatrist is consulted. The States Attorney is not interested in a conviction here. The inquiry is concerned with the welfare of the child as a ward of the state, and he is generally placed in a new environment or appropriate institution. Here we have individualization, par excellence, with the social sciences drawn upon to the fullest possible extent. It is all immensely important, not only for the children, but for all of society for many reasons. To mention one—latest statistics show that the overwhelming number of adult, habitual criminals have records of juvenile delinquency. Even more important, it is possible that the juvenile court work will be most significant with reference to suggesting the possibility of similar treatment of criminality in general. In the solution of this vast problem, the sociologist is handicapped by his lack of legal training. The work must accordingly be done by the lawyer who is also a social scientist.

It is relevant here to mention the interrelationship between law and the general field of criminology. Many problems are common to both. Evidence in mitigation may be introduced, and this opens almost the

[11]His SOCIAL CONTROL is a general treatment of the subject.

[12]FOLKWAYS, though old, contains an enormous amount of valuable data.

entire field of criminology to the lawyer. Some matters are of particular value to the prosecution and the police such as criminal identification by means of the finger print, photography, the Bertillion and other measurements, moulage—the making of a cast to preserve a foot-print, a tooth mark or other temporary form; chemical and medical analyses; and ballistics, which is the identification of fire-arms and bullets by means of microscopic examination.

Psychological tests have been introduced in some cases. In the law of wills with regard to mental capacity of the testator, with regard to responsibility for crimes and in countless other situations, the lawyer must be a psychologist. Law was behavioristic in a great measure long before Watson was ever heard of. The *act,* by and large, is made the basis for inferring intent, although general circumstances are considered with reference to motives, premeditation and other concepts. In contracts the law is clear that there must be "a meeting of the minds." Yet it is the conduct of the parties that absolutely determines this question. It is what a reasonable observer would conclude and not what goes on inside of the parties' heads that counts. Similarly in the criminal law it is said that there can be no crime without a guilty mind—a *mens rea,* but the *mens rea* is inferred from behavior and against a background of social convention. Thus an Indian who believed in the existence of evil spirits clothed in human flesh thought he saw one and shot it and was found guilty of homicide.[13] The concept of the "reasonable man" which runs through the entire law is the creation of a mythical person in order to formulate an objective standard whereby to judge conduct.

Unfortunately again, the psychologist cannot be depended upon to supply the needs of the lawyer because he does not understand legal concepts or requirements.[14] Some of the most valuable data applicable to law is being developed by the psychiatrists. The psychoanalysts too, are making valuable contributions.[15] Regardless of their frequent dogmatic assertion of theory as fact, their work is important for the following reasons: they investigate the life history of the individual in much greater detail than any other group; second, their approach is genetic; and third they deal with the whole personality. But one notes much impatience with the law on the part of the psychiatrists and a brief comment is accordingly in point. First, it must be clear to everyone but a narrow specialist, that the very fact that there are a dozen different schools of psychology is evidence that no one school has an exclusive claim to adoption by the courts. Indeed the diametrically opposed views of expert psychiatrists who are called upon to testify in court present a pathetic spectacle.

Permit me to state my conception of the fundamental difficulty and to indicate a way out. Psychiatry as a branch of medicine is particularly concerned with the individual organism while law cannot be conceived of apart from human relationships. The psychiatrist, like all doctors, is concerned with his patient; the rest of the world exists only in-

[13]Regina v. Machekequonabe, (1896) 28 Ont. 309.

[14]A recent book, LEGAL PSYCHOLOGY (1931) by Prof. H. E. Burtt is not of great value, but deserves notice as a step in the right direction.

[15]Perhaps the most interesting, and in many ways the most valuable book to appear is THE CRIMINAL, THE JUDGE AND THE PUBLIC by Alexander and Staub, (1931) The Macmillan Co.
See my review of this book in the Illinois Law Review, April, 1932.

sofar as it indicates the cause of the disease and the cure of his patient. The jurist on the other hand, while concerned with the individual, is interested in him as a member of a group, that is as a person in relation to other persons. Here, it is suggested, are the crossroads where psychiatry and law converge and also separate. And it is the failure of the psychiatrist to comprehend the above distinction which retards progress in the adoption of psychiatric data in legal proceedings. However the problem is by no means a simple one, for a great many cases of mental disease are social in origin. That is to say that in many respects psychiatry is a branch of social psychology. The neurosis and the complex are social phenomena. Diagnosis is largely concerned with social causes, with conflict within some group, with maladjustment. All of these, it is true, bear upon diagnosis and if the distinction suggested above (the doctor's concern only for his patient) could be maintained with regard to therapy, the problem would still be simple. But therapy is also social. Conflict must be eliminated, the individual must be adjusted to his environment. What then remains of the distinction made? A matter of emphasis or of evaluation of ends to be served. Law and psychiatry join hands then, insofar as they both are interested in the individual; when law leaves off and interests itself primarily in others, it must part company with psychiatry and the underlying motif of that field. And this happens when for example, in the criminal law, individualization of punishment gives way to concern for the safety and welfare of society, and the law aims at deterrence, and conceivably even sacrifices the prisoner at the bar to the greater cause of suppressing criminality—a theory, which of course, has not been demonstrated. I have perhaps presented a somewhat exaggerated picture in order to develop my point. For I have no doubt that the jurist who has some understanding of psychiatry is thereby much better fitted to go about his business and effectuate the purposes he values. Indeed it will be found upon investigation, that while the law books retain their antiquated ideas about "insanity," and "responsibility," yet in the actual administration of the law by intelligent judges everywhere, the reputable psychiatrist is consulted and listened to with much respect. And the current collaboration of the American Bar Association, the Association of American Law Schools, the Medical and Psychiatric Associations, is even now clearing the path to a more intelligent and effective utilization of psychiatry in law.[16]

That law is some sort of function of economic institutions cannot be doubted. Thus it is impossible for a lawyer to understand the law of real property unless he has a thorough detailed knowledge of the feudal system. The law of contracts, sales, bills and notes, corporations, public utilities and many other broad fields cannot be understood without knowing the economic background of history and theory that gave rise to these bodies of law. Even more than the real estate practitioner, the so-called "corporation lawyer" must have an intimate knowledge of finance and business in general. Economics and law interlock firmly and at many points; and it is accordingly not surprising that traditional methods of presenting the commercial law are being revised along functional lines to conform to actual business practices and organization.

Of all the social disciplines, history and philosophy have in many respects been most beneficial in law, no doubt because they have been

[16]See the recommendation of the Committee of the American Psychiatric Association in 19 Jour. Crim. Law and Crim. 376; and the 1929 resolution of the Am. Bar Assn. in 15 Am. Bar Assn. Jour. 742.

longest established. I have already touched upon the relationship of law to economic history. But just as the present status of an individual, a nation, a disease or an idea cannot be understood without a knowledge of their origin and development, so it is impossible to understand present rules of law and procedure, without knowing their sources. The genetic approach is very fundamental in every field; and the historical analysis of a rule or an institution is I suppose, one of two or three types of explanation that satisfies the human mind. (Another is the reduction of all phenomena including social ones to terms of mass and motion). Thus the distinction between torts and crimes is relatively recent. In the general field of liability for wrong there was originally absolute responsibility. The risk was placed upon action of any kind, and if the actor, his servant or his cattle without any fault of his, caused damage, liability followed. With the passage of time the idea of blame came to be recognized, and the standard of due care and negligence came into our law. This was due in part to an advance in culture, and in a lesser degree to the influence of the church which associated sin and culpability in secular affairs. In very recent years we have had a most interesting return to the doctrine of liability without fault. Workmen's Compensation is an example where payment is made regardless of due care on the part of the employer or contributory negligence on the part of the employee. It has been suggested, possibly as an offshoot, partly of ideas of determination, partly of conceptions of an alleged greater justice, that the idea of liability without fault should be extended generally to all personal injuries, the loss to be covered by insurance. In other words these losses, it is urged, are of social concern, and it is therefore desirable to distribute the burden generally.

An understanding of the development of the common law in competition with the various local laws and tribunals, and particularly of the procedure and of the organization and growth of the national courts is essential to an understanding of present day law and procedure. Moreover it is invaluable as a prerequisite to intelligent change. It hardly supports the awful regard of many lawyers for existing law and procedure; on the contrary it lends weight to the attitude of a western jurist who is quoted by Judge L. R. Yankwich in the current Southern California Law Review as follows:

> "I can only hope for a day when courts of justice will decline to dig among the tombs of a dead past for ancient and obsolete precedent, particularly a precedent adopted in a day when a majority of the people believed the insane to be possessed of the devil, and when governments hung them as witches; when they will refuse to be shackled by a procedure that finds neither reason nor justice in our day and time; when the law will be treated as a philosophy to be applied to the ever changing conditions of man, and not a straight-jacket with no leeway for the exercise of common justice. . ."[17]

One who opposes all change in present legal procedure needs to examine the history of the subject. The relationship of the rules of evidence to the jury and its control by the judge, of the jury itself to the Fourth Latern Council which prohibited the clergy from further participation in the ordeal, the theretofore accepted form of trial—all of this is a story of one piece. Ordeals and compurgation were the Anglo-

[17] 5 So. Cal. Law Rev. at 208.

Saxon forms of trial. Compurgation was the taking of oath by a number of witnesses, not to the correctness of the facts but to the creditability of the accused. It was really testimony of good reputation. This method fell into disrepute for reasons that can readily be surmised. The Normans introduced wager of battle where the two parties, or later, their hired champions fought it out. Presumably Providence would be on the side of the righteous. But this method was not obligatory upon the Anglo-Saxons, besides, it was confined to civil disputes. The remaining method, the ordeal, was the general form of trial. There were many types of ordeal, such as swallowing a bit of food in which was concealed a feather, or carrying a hot iron a number of paces. If the hand healed in a specified time, the accused was not guilty. Another was the water ordeal. The accused was bound and put into the water; if he did not sink he was guilty; if he did sink, that is, if the water "received" him he was innocent and I suppose, would be fished out before he drowned. These methods of trial seem barbaric to us who are accustomed to decisions upon the merits based upon an inquiry into the facts, although it has been suggested that our own form of trial is really a modern wager of battle. And, when it is remembered that the clergy participated in the ordeals in a customary ceremonial, it will be understood that this procedure was based upon the belief in divine intervention and manifestation by appropriate means of the desired outcome of the case. The Fourth Lateran Council in 1215 put an end to the ordeal, and the jury developed. But there were no ready made rules of evidence to direct judge and jury. Indeed the rules of evidence did not take on their present form until about one hundred and fifty years ago. No one has a finer knowledge of appreciation of our legal history or traditions than Oliver Wendell Holmes. Yet he has stated:

> "For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics. It is revolting to have no better reason for a rule of law than that so it was laid down in time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."[18]

If there is any doubt about the value of philosophy in some fields, it is clear that in law, philosophy is of immediate and practical importance. The layman has frequently understood this better than the lawyer himself, due in part to the fact that legal decisions are set forth in an artificial form which disguises the premises that determine the result. The lawyer has, until recently, accepted the formula that "ours is a government of law and not men" at face value. The layman, free from any technical obsessions, has thought otherwise. Thus Roosevelt, in his message to Congress, Dec. 8, 1906, stated:

> "The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and as such interpretation is fundamental, they give direction to all lawmaking. The decisions of the courts on economic and social questions depend upon

[18] *The Path of the Law*, in Holmes, COLLECTED LEGAL PAPERS, at 187.

> their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy and not to a long outgrown philosophy, which was itself the product of primitive economic conditions."[19]

When the appointment of Holmes to the Supreme Court was recommended to Roosevelt, he was anxious to know about Holmes' "point of view."[20] Charles Beard and many others have interpreted all of constitutional law in terms of the social and political philosophies of the various justices who sat in the Supreme Court. The recent successful opposition of labor to the appointment of Judge Parker shows that this attitude is general among the laity. Accordingly there can be no more significant approach for anyone who wishes to understand the "law behind the law," to borrow an apt phrase, than comes from the correlation of philosophy and law. Philosophy has been more than a mere background against which the pattern of the law may conveniently be placed. It has been a tool in the hands of scholars and jurists throughout the ages, used on the one hand to preserve the status quo, and on the other to effectuate an inevitable series of changes in a peaceful, orderly fashion. The range of philosophic thought has been set forth by Dean Pound as follows:

> "Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change. The social interest in the general security has led men to seek some fixed basis for an absolute ordering of human action whereby a firm and stable order might be assured. But continual changes in the circumstances of social life demand continual new adjustments to the pressure of other social interests as well as to new modes of endangering security. Thus the legal order must be flexible as well as stable. It must be overhauled continually and refitted continually to the changes in the actual life which it is to the changes in the actual life which it is to govern. If we seek principles, we must seek principles of change no less than principles of stability. Accordingly the chief problem to which legal thinkers have addressed themselves has been how to reconcile the idea of a fixed body of law, affording no scope for individual willfulness, with the idea of change and growth and making of new law; how to unify the theory of law with the theory of making law and to unify the system of legal justice with the facts of administration of justice by magistrates."[21]

Throughout all of history, philosophers have been concerned with law and justice. The greatest of the Greeks have made immortal contributions to the subject in a language of ineffable beauty. The Republic of Plato is an inquiry into social justice, and the dialogue with Thrasymachus remains a challenge to the modern jurist. Relativity is

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[19] Quoted by Cardozo in THE NATURE OF THE JUDICIAL PROCESS at 171.

[20] "Now I should like to know," he said, "that Judge Holmes was in entire sympathy with our views. . ." Quoted by Beard in *The Dear Old Constitution* which appeared in Harpers about a year ago.

[21] INTERPRETATIONS OF LEGAL HISTORY (1923) The Macmillan Co. at p. 1.

the order of our day in all departments, but if one would have a thorough application of the thought to justice and law, he must go to Aristotle for it. To him justice was equality among equals; to those unlike in circumstances there should be unlike treatment according to merit, service, worth or guilt. At present we might urge a democratic extension of Aristotle's concept, but the kernel of his philosophy of law remains valuable. For a great many years following the Greeks, the dominant idea was that of "Natural law," or 'divine," or "higher law" as it was variously called. Hegel took up the thought and developed law as the evolution of right. The idea of freedom came with Loche and Rousseau and their American adherents, who in turn, inspired the law-makers of their day and many succeeding ones. The modern philosophy of law may be said to have started in the latter part of the 19th Century, with Von Jhering who shifted the entire emphasis from the question "What is the *nature* of law?" to "What is the *purpose* or *end* of law?"[22]

I should leave a most incomplete and distorted picture of the philosophy of law, if I gave the impression that only an occasional philosopher concerned himself with the subject. As a matter of fact we can go through the whole history of philosophic thought and find in every time and place the utmost concern with law and legal ideas. For law is as broad as life itself and as old as the age of man. For purposes of convenience to the lawyer, these various philosophies of law may be grouped into four schools: the philosophical, the historical, the analytical, and the sociological.[23]

The analytical school deals with mature systems of law; law is defined as a command of the state, laid down by the courts and enforced by the political power of society. Legislation is the typical example of law for the analytical jurist. Austin, Holland, and Salmond are the outstanding European exponents of this school. In this country Hohfeld has surpassed them all in the nicety of his analysis.

The historical school was concerned with the past, with comparative legal systems and institutions. Von Savigny stands out as the great founder of this school, although Sir Henry Maine made the viewpoint part of Anglo-American jurisprudence. To them law was found, not made. Law was determined by human experience, social, economic and political forces, and not by independent conscious human effort. As Savigny put it "all law arises from custom; that is, it is produced first by custom and popular belief, then through the course of judicial decision, hence, above all, through silent inner forces, and not through the arbitrary will of a law maker." Insofar as this school emphasized custom, public opinion, social and economic conditions, and social standards of justice, it seems to me that they made an invaluable contribution to law and called attention to the type of data which must be utilized if ever a science of law is to be had.

The philosophical school set up an ideal, an ethical standard, a natural law to which, it was said, law must conform. It is, of course apparent that these various schools of law did not exist in air-tight compartments. The various ideas were fused into one another. They

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[22]LAW AS A MEANS TO AN END, Vol. V. The Modern Legal Philosophy Series.

[23]I follow Dean Pound very closely here just as he has outlined the field in his articles *supra* note 8.

still exist today in various modern garbs. I have already intimated that the historical school is tremendously important for a modern study of law. Likewise the philosophical school which now emphasizes a limited sort of natural law is by no means passé Indeed in some fields of law such as constitutional law, the ideas of this school are still a dominant force.

Finally, it remains to consider the sociological school, by and large the most important in this country. The emphasis of Von Jhering upon the end of law may be taken as the beginning of this school. This school received its greatest impetus from the works of Kohler, who has been called by Pound, "without question the first of living jurists." Kohler treated law as the product of the culture of a people; he differed with Savigny and thought that conscious effort does play a part in law. Kohler was concerned with "how the law has developed in the course of history, and in connection with the history of culture—how culture has been conditioned by law, and how law has furthered the progress of culture." Said he: "The law cannot remain the same. It must accommodate itself to the progressing culture of the time and must be so fashioned as to express the growing demands of culture."

The sociological school as developed by its great American exponent Roscoe Pound is characterized as follows:

1. It is concerned with the study of actual social effects of legal institutions and doctrines.

2. It emphasizes the need for scientific legislation based upon sociological investigations.

3. It deals with the enforcement of law rather than with logical analysis and synthesis of concepts.

4. It investigates social, economic and psychological conditions as related to law.

5. It emphasizes individualization particularly in the administration of the criminal law.

6. Finally, it insists that law must be interpreted with reference to a social purpose or end to be served.

What is going on at present in this field of law as social science? I believe that in many ways law is now the most interesting of all the social sciences. Arnold of Yale has said in the current issue of the Harvard Law Review that there is going on "an enthusiastic search for eternal verities through new methodologies. . . (which) makes the law today the most fascinating of the social sciences."[24] Frankfurter of Harvard has said:

> "Our times may well come to be named, by future dealers in half-truths, the Tired Age. Disillusionment is a mood of fashion as much as a form of ennui after the war's great effort. Whatever the cause, our politics are devoid of ardor and social reform has lost its romance. Such being the mental climate, one would expect jurisprudence to be in the doldrums and to earn its title as the dreary science. Alas for these generalizations about the main currents of thought! The waters of law

[24] 45 Harv. L. Rev. at 618.

are unwontedly alive. New winds are blowing on old doctrines, the critical spirit infiltrates traditional formulas, philosophic inquiry is pursued without apology as it becomes clearer that decisions are functions of some juristic philosophy."[25]

In a large measure the development of law as social science in this country has taken place in four eastern universities. The functional approach of Columbia professors has profoundly influenced the study of law; the sociological investigations at Yale are of abiding value; the work of Pound at Harvard, though relatively more conventional, is a dominant force; and the program of the Institute of Law at Johns Hopkins is one of the most ambitious in all contemporary social research. A word about the Institute to give you a picture of what is actually going on. Four men were selected to organize it. They are Leon Marshall, former dean of the Commerce School at Chicago; W. W. Cook, a physicist and student of Planck, who turned lawyer; Oliphant, and Yntema, legal scholars trained in the social sciences. The outstanding project of the Institute to date has been a study of litigation in Ohio, a research costing hundreds of thousands of dollars. Cook has described the Institute's plan as follows:

> "In the belief that the application of methods similar to those which scientists in other fields have so fruitfully used will yield a rich harvest in the legal field, the members of the Faculty of the Institute have attempted to plan the work of the Institute for the immediate future. They have assumed that the fundamental purpose of the Institute is to study as scientifically as may be, law in action; to seek to determine whether or not our legal system is accomplishing the purposes for which it exists, and to the extent that the conclusion is that it is not, to ascertain both what the reasons for the failure are and what may be done to remedy the resulting evils. Notice that a fundamental assumption is—and here recall Galileo's experiment—that the only way to find out what anything does is to observe it in action and not to read supposedly authoritative books about it or to attempt by reasoning to deduce it from fundamental principles assumed to be fixed and given."[26]

"And Marshall has thus summed up their objectives:

1. To study the trends and litigation, and to ascertain its human causes and effects.
2. To study the machinery and the functioning of the various agencies and offices which directly and indirectly have to do with the administration of law.
3. To learn reasons for delays, expense and uncertainty in litigation.
4. To institute a permanent system of judicial records and statistics which will provide automatically information now secured after great labor.
5. To detect the points at which changes in substantive law would contribute markedly to social justice.

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[25] 45 Harv. L. Rev. footnote 3, pp. 617-18.
[26] 7 Ind. L. Jour. at 116.

6. To do all this in close cooperation with the practical worker in the field and to turn the results over to practical administrators for utilization."[27]

Current movements in jurisprudence are closely related to contemporary thought. Just as social scientists generally have been comparing their fields with the exact sciences, so legal scholars have been asking: is or can law be scientific? The principle objections raised have been the enormous range and variability of the phenomena dealt with; and the lack of control over or recurrence of identical phenomena, and the consequent limitations upon predictability. In dealing with these objections, in law as elsewhere, the emphasis in the discussions has been upon methodology, and techniques. Cook of Johns Hopkins and Patterson of Columbia have discussed this problem most significantly.[28]

A second movement, in which Cook and Oliphant[29] have been leaders, although Dewey[30] and Morris Cohen[31] have contributed, deals with legal analysis. The function of and limitations upon logic as a tool in legal decision have been pointed out with the result that a much more sophisticated interpretation of cases is made possible.

Another though related movement has to do with the nature of the judicial process. Justice Cardozo in a brilliant little book has discussed the use of logic, history, custom and sociology as methods of deciding cases.[32]

Growing out of the discussions on judicial process, and inspired in great part by a number of lawyers and judges, is the current school of realists. As might be expected of realists, the adherents of this school have challenged many accepted views, including some of Dean Pound's. The present emphasis upon particular studies, concrete factual situations and scientific techniques have made the struggle an inevitable one. In a fashion the battle is the old one between idealist and realist, the former insisting upon the place in law of ethics and values,[33] the latter concerning himself with behavior. While I should not, without denying the realism of Holmes, classify him with the current school, it is clear that he has been their great inspiration. His thesis that "the prophecies of what the courts will do in fact and nothing more pretentious are what I mean by the law" has made the behavior of judges (and others) the principal interest of the realists. As outlined by Llewellyn of Columbia, the realist is characterized by the following:

1. "The *temporary* divorce of Is and Ought for purposes of study.
2. "A distrust of the theory that traditional, prescriptive rule formulations are *the* heavily operative factor in producing court decisions.

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[27] 7 Ind. L. Jour. pp. 122-23.

[28] See Patterson's *Can Law Be Scientific?* in 26 Ill. L. Rev. pp. 121-147.

[29] See Oliphant's Introduction to Rueff, *supra* note 9.

[30] *Logical Method and Law* (1924) 10 Corn. L. Q. 17.

[31] *The Place of Logic in the Law* (1916) 29 Harv. L. Rev. 622.

[32] THE NATURE OF THE JUDICIAL PROCESS (1922) Yale Press.

[33] See Pound, *The Call for a Realist Jurisprudence*, 45 Harv. L. Rev. 697-711.

3. "An insistence on evaluation of any part of law in terms of its effects."[34]

Judges, lawyers, litigants and juries are all human beings. Law deals with behavior of motivated, propelled, determined human beings. Be that as it may, it is impossible to deny that values have become part and parcel of modern jurisprudence, and that the utility of immediate social purposes is granted.

If I have touched upon too many subjects, I can only plead in justification, what Holmes put so eloquently when he said:

> "The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt—that a man may live greatly in the law as well as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. All that life offers any man from which to start his thinking or his striving is a fact. And if this universe is one universe, if it is so far thinkable that you can pass in reason from one part of it to another, it does not matter very much what that fact is. For every fact leads to every other by the path of the air. Only men do not yet see how, always. And your business as thinkers is to make plainer the way from some thing to the whole of things; to show the rational connection between your fact and the frame of the universe. If your subject is law, the roads are plain to anthropology, the science of man, to political economy, the theory of legislation, ethics, and thus by several paths to your final view of life. It would be equally true of any subject. The only difference is in the case of seeing the way. To be master of any branch of knowledge, you must master those which lie next to it; and thus to know anything you must know all."[35]

I have no doubt that it is not necessary for me to dwell, here, upon the immediate application of these thoughts to the practice of law. Lawyers were once the recognized intellectual leaders in their communities and should be anxious to regain that position. A keen feeling of moral responsibility is essential for this, and I am inclined to the view that it will result from an understanding of law as a social discipline rather than from the study merely of the canon of ethics.

But aside from obligations of any sort, there is a fascination in law as a social discipline. As Llewellyn puts it "it is the land of high desire." One who has an understanding of law in this broader sense can appreciate the beautiful expression of Justice Holmes who said in speaking of the Law:

> "And what a profession it is! No doubt everything is interesting when it is understood and seen in its connection with

[34] See Llewellyn, *Some Realism About Realism—Responding to Dean Pound*, 45 Harv. L. Rev. 1222-64. An excellent bibliography on the literature of contemporary realism in law is appended.

[35] *The Profession of the Law* (1886) in Holmes' COLLECTED LEGAL PAPERS pp. 29-30.

> the rest of things. Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life—so share its passions, its battles, its despair, its triumphs, both as witness and actor?
>
> "But that is not all. What a subject is this in which we are united—this abstraction called the Law, wherein as in a magic mirror, we see reflected, not only our own lives, but the lives of all men that have been! When I think on this majestic theme, my eyes dazzle."[36]

I leave it to your imagination to bound the limits of the work that needs to be done if law, the eternal guardian of life, is to fulfill its mission. There is more than abiding interest and love of wisdom to encourage such culture. For it is out of these incursions into the thought of the ages that a higher and fuller measure of justice is achieved. It is by this contact with culture and chiefly with the social sciences that the jurist who none-the-less keeps his ear to the ground during his own days. and his finger on the pulse of his own times, creates a nobler and a wiser vision of justice. And in doing this, is he not fulfilling the highest hopes of humanity for whom justice will forever be the most distinctive, the most human and the most inspiring of human qualities?

I am sure we are all grateful to Professor Hall for his very scholarly and interesting address. It will be printed as part of the proceedings.

Members of the Bar, last week it was my privilege to attend the South Dakota Bar Association meeting at Mitchell and I want to assure you that I was received by the officers and members of that Association and given every courtesy. They had a most successful and enjoyable meeting, and I was very glad indeed that it was my privilege to be there. We have with us as a visitor for our sessions Judge Knight, who at the close of the session in South Dakota, was elected as their President for the coming year. We are very proud and glad that he was able to be with us. I believe it was Lord Mansfield who said, "When you select a judge, select a gentleman; if he knows a little law, so much the better." From my contact with Judge Knight I feel sure that the people of his district certainly must have had this saying of Lord Mansfield in mind, for they certainly selected a gentleman, and I am glad at this time to introduce Judge Knight to you, and we will be glad to have a word of greeting from him now—Judge Knight.

JUDGE KNIGHT: Mr. President and gentlemen of the North Dakota Bar: It has been a real pleasure to me to be with you for these sessions. I will say that there has grown in my mind continually one regret, and that is that way back in the times, the memory of which most of our minds do not extend to, North and South Dakota were separated. I wish that you might still belong to us and we to you. I wish to express my thanks and appreciation to you in general, and to your President, and to Mr. S. D. Adams particularly, for the many courtesies which have been extended to me, and I wish to extend to you the cordial greetings of the South Dakota Bar. I wish also to say

[36] *The Law* (1885) in Holmes' COLLECTED LEGAL PAPERS at 26.

to you that the next annual meeting of our Bar is to be held just a few miles south of your south line, at Aberdeen, and I wish to extend to you all a most cordial invitation to meet with us.

VICE PRESIDENT HUTCHINSON: I hope that all those who have not had an opportunity to meet Judge Knight will meet him now.

VICE PRESIDENT HUTCHINSON: I think that I will make the election of officers a special order of business for two o'clock this afternoon, so that all of you who are here, and those who are not here, will know that, and so we can have as large an attendance as possible for that business.

VICE PRESIDENT HUTCHINSON: We will take up the balance of these Committee reports, I believe at this time, or some of them at least. The report on the Modification of the Jury System, is there any special report to be made in that connection?

SECRETARY WENZEL: That is printed, Mr. President.

VICE PRESIDENT HUTCHINSON: That is printed; are there any recommendations in the report?

SECRETARY WENZEL: You will find it on pages 24 and 25 of the printed report, and there are two recommendations in that report.

Modification of the Jury System

Your Committee realizes that the great wave of discussion relative to the value of civil jury trials was produced mainly by the choice of this subject for high school debates and oratorical contests.

Nevertheless, we believe that the number of cases now triable to a jury should be reduced, as it would seem that a trial judge can as safely be trusted to try a case involving a small sum of money as an action for divorce or to foreclose a mortgage.

We recommend a rule similar to one recently adopted by the Cleveland Court, which provides that trial shall be by judge in all civil cases unless demand for jury trial is made at the time of filing a note of issue, with the further provision that in District Court cases involving less than $200.00 and in County Court cases involving less than $50.-00, trial shall be by judge unless the litigant demanding a jury trial deposit with the Clerk of Court a sum sufficient to pay the additional expense of a jury trial, such sum to be taxed as disbursements in favor of the party demanding a jury, should he prevail in the action.

We recommend a rule of Court providing for the examination of the whole panel by the judge at the opening of the Court, in the nature of a school for jurors, not only to determine their fitness for jury duty in general, and in particular cases, but for instruction in a specific way as to the duties of a juror.

The examination of jurors should be recorded and constitute a sufficient foundation for challenge of a juror in any case. The examination of the jury by counsel before trial should then be limited to matters not disclosed in the general examination.

We believe that, at least in important cases, the judge should be permitted to go over the pleadings with counsel before the term or

trial, and by agreement eliminate all matters upon which there is no disagreement. This would result in a sifting out of the material issues and these alone should go to the jury. The jury then could give its attention to issues instead of trying the parties or their attorneys and overlooking important matters. A great many cases could then be disposed of by special findings by the jury, with the much desired economy of time and expense and a nearer approach to justice.

J. J. WEEKS
C. E. BRACE
ROBERT H. BOSARD.

VICE PRESIDENT HUTCHINSON: Are any members of this Committee present? J. J. Weeks, C. E. Brace and Robert H. Bosard. They do not seem to be here to present their report so we will pass on.

MR. BERGESON: Mr. Chairman, last spring the Cass County Taxpayers Association approached the Cass County Bar Association with the request that certain modifications be effected in our own procedure here, and also with the further request that the Cass County Bar Association appoint a committee to make a little study of this question on the modification of the jury system and present some recommendations to this State Bar Association meeting, having particularly in mind the appointment of a committee which would make further study and make recommendations on proposed legislation to the next Legislature. This Association appointed a committee consisting of J. F. X. Conmy, Howard G. Fuller and myself. We made some investigation and prepared a report, not realizing at the time that there already had been appointed a State Committee for this purpose. This report we have here today, intending to present it rather as suggestive to the State Committee, and if it is your will, I wish to present it at this time, or at least a portion of it. It is not intended as an amendment to the report of the State Committee, not in any sense changing it, but rather in the sense of an addition to the report which has already been submitted. I think I shall move the adoption of the State Committee's report with this report of the Cass County Bar Association as an amendment thereto, if that procedure is proper. This report reads as follows:

Modification of Jury System, Proposed by Cass County Bar Association

At the request of the Cass County Taxpayers' Association, the Bar of Cass County appointed the undersigned as a Committee to investigate and recommend possible modifications of our jury system, to the end that justice might be more efficient and at the same time be less costly to the public.

This Committee had intended merely to make some general observations and recommend to this Association the appointment of a committee representing the Bar of the State. We did not know until recently that such a committee had already been appointed. We, therefore, make this report in order to discharge a duty and also to give the State Committee the benefit of whatever information we have gathered. We fully realize that much of this information will not be new to your Committee.

Considerable material can be found in the publications of the American Judicature Society, the reports of the Judicial Council of Massachusetts and other states; recent reports of crime commissions to various legislative bodies, such as the Legislature of Montana and the General Assembly of Pennsylvania, and other similar reports and publications. With the present demand for tax reduction, the time seems to be opportune to accomplish certain changes in our jury system, which should not only reduce the cost to the public but should also make justice more speedy and more acceptable to the litigants in civil actions and to both State and accused in criminal cases.

We recommend for consideration the following suggestions:

First: There seems to be no sound reason why the public should stand the whole burden of the cost of jury trials in civil cases, especially where the amount involved is small. District Court cases in which the difference between the litigants does not exceed fifty dollars occur in almost every term of Court. Yet, because the parties refuse to compromise, the public must pay jury fees for from one to several days in each such case. Many States require a statutory deposit by the party demanding a jury; otherwise the jury is waived. The amounts vary in different States, but fees ranging from $10.00 to $25.00 are common.

The adoption of such a method would materially reduce the number of cases tried before the jury, and would make it possible for the Court to more nearly keep up with the calendar. In New York City the passage of legislation in 1927 increasing the cost of trial by jury by $25.00 was followed by a reduction of 75% in the number of issues filed for jury trial. A partial list of the States in which jury fees are required in civil cases, under varying regulations, includes Arizona, California, Colorado, Illinois, Maine, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Washington, and Wisconsin.

Second: In spite of the sacred principle that every accused is entitled to have his guilt or innocence established by twelve of his peers, there are several States which have, by legislation, specially provided for waiver of the jury in criminal cases. In fact, in Maryland, the practice of trying cases before a judge without a jury, is older than the statute, and the statute of 1860 was merely a recognition of a practice which had been gradually developed by the Courts to the satisfaction of the community. The Maryland statute of 1860 is short, and reads as follows:

"Any person presented or indicted may, instead of traversing the same before a jury, traverse the same before the Court, who shall thereupon try the law and the facts."

Similar legislation has been in effect for several years in Connecticut and Massachusetts.

From Connecticut, the Assistant Clerk of the Hartford Court is quoted on Page 22 of the First Report of the Judicial Council of Massachusetts to the effect that since this law went into effect in Connecticut about 70% of the cases have been tried by the Court and 30% by jury; that the jury is more often waived in cases of minor offenses

and also violations of the liquor law and offenses against women; that the percentage of convictions by jury has been about 90% and by the court about 70%; that trial by court expedites matters as often three cases can be tried in the time that one would take to the jury, and there is considerable saving of money, as the jury costs over $100.00 per day.

We quote from an article by Hon. Carroll T. Bond, Chief Judge of the Maryland Court of Appeals, as printed in the First Report of the Judicial Council of Massachusetts in November, 1925, in which he describes the results of the Maryland law as follows:

"Within the memories of living men far the greater number of trials in criminal cases in Baltimore City have been held before judges alone. A like experience is reported from the County Courts. In the year 1924 over 90% of all the cases tried in the criminal court of Baltimore City were so tried. A count made ten or twelve years earlier showed 70% so tried, and this is probably the lowest percentage now likely in the course of any of the variations. Ordinarily two criminal courts are sufficient to care for the criminal dockets in the City, which has a population of nearly 800,000. At times there is not enough unfinished business for two Courts, and one is able to keep up the work. It is ordinarily possible to give trials without any delay beyond such time as may be needed for preparation, and there are times when the Court seems too close on the heels of the Grand Jury, when the Court is prepared to give trial on the day after indictment. For some years, now, only one jury panel has been kept in attendance upon the two criminal courts, and, even so, the jurymen spend much of their time sitting aside as spectators. Of the 1,500 criminal cases docketed during the four months of January, 1925, term of the criminal court of Baltimore City, all except 177, mostly those last docketed, were disposed of before the final day of the term. Unquestionably this comparatively rapid disposal of business is due to the prevalence of trials without juries. There is no common length for trials in that form, of course, but they are very much shorter than jury trials. It seems safe to say, for a guess, that the non-jury trial of a given case requires no more than a third of the time which would be required to try the same case with a jury. This estimate is confirmed by lawyers familiar with the criminal court work."

In this connection, it is interesting to note that the Supreme Court of North Dakota in the case of *State v. Throndson,* 191 N. W. Page 628, laid down the principle that an accused in a criminal case may waive a jury trial. In this case, however, the defendant pleaded guilty and there was no trial.

It is common knowledge to all of us that in criminal cases an accused who cannot furnish bond is often required to remain in jail for a period of months before he can have a trial by jury. It would be a boon to the accused in many cases and also beneficial to the State if the defendant could waive jury and have his hearing promptly before the Court.

These suggestions are merely a beginning. The subject is a broad and important one. Any change of our fundamental law naturally involves constitutional questions. As to such questions we have made no investigation and therefore do not pass. We believe that your Com-

mittee on Modification of the Jury System should be given broad powers and should be authorized to present to the next Legislature definite proposals for modification of the jury system in this State. The Cass County Bar Association and the members of this Committee, we are sure, will stand ready to aid in every way possible.

Dated at Fargo, North Dakota, this 31st day of August, 1932.

Respectfully submitted,

A. R. BERGESEN
J. F. X. CONMY
HOWARD G. FULLER.

I move the adoption of the report.

VICE PRESIDENT HUTCHINSON: Now members of the Bar, there appears to be in the report that has been filed, and this supplemental report just read, three recommendations. The first recommendation in the printed report is the one on page 25. Are there any remarks or discussion relative to this first recommendation?

MR. SPALDING: I suggest the advisability of dividing the questions involved in the first paragraph on Page 25 so as to consider the first part of it separately, to that referring to the deposit.

VICE PRESIDENT HUTCHINSON: That is demand for jury trial?

MR. SPALDING: No, take up that part down to the demand for a jury trial and requiring deposit separately.

VICE PRESIDENT HUTCHINSON: Yes, you in other words desire to consider first the matter of a demand for jury trial.

MR. SPALDING: Yes, and the amounts involved.

SECRETARY WENZEL: The statement will be this: "The trial shall be by the judge unless a jury is demanded."

MR. BURDICK: I move that be indefinitely postponed.

MR. HILDRETH: Second the motion.

VICE PRESIDENT HUTCHINSON: All those in favor of indefinitely postponing this recommendation, signify by saying aye; opposed no. Those in favor will please rise. You may be seated. All those opposed, rise. The motion is lost.

We will now take up the motion as to the adoption of this recommendation. All those in favor of the recommendation of the Committee signify by saying aye; opposed no; the motion is carried.

The second recommendation is that the litigant in small cases, as stated there by the Committee, be required to deposit a jury fee, if he desires a jury trial. Is there any discussion on that recommendation?

MR. TRAYNOR: I make a motion that we indefinitely postpone that.

VICE PRESIDENT HUTCHINSON: It is moved that this recommendation be indefinitely postponed. All those in favor, signify by saying aye; opposed no. All those in favor of postponing it, please rise. All

those opposed, rise. The motion is carried and the proposal to require a deposit is indefinitely postponed.

We will then pass to the third recommendation, and that is contained in the second paragraph on Page 25, which recommends a rule of Court, that the Judge make certain preliminary examination of the jury; are there any remarks as to that recommendation?

SECRETARY WENZEL: Isn't that practically the same proposal that was submitted to the District Bar meetings last year upon the recommendation of Mr. Lanier's committee?

VICE PRESIDENT HUTCHINSON: Not quite, I think in that recommendation it was complete examination of the jury before each case was submitted. This was general examination at the opening of the term of the entire panel.

MR. BURDICK: Is that intended to take away from the attorneys the power to examine the jurors fully?

VICE PRESIDENT HUTCHINSON: I don't think it does that.

MR. SPALDING: I wish to speak a moment on that portion of this paragraph, requiring the Court to give a preliminary charge, when there is no case before him, such charge containing general instructions regarding the duties of a jury. I think the suggestion is a very dangerous one. He might wrongly instruct the jury on matters which would later come before him, in cases where the attorney trying the case not having been present and hearing his instructions, would have had no opportunity to know what they were, or to object to them, and that it would have the same influence over the jury as though he had given such erroneous instructions in instructing the jury on submitting the case to them. I think that it is really a dangerous proceeding.

MR. REMINGTON: Mr. President, it seems to me that proceeding furthermore gives the Court an opportunity to place in the minds of the jury ideas concerning the law and its duties which do not constitute a part of the record.

MR. BURDICK: You stated to me you didn't believe passage of this particular paragraph would interfere with the lawyers' right to examine the jury. If you will read the next paragraph, you will find you advised me wrongly.

VICE PRESIDENT HUTCHINSON: I think, Mr. Burdick, that you misquote me to some extent; it perhaps limits them to a certain extent. What you asked is, if it limited any examination by the attorneys.

MR. BURDICK: All we have left, if you will read both paragraphs, all the lawyer has left to examine the jury on, is what you fail to ask. If you have left anything out, we can step in and ask a few simple questions.

TRACY BANGS: I don't want to take up your time but I certainly hope this body won't adopt some resolution that is going to react disastrously. I know the papers have been full of criticisms of the jury trial, and an effort has been made to place the blame of many of the ills of the present day to the jury system. Frequently you will find some suggestion that more power should be given to judges and less

to the jury. I have no criticism of judges, as judges, but I do feel that they have all the power now that it is wise that they have. Judges are men who are selected by the voters from among the members of the Bar, and they may select a wise judge, or they may select an unwise one. The jury system has worked very satisfactorily. I can't help but feel that it is the absolute bulwark of the liberty of the American citizen and of the protection of his rights, not only in a criminal case, but in a civil one. We have in the Federal Courts a system by which the judge examines the juror; if you are not satisfied with that examination, you may ask the Federal Judge to please submit a question to each particular juror. When that is ended, you may ask the judge to submit another question, if you want to examine a particular juror, making a cumbersome method of investigation of the jurors, that absolutely, or practically any way, prohibits any of the examination other than that which is made by the Court. There are certain environments that would hamper a juror in passing upon the facts in certain cases; there are relationships; there are conditions of many kinds, no need of taking time to relate them. Whether that juror is subject to that influence, subject to that environment, that might disqualify him, for a fair and impartial juror, is for the attorney to find out. There is no one can do that so well as the attorney. I believe the recommendations would result in more harm than good. I move you, Mr. President, that further consideration of the section, that is paragraphs two and three, having to do with examination of jurors, be indefinitely postponed. (Several seconds were received.)

MR. BANGERT: Much insidious propaganda has come up in this State in the past several years against the jury system. It seems to me the Court controls the examination of the jury, in any event. Any lawyer going beyond his powers can certainly be stopped at any time. It seems to me that we have had enough of this propaganda that the lawyer ought to be cut out of his right to examine the jury to determine his qualifications. It seems to me the single case down in Minneapolis in the first trial of Foshay ought to be sufficient answer to that.

MR. ELLSWORTH: I want to say I agree fully with Mr. Bangs and the gentleman who has just spoken. In comparing the system that has been adopted in the Federal Court with that prevailing generally in the District Courts of the State, I find in all my practice and experience that the State system is much more satisfactory to the attorneys in every way.

MR. HILDRETH: I want to agree occasionally with my friend from Grand Forks. No one stated the proposition, or can state it, clearer than Mr. Bangs did. In the Federal Court, the only way that an attorney can examine a juror is to pass up a piece of paper with a question on it. We do not want that system.

VICE PRESIDENT HUTCHINSON: The question is on the motion to table these recommendations with reference to the jury. All those in favor of tabling those recommendations signify by the usual sign; opposed no; the motion is carried.

Now we will complete the consideration of this report. There is one more recommendation made by the supplementary report, and that is recommending a statute with reference to the waiving of a jury

trial in criminal cases, if the defendant decides to waive. Are there any remarks on that recommendation? If not, all those in favor of this recommendation, which is the proposal of a statute giving the defendant a right to waive a jury trial and having the trial before the Court in criminal cases, signify by the usual sign.

MR. MCFARLAND: It might be well in that particular case to let the Supreme Court vote for us.

VICE PRESIDENT HUTCHINSON: All those in favor, signify by the usual voting sign; all those opposed no; the motion is carried. Now that completes the consideration, I believe, of that report.

AFTERNOON SESSION

VICE PRESIDENT HUTCHINSON: There are a lot of important matters yet to come before the Association, and some of the members are desirous of getting away as early as possible, so I think we better complete our work. Now there are several committee reports here and I do not know as they will take so very long to dispose of them, but we will dispose of them anyway. The first one is "Local Organizations." I believe that report is printed. I guess there is no special recommendations in that report. Cuthbert, Kvello and Shaft are on the Committee. Have they anything special to offer? The report is on Page 24. If not, we will pass on to the next report, "Press and Public Information." That is also a printed report by Emanuel Sgutt of Fargo and Tom Burke of Bismarck. Is there anything further to offer in connection with the report? If not, we will pass that and take up the next "Public Utilities." Was there a report filed in there.

SECRETARY WENZEL: Mr. Mackoff is Chairman and made no report and says he has no report to make at this time.

VICE PRESIDENT HUTCHINSON: Then there is the fee schedule report.

SECRETARY WENZEL: That is supposed to come up in executive session.

VICE PRESIDENT HUTCHINSON: I guess we are in executive session right now. There are several reports to come up in executive session, and we will take them up a little bit later, and after perhaps the election. The Memorials Committee is another one that we should be able to dispose of. Is that report filed?

SECRETARY WENZEL: That report is filed, Mr. President, and there is just one addition to it. Mr. Libby informed me yesterday that he had not included in the list of deceased members during the year, the name of Mr. Frank I. Temple, of Fargo. That came in after the completion of the report and that should be added to the report before it is printed. I think the usual procedure in connection with this report is to dispense with the reading of it and have it printed in the proceedings. Perhaps a motion to that effect will dispose of it.

MR. ADAMS: I so move.

MR. JACOBSON: Second the motion.

VICE PRESIDENT HUTCHINSON: It is moved and seconded that the report of the Memorial Committee be printed in the proceedings. All those in favor, signify by the usual sign; opposed; carried.

SECRETARY WENZEL: Mr. President, at this point may I direct attention to the fact that there was a special committee appointed for the purpose of arranging for the special memorial in the Supreme Court for deceased judges. For some reason or other, that committee has filed a report with the Secretary and it makes no reference, as far as I can find, to any proceeding in the Supreme Court, and my understanding was that the purpose of the appointment of the committee was to have regular memorial proceedings in the Supreme Court so it would get into the Supreme Court records.

VICE PRESIDENT HUTCHINSON: Who are the members of the committee?

SECRETARY WENZEL: The members of the committee are George A. McGee, Judge Moellring and Judge Lowe.

VICE PRESIDENT HUTCHINSON: I guess none of the members are here. Is the nature of the report such that it can be printed, Mr. Wenzel, do you think?

SECRETARY WENZEL: Oh yes, certainly, but it should be referred to the same or a new committee for appropriate action.

SECRETARY WENZEL: That disposes of all reports except those that are to come up in the executive session.

VICE PRESIDENT HUTCHINSON: Yes, except those reports as are listed here for the executive session.

MR. TRAYNOR: Was any action taken on the fee schedule report?

VICE PRESIDENT HUTCHINSON: Not yet, that is listed in the executive session. Is there any unfinished business that could be taken up by the Association at this time?

MR. HILDRETH: There is one matter that I would like to call the Association's attention to. The American Bar Association meets in Washington, D. C., the first part of October. Last year, the Association selected Mr. Adams and myself as delegates to attend the convention at Atlantic City and we attended, and at that time not meeting with very much opposition, I was placed on the Supreme Council. Now I will not be able to attend the meeting in Washington and from correspondence I have had with some of the officers of the Association, I do feel that we ought to designate some member of this Association who will attend the meeting to be held in Washington, and permit me to say that I do wish all the members of the Association were members of the American Bar Association. It is a great institution and it is made up of the leading lawyers of the country. I do feel that the Association ought to take some action and select some one member of the Bar who will attend the sessions at Washington and recommend that he be made a member of the Supreme Council.

VICE PRESIDENT HUTCHINSON: It might be well to ascertain at this time who are planning on attending the American Bar Association meeting at Washington. Any one in the room who is planning to attend?

JUDGE BRONSON: I have been a member of the National Council on Uniform State Laws for a number of years and generally attend the sessions of the conference with about three absences over a period of about 12 or 15 years. I plan to attend this year. You all know this conference on Uniform State Laws precedes the meeting of the American Bar Association, the last day of the conference being usually the first day of the American Bar Association meeting. I plan to attend the meeting this year as a member of the National Conference of Commissioners on Uniform State Laws, and of course, we are always interested to see as many North Dakotans attend the meeting of the American Bar Association as possible. If any one wants to go, it will be very pleasing to me. I have talked to Mr. Young and he may be there, I don't know. He may have a meeting of the Federal Court on perhaps during the period of time that he might plan on going, so it might make it difficult for him this year to go.

MR. ELLSWORTH: I am well acquainted with Judge Bronson's splendid attendance upon the meetings of the American Bar Association. He is better acquainted possibly than any of us with the procedure and I cannot think of a representative of this Association who could more fittingly represent it in the American Bar Association than Judge Bronson, so I move that we authorize him to represent the Association at that meeting.

MR. HILDRETH: Second the motion.

VICE PRESIDENT HUTCHINSON: It has been moved and seconded that Judge Bronson represent this State Association at the meeting of the American Bar Association. All those in favor, signify by the usual sign; opposed.

MR. ADAMS: This Association is entitled to, I believe, three delegates in the section of State Association delegates or Associations' meeting, and I think we ought to authorize Judge Bronson, Mr. Murphy and who else may go to represent this Association in the section of Bar delegates, Bar Association delegates. I shall move that Mr. Bronson and Mr. Murphy and whoever else may go be our delegates in that section.

VICE PRESIDENT HUTCHINSON: Perhaps your motion, Mr. Adams, might include that the incoming President might designate who ever attends, or who ever is selected, to be the representatives of the Bar, that might be in order.

MR. ADAMS: Yes, that is the practice in the past. I don't want to change it.

VICE PRESIDENT HUTCHINSON: I don't know whether it is or not. I was just suggesting that if those who do intend to attend, will get in touch with the incoming President of the Bar, why that could be arranged. All those in favor of this motion signify by the usual sign; opposed; carried.

Is the Resolutions Committee ready to report? It might be a little early, but I thought perhaps we might be able to take care of that report at this time.

I stated this morning that the election of officers would be taken up as a special order of business at two o'clock and I have two minutes

to two now, so I think we can take up the election of officers at this time. I am going to ask Mr. Halvorson, who is a member of the Executive Committee, to take the chair during this period.

MR. HALVORSON: The order of business calls for the election of officers for the ensuing year. There are three officers to be elected, President, Vice President, and Secretary-treasurer. The chair at this time will entertain nominations for the office of President of the North Dakota Bar Association. These nominations are made from the floor.

MR. GRAHAM: I believe the custom has been in the past to advance the Vice President, and such being the case, it gives me great pleasure to place in nomination Judge William H. Hutchinson, of LaMoure, who has been Vice President during the past year.

MR. WARTNER: I would like to make an amendment to Judge Graham's motion. I move that the rules be suspended and we nominate Judge Hutchinson by acclamation. (Several seconds to motion.)

MR. HALVORSON: Is there any further question before you vote on the motion to suspend the rules and have the Secretary cast the entire vote of the Association for Judge Hutchinson for President of the North Dakota Bar Association for the ensuing year? Are you ready for the question? All those in favor, will rise.

SECRETARY WENZEL: The ballot is cast.

CHAIRMAN HALVORSON: The ballot is cast unanimously by the Secretary and Judge Hutchinson is declared elected as President of the North Dakota Bar Association for the ensuing year. The next order of business is the election of Vice President.

MR. STUTSMAN: Mr. Chairman, a year ago I called attention to the fact that the territory belonging to the State of North Dakota west of the Missouri River was not very well represented and pursuant to suggestion made at that time, I am going to nominate as candidate for Vice President of this Association one of our outstanding attorneys west of the River, Jim Cain, of Dickinson, whom I recommend to the Association for Vice President for the ensuing year. I nominate him for that position.

MR. MACKOFF: As fellow townsman of Mr. Cain, I would like to second the nomination, not only on the ground we are entitled to representation west of the River, that in itself is reason enough, it is quite a number of years since we have had a representative from Dickinson and west of the River generally, but on the further ground he is a most estimable gentleman, an able lawyer, who has practiced 25 years, I believe, a man with the respect and admiration of not only the Bar in our section of the State, but of all the people there, and I am sure also of all the members of the Bar over the State, who are acquainted with him. It is my pleasure to second the nomination of my fellow townsman.

JUDGE GRIMSON: I move that nominations be closed, and the Secretary instructed to cast the unanimous ballot for Mr. Cain as Vice President.

MR. JACOBSON: Second the motion.

CHAIRMAN HALVORSON: You have heard the motion; is there any discussion? If not, all those in favor of the motion signify by saying aye; contrary; the ayes have it and the Secretary is instructed to cast the unanimous ballot of the Association for Senator Cain for Vice President of the Bar Association.

SECRETARY WENZEL: It is cast.

CHAIRMAN HALVORSON: The next office is the office of Secretary-treasurer. The chair will entertain nominations for the office of Secretary-treasurer of the Association.

MR. REMINGTON: I desire to place in nomination the name of a man who has served this Association and members well, who has conceived that this office is not merely a record-keeping affair, not merely an accessory to the district machinery, a man who has conceived that he was there in the interests of the attorneys of the State, and I take great pleasure in placing before this convention in nomination for the office of Seceretary-treasurer, the man who now holds that office and who has served us well in years past. (Several seconds to the nomination.)

MR. ELLSWORTH: Mr. President, I wish to place in nomination for this very important office a man who is most abundantly qualified by experience, who is a lawyer of considerable eminence and rather wide practice, a man of wide acquaintance and who is well known, I think, to practically of the members here of this Association, a man who is not only thoroughly fitted to transact the business of this office, a man who is not only a fine officer, but a thorough gentleman, and one who will be satisfactory, I think, to the members of the entire Association. I nominate W. F. Burnett.

MR. HILDRETH: Mr. President, and gentlemen of the Association: Having been a member of the Association a good many years, having known Mr. Burnett a good many years—I knew him when he was in the service of his country, he was the youngest first sergeant of his company that was in the old regiment, and I remember with what great interest he took in his company and at roll call he was so familiar with the name of every one of the 81 members of his company, that he never referred to a roll call, but called them off by name. He came back from the service without any blemishes on his record, and with his discharge endorsed in the highest words that can be placed there by the War Department, "service honest and character excellent," he went to the University at Ann Arbor and took a course in the law, and he has been in the Bar a good many years. He is a gentleman in every sense of the word, a splendid lawyer, and one in whom I think I can safely say without contradiction, has the confidence and respect of every lawyer who knows him, and I know of no man in the Bar that can fill that position with greater fidelity to the trust than Mr. Burnett and therefore it is with pleasure that I second his nomination for this important office.

The nomination of R. E. Wenzel was seconded by Past Presidents F. J. Traynor and A. M. Kvello, also by H. G. Owen.

MR. BANGERT: I move you that the nominations be closed.

MR. NILLES: Second the motion.

CHAIRMAN HALVORSON: You have heard the motion and second; all those in favor say aye; opposed; it is carried. We have then, gentlemen, two nominations before you. I say frankly I have not read the by-laws but I presume the election is by ballot.

MR. ELLSWORTH: I move you that the election be had by ballot and that the candidate here receiving a majority of the votes cast be declared the Secretary.

CHAIRMAN HALVORSON: The chair will rule that is the procedure. I think I will appoint three tellers. Is that the usual procedure? I will appoint Lyle Johnson, Mr. Zuger and Francis Murphy as tellers.

MR. PALDA: I presume that majority rule was invoked because they all knew you were a Democrat.

MR. ZUGER: Mr. Chairman, the results of the ballot are as follows: Wenzel, 74; Burnett, 37; Fuller, 1.

CHAIRMAN HALVORSON: Dick Wenzel having received the majority of votes cast is declared Secretary-treasurer for the ensuing year.

Mr. President, I will turn this gavel over to you.

PRESIDENT HUTCHINSON: Those of you who attended the meeting last night know that I have not had time to get a speech ready, and even if I had had time, I would not have dared to have two bad checks out at the time, so I have no speech for you at this time. I appreciate the honor which you have rendered me by having enough confidence in me to ask me to preside for next year. I assure you that I will give the Association the best service there is within my power. I hope that I will have the entire cooperation of the Bar, and if we can just have another meeting like this meeting has been my best wishes will be fulfilled.

Now, members of the Bar and ladies and visitors, we have a special treat this afternoon. Most of you know Bill Green. He states that he is going to give an address that is not for publication; in fact he has not permitted us to publish it in the report. If that had been announced before, I am sure we would not have had a room large enough to have held the audience that would have been here to listen to it, but Mr. Green is here and without any further words, we will hear him.

(Address by Wm. C. Green.)

Now, ladies and gentlemen, just don't leave for a moment. I want to tell you Judge Johnson is here and has promised to greet us for just a moment. I am sure we all appreciate this talk, Billie Green, you have made. You have given us a certain view of Washington, and Washington celebrities, that perhaps we did not have before, and it has been very enjoyable to us all.

Ladies and gentlemen, I am happy at this time to have the privilege of introducing Judge Johnson of Chicago. We know him out here as the man who prosecuted Al Capone. He is the speaker for this evening, but he will say a word of greeting to you at this time.

JUDGE JOHNSON: Mr. Chairman and members of the North Dakota State Bar Association: It is very pleasant to come here and have an opportunity to meet members of the Bar of this State. The Chair introduced me as Judge Johnson. I am so new as a judge that when they say, "Hello, Judge," I still look over my shoulders to find where he is. I think that new responsibilities are coming to all of us as members of the Bar by reason of a situation which has come upon us in these latter years. I find in our own State and adjoining States, States with which I am familiar, that the finest talent of the Bar has been attracted into fields of industry and commerce where the rewards are much larger, and that there has not been on the part of the Bar, particularly in our State, the interest that there formerly was in the practice and in government, and I think that a change is coming, and I think that is the most wholesome thing that can happen for our country, for if we, as members of the Bar, come back to the old time place that we formerly occupied, both in shaping government, and in government, it will be well for our country.

As you know I am scheduled to speak this evening, and if I were to extend my remarks now, I might be in the position that a little girl suggested when she came from the city to the country. She, for the first time in her life, watched the farmer milk the cow. The next morning, the farmer came in very much perturbed and said somebody had stolen the cow. The little girl attempted to console him, so piped up and said, "Well, she couldn't go very far because I saw you drain her crank case last night."

PRESIDENT HUTCHINSON: We are glad to have Judge Johnson greet this audience at this time. I am sure there will be a large attendance for the evening. The public is cordially invited. There will be a special section, I am told, set aside for the attorneys and their wives so you will be assured of a seat, and I hope as many of you as can possibly stay for this evening will avail yourself of the opportunity of hearing Judge Johnson.

The only business of the Association which is left is the business known as the Executive Session. We will have to excuse all those who are not members of the Association. We will take a ten-minute recess.

Members of the Bar, I think we probably better get down to the balance of our business. We will take up the committee report on Ethics and Internal Affairs. Mr. Secretary, have you a report?

SECRETARY WENZEL: It is written, Mr. President. I move the adoption of the report.

INTERNAL AFFAIRS

This year saw fewer complaints registered against attorneys in North Dakota than ever. Unless, therefore, there has been a decided increase in the number of complaints registered directly with the Bar Board, North Dakota has reason to feel proud of the reputation of the attorneys engaged in practice. They have withstood the severe tests of this "modified prosperity" period, and have, as a class, handled the business of their clients promptly and efficiently.

There have, as usual, been a number of justified complaints. Most of these deal with failures to attend to business promptly or

failure to make proper report. In three of the cases forwarding attorneys or companies were unable to obtain reports, in two advance costs were paid and nothing was done over a period of time, and in two items of costs were paid by client and then not delivered to the parties rendering the service. Three other cases were of such serious character as to justify the Committee in asking that complaint be made directly to the Bar Board.

So far as the Committee is able to ascertain, all matters referred to it or handled by the Executive Secretary, have been adjusted to the satisfaction of the parties making complaint.

W. E. Hoopes
N. J. Bothne
L. T. Sproul
R. E. Wenzel.

PRESIDENT HUTCHINSON: It is moved that this report be adopted. (Several seconds to motion.) All those in favor of this motion, signify by the usual sign; opposed; it is carried, and the report is adopted and will be printed. We will take up the Fee Schedule report.

SECRETARY WENZEL: You will find that in the printed pamphlet, on Page 26. Fred Traynor is the Chairman and he asked me to present to the Association, in the event of his absence, the recommendations in the report. The principal matter recommended in the report is the adoption of the method adopted in the Lake Region by the Lake Region Bar Association. There are one or two other recommendations with regard to a change in the amount of charges to be made for collections. You will find that in the first paragraph at the top of Page 27, the change in the fee schedule to be made will make it correspond with the charges proposed and recommended and adopted by the Commercial Law League of America. It provides for a charge of 15% instead of 10% for the first $500, 10% instead of 8% for the next $500, and 5% instead of 4% for amounts over $1000. In addition to that, as I said, the Committee recommends the policy adopted by the Lake Region Bar Association, which is to require a filing and reporting fee. Mr. Traynor handed me several of these pamphlets and the provision, which is in the form of a notice, reads as follows, omitting the formal part of the beginning: (reading) * * * * In other words, no claim is to be accepted by the attorney unless a filing fee of one dollar accompanies the claim. There is also another rule which has been adopted by the Lake Region and offered as an amendment to the fee schedule; that is a filing fee of 50¢ for reports. On behalf of the Chairman of the Committee, Mr. President, I move the adoption of the report.

MR. ELLSWORTH: If I succeed in getting the floor, I will second the motion. I wish to most heartily concur in that recommendation of the Committee, that the schedule of fees adopted by this Association be printed and furnished to each member of the Association, and that he be urged to conform to this schedule of fees to the very best of his ability and in good faith, and under the present economic condition, there is greater stress laid upon lawyers and greater temptation to violate the schedule of fees than at any other time. I think it is a good time to call it to the attention of the Association more strongly than it has ever been done before. I second the motion.

SCHEDULE OF FEES

Your Committee on the Maintenance of the Schedule of Fees reports as follows:

At the meeting of this Association held in 1924 a schedule of fees for the guidance of the members of this Association was duly adopted. It will be found at pages 101 to 106 of the annual report of the proceedings of this Association for that year.

So far as your committee is informed, the schedule of fees at that time adopted has been in no manner since changed and still remains in full force and effect. In the opinion of your Committee, that schedule of fees requires no changes at this time, unless it be deemed advisable to change the schedule of collection charges for commercial collections to provide that the percentage on the excess of $300.00 to $1,000.00 be 10% rather than 8%, and on excess over $1,000.00 5% rather than 4% as provided in the schedule adopted in 1924, so as to conform to the rates in force in the Commercial Law League of America at this time.

At the regular meeting of the members of the Lake Region Bar Association of North Dakota held at Langdon on the 10th day of October, 1931, at which some 60 members of the Association were present, a resolution was unanimously adopted that a filing fee of $1.00 for each claim placed with a member of the Association for collection shall be paid by the party filing the claim at the time of the filing thereof and that such fee shall neither be contingent or a part of the collection fee to be charged if the claim is collected. If the forwarder of the claim desires the attorney receiving the claim to file it for collection, such forwarder should remit $1.00, otherwise the forwarder should be requested to remit postage to cover the return of the claim.

At the last regular meeting of the Lake Region Bar Association held at Devils Lake in June, 1932, the members of the Association were asked to relate their experience with reference to the working out of this adopted plan. The reports were all very favorable, particularly was it reported that this system has discouraged the sending of utterly worthless claims by forwarders to the attorneys for collection and has brought about the receipt by the attorneys in the Lake Region District of a better class of collections.

It is well known by every attorney in the State that many of these worthless claims are going the rounds of the attorneys and that a great deal of effort and expense is wasted by the attorneys of the State upon such claims. If the forwarder or the owner of the claim does not have sufficient faith in it to be willing to invest at least $1.00 therein in an attempt to make collection, then the claim is usually not of any value.

Your Committee, therefore, recommends that the State Bar Association of North Dakota adopt a resolution providing for such filing fee of $1.00 on collection claims similar to that adopted by the Lake Region Bar Association.

Your Committee further recommends that copies of the schedule of fees of this Association sufficient to furnish at least one copy to

each and every attorney in the State be printed and distributed by the Secretary following this convention and that the members of this Association be urged to conform to this schedule of fees to the very best of their ability and in good faith.

FRED J. TRAYNOR
TORGER SINNESS
S. D. WHEAT.

PRESIDENT HUTCHINSON: Any further remarks? If not, all those in favor of the adoption of the report signify by the usual sign; opposed; it is carried.

MR. HALVORSON: I just wanted to make a suggestion, that the State Bar should have the slips printed and officially signed and furnish those in blocks. I was wondering if that could be arranged, to get a uniform slip.

PRESIDENT HUTCHINSON: I will ask the Secretary to make a note of that and to take it up with the Executive Committee at the first meeting we have.

MR. ELLSWORTH: I rise for a point of information. Would it be proper at this time to make an appropriation for the printing of these schedules, and of the slips and send it to attorneys, or should that be referred to the Executive Committee?

PRESIDENT HUTCHINSON: Well, I presume it could be referred to the Executive Committee. They may know what funds are available, etc. I might state that in the Third District we took up this proposition and it was passed there by the Third District before this meeting and the Third District printed those slips and gave them to attorneys in that District already.

SECRETARY WENZEL: You are referring to these slips?

PRESIDENT HUTCHINSON: Yes, so I didn't know but perhaps the other Districts have done the same thing.

MR. HALVORSON: The same resolution has been passed but I don't think any other district has printed them. Now that the State Bar has approved them, I think it would be better to have it under the auspices of the State Bar, to be put in block form, to be sent to all the forwarding offices.

MR. ELLSWORTH: I move you, Mr. President, that an order be made that the fee schedule be printed and a sufficient number of the slips to supply the attorneys be also printed at the expense of the Association and distributed by the Secretary to the members of the Association.

MR. LACY: Second the motion.

PRESIDENT HUTCHINSON: Now do we all understand the motion, which is to include in this schedule the complete fee schedule as now adopted? All those in favor signify by the usual voting sign aye; opposed; carried.

SCHEDULE OF FEES

U. S. Circuit Court of Appeals—

Appearance and brief, at least	$150.00
Per diem, at least	100.00

U. S. District Court—

Appearance and brief, at least	100.00
Per diem, at least	50.00

In Bankruptcy Matters—

Where no assets above exemption and no contest, at least	100.00
Where contest, or where there are assets above exemption (fee fixed by court)	150.00
Filing claim with reference. If collection is made, add collection fee.	
Appearance before referee in support of petition, motion or rule, and order thereon, and the time spent in preparation, whether the matter be contested or uncontested, same fee as near as may be as District Court matters.	
Appearance before referee at creditors' meeting by direction of client, and actively participating in the proceedings, same per diem as in District Court.	

State Courts—

Supreme Court:	
Appearance and brief, at least	150.00
District Court:	
Retainer, at least	50.00
Trial, per diem, at least	50.00
Motion for new trial, at least	50.00
All cases of foreclosure of real estate mortgages by advertisement, a minimum of $25, plus one-half the statutory fee.	
Foreclosures by action, a minimum of	50.00
Foreclosure of chattel mortgage and statutory liens on personal property at least	25.00
Foreclosure of vendor's and mechanic's lien, same fees as in foreclosure cases based upon the fair value of the matter in controversy, in no case less than	50.00
Provisional remedies, except garnishment	50.00
Garnishment, at least	15.00
Actions to quiet title, at least	100.00
Divorce or separate maintenance, default, at least	100.00
Divorce or separate maintenance, with contests, at least	150.00
Appeal from Justice Court, at least	25.00
Obtaining judgment by default, at least	25.00
Defense in case of felonies, in addition to per diem, at least	100.00
Defense in cases of Misdemeanors, in addition to per diem:	
In Justice Court, at least	25.00
In District Court, at least	50.00

County Courts of Increased Jurisdiction—

The fees specified for services in the District Court shall apply to the County Court as far as applicable.

Adoption proceedings, at least 50.00

Probate Court—

Where estate is simple and under $3,000, entire proceedings, at least 100.00

Fees in the Probate Court for trial shall be the same as it is provided for the District Court, so far as the same are applicable.

Estates over $3,000 with no complications, amount at least equal to statutory administrator's fees, but not less than 150.00

Special Proceedings—

Quo Warranto, Mandamus or Writ of Prohibition, at least 100.00

Habeas Corpus, at least 100.00

Certiorari (only in lower courts), at least 100.00

Bastardy Proceedings, as special attorney for State, no defense, at least 100.00

Bastardy Proceedings, defending, at least 100.00

Justice Courts—

Trial in City, Village or Township where attorney resides or has an office, in civil cases, at least 15.00

Outside of City, Village or Township in which the attorney resides or has an office, add to each of above..... 25.00

Legal Services Before Boards, Committees, Etc.

Appearance and argument before City Council or any of its committees, or before any board or officer of the City, at least 25.00

Same before board of Supervisors, or County Commissioners, or before any County Board, Committee or Officer, per day, at least 25.00

Same before any Board, Department, or Officer, of the State, per day, at least 50.00

In addition to the above, in matters before the Board of Review, 10% of the net amount saved in taxes by reason of reduction in assessment.

Miscellaneous—

Drawing will or codicil in its simplest form, at least..... 10.00

Drawing deed and taking acknowledgment, at least 5.00

Drawing mortgages and notes, at least 5.00

Drawing leases, articles of agreement, or contract for deed (in duplicate), at least 5.00

Legal advice without consultation of authorities 3.00

Time necessarily devoted to briefing questions of law or fact as the basis of legal advice or opinions, per diem, at least 35.00

Examining abstracts of title, at least 10.00

Examining of original records, additional charge for time consumed.	
Attendance taking deposition inside county, at least	15.00
Same, outside county, per day, at least	50.00
Preparing articles of incorporation and securing charter, at least	50.00
Drawing by-laws and completing organization, at least	50.00
Writing letters (in addition to consultation or suit fees), at least Each	.50

SCHEDULE OF COLLECTION CHARGES

Commercial Collections—

15% on first $500.00.

10% on excess to $1,000.00.

5% on excess of $1,000.00.

Minimum fee, $5.00.

Claims under $10.00, 50%.

Minimum suit fee, $7.50, plus commission.

To the foregoing percentages should be added the proper fee for legal services in the courts, if suit be brought.

Claims collected by repeated duns, demands or notices, or in installments, should be made a matter of contract at not less than the above rates.

On all business forwarded by one attorney to another, one-third of the fee to the forwarder and two-thirds to receiver.

No division of fees should be made without the knowledge of the client who pays them.

On collections other than commercial ordinarily a higher rate of commission should be charged.

NOTE

A filing fee of $1.00 shall be paid for each claim placed in the hands of an attorney for collection. A fee of 50¢ shall be paid for each credit report, made without referring to the records.

PRESIDENT HUTCHINSON: The next report is the State Bar Board report.

MR. ADAMS: While the Bar Board is neither under or part of the State Association, the close relationship which has heretofore existed is very much appreciated by the members. Therefore for the past six years we have given each year not only a financial report, but a general report, and we conform to that this practice this year.

ANNUAL REPORT STATE BAR BOARD—1932

The State Bar Board submits to the State Bar Association a financial report for the fiscal year ending June 30, 1932, and a brief resume of its other proceedings.

The financial report for the year is as follows:

Balance in Bar Board fund, June 30, 1931, as per records of State Auditor		$ 4,870.68
Collections between June 30, 1931, and June 30, 1932, as evidenced by Treasurer's receipts:		
Licenses	$5,430.00	
Examination Fees	540.00	
Total		$ 5,970.00
Grand Total		$10,840.68
Disbursements		$ 5,604.34
Balance, June 30, 1932, as per Auditor's records		$ 5,236.34

Distribution of Disbursements

State Bar Association	$ 2,705.00
Salary and Expenses, Secretary	342.84
Per Diems and Expenses, Members of Bar Board	1,157.24
Expenses in Disbarment Proceedings	817.39
Postage	51.16
Printing	75.68
Supplies	26.38
Clerk Hire	247.50
Miscellaneous	95.70
Furniture and Fixtures	85.45
Total	$ 5,604.34

During the year, at the one examination held in July, 1932, 29 applicants were passed and another passed but has not as yet been sworn in, the Board feeling obliged, in this case, to investigate more carefully the moral qualifications of the applicant.

Two changes in the rules of the Board have been made which may interest practitioners: 1st, but one examination a year is now given where two were formerly given. The Board felt that the expense necessary did not warrant the two examinations, especially since applicants for the winter examination were few and far between; 2nd, a rule requiring all applicants to have been for at least 90 days before date of application actual bona fide residents and having their domicile within the State of North Dakota, providing that students registered and attending the Law School at Grand Forks one full school year immediately preceding his application shall be construed to be a resident of the State within the rule. A similar rule prevails in most States.

Seventeen disciplinary matters have been before the Board during the year, and that the Bar may know the nature of these matters they are here enumerated:

Failure to remit collections	6
Failure to remit settlements	2
Practicing without paying license	2
Practicing after disbarment	1
Excessive fees	1
Failure to abide by agreement with opposing counsel	1
Employment by corporation and payment to corporation of fees earned	2
Accepting retainer and failing to act	1
Permitting use of name by collection agency doing law business	1

Respectfully submitted,

S. D. ADAMS
C. L. YOUNG
C. J. MURPHY.

PRESIDENT HUTCHINSON: Perhaps a motion to have this report printed in our proceedings would be in order.

MR. LACY: I move to adopt the report and that same be printed in our annual report.

MR. HILDRETH: Second the motion.

PRESIDENT HUTCHINSON: All those in favor of this motion, may signify by the usual sign; opposed; it is carried.

We will now take up the report on the Unauthorized Practice of Law.

UNAUTHORIZED PRACTICE OF THE LAW

This committee was appointed pursuant to the action of this association at its last annual meeting to select from those corporations or individuals engaged in the unauthorized practice of the law those offenders whose prosecution in the judgment of the committee shall serve most effectively to end such practice, and, "if deemed advisable," to commence appropriate proceedings to enjoin further offenses.

The president in his letter of instructions to the several members of the committee stated that the executive committee was able to appropriate only $100.00 for use in meeting the expenses of the committee, that the members of the committee doubtless would be willing to proceed with their work if their actual expenses were paid, and would await provision for compensation for their services as attorneys in any action that they might deem it advisable to bring; that an attempt would be made to secure from the attorney general an opinion as to the authority of the bar board to permit the use of sufficient of the funds in its hands to pay the expense incident to maintaining an action, including attorneys' fees for the members of the committee; and that if such funds are not available it would be necessary to make a special levy upon the members of the association to meet the expenses of litigation. Later the attorney general rendered an opinion that the fund administered by the

bar board cannot be used by the board to finance the work of this committee.

Early in October the committee held its first meeting and prepared a questionnaire which was sent out to enable members of the bar to furnish information relating to unauthorized practice of the law of any nature. Later another meeting was held to consider the information received. Since the committee, it was felt, had been created primarily to deal with banks and trust companies, which had been reported to the association to be the principal offenders engaged in practicing law illegally, it was deemed our function to center our attention upon such corporations. A sub-committee, consisting of Judge Ellsworth and Mr. Knauf, therefore was designated to investigate those institutions complained against to determine if suits against them were warranted. This committee completed its work in February and reported in writing to the chairman that there are at least two banks and trust companies having their principal places of business in the state which advertise extensively for business that in many of its features may be regarded as the practice of law, and that both are soliciting, undertaking to transact, and actually transacting, business of this character.

The sub-committee reported further that its members already had devoted several days to the work of the committee away from home, that they had received no compensation for the time thus spent, and that in view of "the present economic situation it is obviously impractical and undesirable to commence suits, the bringing and maintenance of which will involve a very considerable expenditure of time and money." This word was conveyed to the president, but thus far the financial problem remains unsolved, and therefore no suits have been commenced.

The committee does not wish its position misunderstood. In thus deferring action there is no thought of being mercenary, but it must be borne in mind that any litigation instituted presumably will be bitterly contested and will call for painstaking and time-consuming service of a genuinely professional nature on the part of those charged with its prosecution, and a majority of the members feel that they are so situated that they cannot engage gratuitously in a task of such magnitude and responsibility.

Though no suits have been commenced, substantial progress has been made, for we now have on hand definite information as to all phases of the unlawful practice of the law prevalent in the state and are in position to deal with specific offenders. At the beginning of the year there was uncertainty as to the extent of the evil. It is settled beyond cavil now that there is considerable practice by unlicensed individuals and corporations other than banks and trust companies. So it would appear that to deal adequately with the situation the association should enlarge the scope of its efforts and engage in an aggressive and comprehensive campaign to end the offending practices on the part of all engaging therein.

The year also has made available for the guidance of the committee a rapidly increasing variety of experience and information relating to the subject. Nearly all of the bar associations in the country are vigilantly engaged in a warfare to eradicate the evil. Reports of the means used and the results attained by them are most suggestive and helpful. A particularly exhaustive study of the problem and the methods used in

dealing with it was made by the committee on Unauthorized Practice of the Law of the American Bar Association, which submitted its conclusions to that association at its 1931 meeting. It was urged that state and local bar associations endeavor to persuade laymen and lay organizations guilty of unlawful practices to change these practices, because much has been accomplished by means of agreements between, and joint declarations by, fiduciaries and other lay organizations and bar assocations, either state or local, and because much more can be accomplished by the same means. Agreements obviously will not eliminate all unlawful practices, and where they fail, appropriate proceedings should be invoked against the persisting offenders. Since other states appear to be making at least measurable progress against the evil as a result of discussions and negotiations, this association, in view of the inadequate funds at its disposal, may well exhaust means so simple and inexpensive before resorting to the courts to coerce those who refuse to yield to reason.

If we are to achieve the best results there should be a clear understanding as to the precise nature of our objective. There appears now to be a misconception on the part of many as to the reasons for this general movement. The unauthorized practice of the law is not objectionable because it takes business away from lawyers. The evil in it consists in the dangers to the personal and property rights of the public which lurk in it and to its interference with and frequent thwarting of the proper administration of justice. Character and integrity and professional training are prerequisites to the right to enter the profession of law because experience has demonstrated that the interests of the public are best served when work involving the application of legal principles is performed by those technically qualified to do it rather than by laymen. If unlicensed corporations and individuals are permitted indiscriminately to render services long classed as professional, the practice of law will be commercialized, the standards of our calling which are the growth of centuries will be undetermined, and the personal and confidential relationship of attorney and client will become a thing of the past. The unlawful practices we have been considering therefore should be suppressed because the proper administration of justice and the preservation of the integrity of the profession demand that they be suppressed.

Some no doubt feel that much has been said about this subject and little achieved. That may be true, but so much difficulty is involved in dealing with it that other associations too have found and are finding it necessary to engage in extensive investigation and discussion before taking action. We believe, however, that finally definite steps looking to the desired result can be taken and to this end we make the following recommendations:

1. That the committee be continued for another year.

2. That the scope of its work be so enlarged that it may be understood to have the authority to deal with the general subject of the unauthorized practice of the law in all of its varied aspects.

3. That it be directed to enter into discussions and negotiations with individuals, corporations or groups where deemed advisable so that unlawful practices may be stopped by agreement so far as possible, subject to the limitation that no written agreement shall be entered into

in the name of the association with any bankers' or fiduciaries' association until the form thereof has been approved by this association.

4. That the committee be instructed that if those found to engage in the objectionable practices refuse to desist therefrom upon request or by agreement appropriate proceedings should be instituted to put an end thereto.

Respectfully submitted:

C. L. YOUNG,
Chairman
S. E. ELLSWORTH.

MR. YOUNG: Now there are certain matters which really fall outside the scope of the work of this committee concerning which I wish the Association should be informed before action is taken upon the recommendations. I just want to state those matters briefly. In the first place, the problem of dealing with the unauthorized practice of law is simplified very materially where attorneys are associated with the offending corporations or individuals. To show what I mean, I will state that when this committee sent out its questionnaire last October, we received complaints to the effect that there were two attorneys in the state who were employed by corporations, which were really engaging in the practice of law under contracts which brought them squarely within the condemnation of the well known Minnesota case which most of you know about; that is the attorneys were employed by the corporation to handle the legal affairs of the corporation. In addition to doing legal work for the corporation they also performed legal services for others. Fees were collected for those services and paid into the treasury of the corporation instead of to the attorneys who were performing the services. It is that sort of practice which was before the court in the Otterness case and in engaging in it, Mr. Otterness was disbarred. The Bar Board immediately investigated those complaints. We found that in one case the complaint was well founded; in the other case, it was not. In the latter case, the young attorney did perform the legal services for his corporation and was paid salary for doing it, but under his contract, if he performed legal services for any one outside of the corporation, fees for those services were paid to him personally and retained by him so he was not engaging nor was the corporation engaging unlawfully in the practice of law. In the first case the young attorney, realizing his predicament, the relationship between him and client was severed and he is engaged in the practice of law independently. We might state that same thing happened in other cases, that is the corporation found business so unsatisfactory that it seemed no longer to be profitable to have an attorney on its pay roll, and the attorney employed by them also severed his connections and established independent practice.

There was one other complaint as to improper relationship between an attorney and one of the collection agencies of the state. The Bar Board investigated that and put an end to the unlawful practice. My point is this, that where an attorney is associated with a corporation that is engaging in what is generally classed as the unlawful or unauthorized practice of law, if a complaint is filed against the attorney we have the machinery to dispose of the situation at once. The Bar Board has jurisdiction and can act promptly and prosecute if that be found necessary.

Now there is the other matter that was mentioned in the report, the matter of making agreements or using the agreement method of dealing with the situtaion. That is strongly recommended by the American Bar Association and during the year a great many state associations have reported progress by the use of covenants and agreements, and you will find if you consult the files of various law journals, under that heading, that the subject is one being given a great deal of space. When I found that it would be impossible to proceed with the litigation which was contemplated a year ago, when this subject was before the Association for discussion, I took it upon myself to make a study of processes, and by doing considerable writing, I succeeded in getting copies of agreements which have been used in other jurisdictions. I further took it upon myself to select an agreement which seemed to me to be most comprehensive and as stringent as any one could want. It occurred to me to send them to the Secretary of the Bankers Association of this state to see if now, in the light of the discussion of the subject which we had in the state, there might be a willingness on the part of the officers of the Association, and its individual members, to entertain the proposal. I might say this agreement is almost identical with the requirements in the declaration of principle adopted by the State Bar Associations of Iowa and State Bankers Association of that state. I did not know the re-action of the Bankers Association until after arriving at this meeting, and I thought it might be well to get that reaction so you would have it when this report was acted on. I now have the word of the Secretary of the Bankers Association that the Executive Committee has indicated its readiness at once to appoint a committee to consider this subject with a committee of this organization. The terms of the agreement of course, have not been considered in detail by that committee but it seemed to me from the canvas which had been made that in all probability they would be ready to accept its terms. Further than that some of those who had been accused of engaging in the improper practice have indicated a readiness—they have done this before, but they have indicated a willingness to desist from the practice objectionable to this association, and therefore to enter into an agreement. As I say, I had no authority to do this, but of course the Secretary understands this and the executive committee understands this, that I had no authority to submit that to them. I did it so they might know what is being done in other jurisdictions, and so they will understand what we are talking about when we talk about the unauthorized practice of law. It occurs to me it should be possible to make headway by way of agreement without litigation.

I might say in other jurisdictions, local associations have been particularly successful in getting such agreements. It occurred to me that if or when it might be deemed imperative to start proceedings in Cass County, that Association could very promptly take action. Or an agreement could be entered into if they saw fit. The same could be done by the District Associations in territory not covered by a local organization. The State Association will of course, then have to take action, but as we meet only once a year, our action would, necessarily, be deferred.

There is just one other matter which I wish to cover and that is this. We have reported here several cases where prosecution probably will be necessary. There are always people who are willing to break agreements, if they are made, and people refuse to enter into agree-

ments. The thought which would arise naturally is this—if the Association was not in a position to prosecute an action this year, on account of the lack of funds, how can it be any better off next year. My thought with reference to that is this,—if an action is found to be necessary, it may be, and I believe it is true, that there are members of the Association who would be willing to render the necessary professional services without charge. When our committee met, I stated to the other members of the committee, that so far as I personally was concerned, I would be willing to render any services required without compensation. I still feel that way about it, and I think possibly others do, too.

Another thing, it is now settled that an individual attorney may maintain an action to enjoin the unauthorized practice of law either by a corporation or individual. The last question was just settled by the Supreme Court of Washington a few days ago. It was an action wherein an attorney of that state instituted an action in his own name, to enjoin an individual who was doing some of these little things like drawing wills, deeds, and so on. There the Supreme Court of that state sustained his action and held that the injunction should be granted.

I think that is all the explaining there is to do. The explanation of the case is longer than the report. I move the adoption of the report, Mr. President.

MR. BANGERT: Will you briefly give us an outline of the whole agreement with the Associations?

MR. YOUNG: I haven't it here.

MR. BANGERT: What would we give them in return for them ceasing engaging in our business, what would we give them in return for it.

MR. YOUNG: They are the ones who are doing all the yielding. We don't give them anything under the agreement.

MR. BANGERT: Then it would be merely an agreement to cease.

MR. YOUNG: To stop.

MR. BANGERT: How do we propose to enforce it?

MR. YOUNG: If they do not live up to the agreement, then we resort to this litigation I was talking about, institute suit to enjoin them from engaging in the practice of law.

MR. BANGERT: That was my proposal to try to raise the dues into this association. May I ask a further question. You say you found two bank and trust companies who were engaged in the unlawful practice of law. What were they?

MR. YOUNG: A sub-committee reported on this and I assume their report was well founded and I assume they were very careful in their investigation—the First National Bank and Trust Company of this city and the Merchants National Bank and Trust Company of this city.

MR. LACEY: I second Mr. Young's motion.

MR. COVENTRY: If you please, Mr. President at this time, I would like to call to the attention of this body the action of the local bar of the Third Judicial District taken a short time ago. At that time

complaint was made that a certain person was practicing law without authorization. A committee was appointed consisting of Attorneys Coyne, Stockstad and myself and we were asked to investigate and report to this body the results of our investigation. With your permission and the permission of the body at this time, I would like to state what we found to be the facts down in the Third Judicial District, or what we believe to be the facts.

PRESIDENT HUTCHINSON: You may proceed.

MR. ADAMS: I thought the recommendation was that the committee appointed by the Third District should report to the committee of which Mr. Young was chairman, not to us in a full body.

PRESIDENT HUTCHINSON: I am not sure. I thought perhaps that it was the intent to report to the Committee on the Unauthorized Practice of Law.

MR. COVENTRY: Well my understanding, Mr. President, was that we were to report to this body as a whole.

PRESIDENT HUTCHINSON: Well I think I will permit you to make the report, Mr. Coventry.

At this point Mr. Coventry presented a statement of specific instances of unauthorized practice.

MR. YOUNG: It seems to me if the report of our committee is adopted, the situation Mr. Coventry presents there is taken care of automatically.

MR. BANGERT: I might say that I am an instigator of trouble. When I received the circular from the Bar Association asking me to report violations, I took it that it meant something, so the first time I was in Bismarck, I presented a copy of these receipts to Mr. Young and his committee. Mr. Young told me, and I think he will bear me out, that it was one of the most flagrant cases that had ever come to his attention and it would receive immediate attention. That was last November or December, almost a year or so ago. I talked with Mr. Young and I am taking his statements as one hundred per cent true, that the committee have not done anything, they haven't had any money to do business with. I would like at this time to make some arrangements, not requesting the committee to take some action, but instructing that committee to take some action or resign, and to raise some money with which they make take the action. If they should fail, or if this association isn't going to do anything, I am serving notice right now that I shall move that the illegal practice of law, the subject of the unauthorized practice of law, be forever barred from our program.

MR. SPALDING: In view of the fact that among the two institutions which have been named by this committee is one which I organized and founded forty years ago, and for which I have been general counsel during all that time, except when I was on the Bench, I want to ask the committee whether they have received any complaints regarding any other corporation located and doing business in the City of Fargo, and I do it with great hesitancy, but I feel it my duty to do so, in fairness to the two institutions named by the committee.

MR. YOUNG: I might say I had nothing to do with the investigation which was made prior to the last annual meeting. This year the

further investigation which was deemed necessary to make was referred to this sub-committee. So far as I know they have no complaints about other institutions except these two, but I think Judge Ellsworth will answer that question because he had charge of investigations both years. I haven't had any word of any other complaints.

MR. ELLSWORTH: Mr. President, in order that I might answer advisely, I would like to know which one of the institutions Judge Spalding represents.

MR. SPALDING: I represent The Merchants National Bank and Trust Company.

MR. ELLSWORTH: There was one other institution in Fargo which we investigated at about the same time. There were some complaints made about it but we were unable to discover any tangible evidence. I might say any evidence we might consider worthy of submission to the court of violation on the part of these institutions, those were the only banks or trust companies of which complaints were made.

MR. SPALDING: It might be of interest to the Association for me to give a very brief resume of what connection I had with this subject. When the First Judicial District Bar Association was organized, complaint was made in the meeting of the practice of law by corporations within the district, and the party who made the complaint alleged that we would bring positive proof of the violation of the law, regarding the practice of law, by such institutions. The result was that a committee was appointed to investigate the subject. After the committee was appointed to represent Cass County it immediately wrote every attorney in the county as to the instructions of the organization, and asked for information, if they had any, on the subject. One responded stating that unauthorized practice of law was being carried on by a certain individual. The party who made the complaint in the meeting never responded although I saw him repeatedly on the subject, that is, he never responded with any definite information. Others responded, but all to the effect that they knew of no such instances. Nothing was ever done further than to continue the committee, but in the meantime I have heard many rumors that another financial institution in this city, and the people in it are all friends of mine, is engaged in this practice.

This is a subject in which the public is greatly interested. I believe this bank employs a lawyer as an official on a salary, and that legal proceedings are conducted by that official on behalf of that institution. Now of course, I don't know personally about it, but I am telling you what I have heard. It is not known, I suppose, whether he charges a fee or who gets it if he does. This is immaterial. It is as worthy of investigation as are the two that have been mentioned, and no partiality should be shown, and I think none was intended.

MR. HILDRETH: Mr. President and gentlemen of the association: I don't think I have enjoyed myself so much in years as I have when such strong minded veterans of the bar as Judge Spalding reveals the truth, the whole truth, and nothing but the truth. Now this question of the unlawful practice of law has not been confined by any means to the State of North Dakota. The subject is before the American Bar Association, and last September at Atlantic City at a conference I heard many pleas for the different states of the Union to stand pat on this. There is a tendency on the part of corporation lawyers in this country

to gradually bring to such corporations all these avenues of business—writing wills, contracts and deeds, and therefore minimizing to a certain extent the influence of the lawyers in their community.

I want to say, Mr. President, we have a fine bar in this state; we have a fine bar here in Fargo. Some of the young men at this bar, I know, are having a struggle; in fact we have all had a struggle.

We have a noble profession, and yet corporate institutions are gradually boring into the activities of the lawyer. The old fat country lawyer that Judge Spalding knew in his day and I knew fifty years ago, is gone and gradually corporate life of the country is reaching out and putting its hands on every avenue of human existence.

I am very pleased at the splendid report made by Mr. Young and if conditions are existing as have been described, I will be willing to contribute to the extent that I can to have that man prosecuted. It is a rank injustice for a corporation, under the guise of setting a man up in the corner claiming to be a lawyer, to take this business. We have to take an oath; we are subject to discipline; a lawyer is an officer of the court; the Court can discipline him and punish him. What are you going to do with a large corporation which is constantly doing these things? You have to stand up for your rights. You young men sitting down here, you have a struggle ahead of you. Judge Spalding has been through it; my friend Billie Burnett has been through it; we fellows getting grey, we know what it is. If you young fellows do not stand up for these principles and ethics and the great principles of our profession, some of you will be starving for 15 or 20 years or more.

MR. ELLSWORTH: As a member of the committee, I would like to say a few words. I do not think this ought to be dragged out indefinitely. We are all getting more or less tired. I concurred in everything that was written in the written report that Mr. Young submitted here. I concur in it now and the statement he made after he concluded the reading of the report. He stated that he was not authorized by the committee to make the statement or the recommendation, and consequently there is no question of my concurrence there. This matter has been dragging on now for two years and more or less intermittently since I have been connected with this association. Nothing has been done to precipitate it. Two years ago there was an endeavor made by the legislative committee of this association in the Legislature to have a law passed prohibiting unlicensed persons from engaging in the practice of law. All of us know the fate of that bill that was introduced at that time. Shortly after that Mr. Traynor, then being President of this Association, apopinted a committee to investigate the unlicensed practice of law within the state and to make recommendations as to what, if anything, should be done to put a stop to it. I was a member of that committee; Mr. Young was also a member of the committee, but I do not remember he attended any of the meetings. I attended them all. It was discovered at that time that the State Bar Association of North Dakota might be described as one of the chief offenders. Perhaps the most of you who are present here remember the report that was made a year ago in the Association meeting at Jamestown. That report is spread upon the records of the Association so any one can read it that care to. At that time certain things were called to the attention of the association. That has not been brought up to date, among others. This action of the State Bar Association did cause to be issued here some years ago a sort

of circular to be posted upon the counters of its member banks throughout the state, which contained in one section the fees charged by the bank for drawing papers. Now one of the banks in Jamestown publicly exposed that fee bill upon its counter. It was there two years ago; it was there today. An examination of that list discloses that twelve different items might be regarded as the practice of law; in fact there is mentioned and itemized every paper that a lawyer engaged in the legitimate practice of law might draw, with the one exception of wills. The State Bar Association was good enough to leave that out. There were contracts, generally the entire basis of the simple law, and for $1.50 it was announced upon that list, the bank was willing to draw a contract of any description. So it went on, —deeds, mortgages, purchase contracts and all of these intricate documents that some lawyers have trouble in drawing.

We had at the meeting of that committee—that is not the present committee—that is a committee of seven appointed by President Traynor, two attorneys who represented banks and trust companies appeared there and urged upon us very strongly that we did not do anything to precipitate it. The Lord knows we have not done anything to precipitate it. They seem to be afraid that we would not proceed without giving the banks and trust companies that were practicing law within the state an opportunity to cooperate. We dealt with them quite delicately. They made the proposition that the State Bankers Association was going to meet in Fargo in June. I think this meeting was in June or early May, and they were to appoint a committee to confer jointly to see if we could not come to some agreement. We consented to do that. The committee adjourned to meet here in Fargo. Mr. Hanchett was chairman of the committee and myself were here at Fargo. The State Bankers Association was in session and there wasn't any committee appointed, and there was no reference made to us and we sat around at the hotels for a while, saw nothing was going to be done, then finally got together and agreed that a report such as was submitted to this association last year should be drawn and submitted to the association, just as it was. Now that has been the result of trying to deal by agreement. Every proposition of that kind has fallen down, and this matter of the unlicensed practice of law by bank and trust companies and individuals has gone on unchecked for the last two years. It is going on today, just as these gentlemen have said. I do not have any faith in trying to get anywhere by agreement with banks and trust companies or people practicing law without a license. I feel the time has come, to use a common expression, to throw the fear of God into them, and for this Association to assert itself in some such manner, that these people will appreciate the fact that it is going to enforce the law regarding the question. That is my feeling, and in all other respects I agree with Mr. Young. The only difference between him and me, he seems to be disposed to certain leniency, which I think from a larger experience impracticable and in fact impossible.

MR. WEHE: We as the Legislative Committee, have a very thorough bill drawn up here to cover this proposition, and I am going to discuss the motion now that is before the house. I am not presenting this now, just mentioning this fact so as to call your attention to it, which is number six of the Legislative Committee's report.

Now I do not believe that this report as given in by this committee on the Unauthorized Practice of Law should be adopted, but I believe

it should be received and filed for the reasons expressed by Judge Ellsworth. The time has come when we need some definition of what is the unauthorized practice of law in this state. We won't get anywhere until we have a bill put through the legislature, and for that reason, I move you now as a substitute motion, that the report which was a splendid report, be received and filed, in place of adopting it.

MR. SPALDING: I would like to say just an additional word in justice of the situation and to the parties to whom I referred. You all know the power or the jurisdiction of national banks to act as executors and trustees, and receivers and so on, comes through a recent enactment of Congress. It is not a power that extends over every state; it is only applicable to states where trust companies can do business that competes with national banks. I discovered the amendment to the law shortly after it was made, and presented it to a meeting of the stockholders of The Merchants National Bank and it authorized officers of that bank to engage in that business if they saw fit to do so. They eventually did and became the first organization of the kind in the state authorized to do a trust business and act as executor and so on. I advised them that even though I was general attorney for the bank, that I could not expect, and it would not be proper for them to give me the business that was brought to them by other attorneys, that if an attorney drew a will and made the bank executor, that business should go to that attorney, not to the general counsel of the bank. As far as I know that rule has been uniformly followed by that institution. No attorney has any occasion to complain or make any criticisms of that organization so far as I know, for giving preference to one attorney over another, where the attorney is responsible for the employment or naming the bank executor or trustee, or whatever it may be, but if that bank or any other is engaged in the practice of law it is subject to censure.

MR. STORMON: I would like to report a case in Rolette County. In a newspaper very recently, one bank carried a display ad in which they stated they made out leases and solicited that business.

MR. GRAHAM: Is there a motion before the house?

PRESIDENT HUTCHINSON: Mr. Wehe made a substitute motion. Let's vote on the substitute motion. All those in favor of Mr. Wehe's substitute motion, that the report be received and filed rather than adopted, may signify by saying aye; those opposed say no. We will have a rising vote, all those in favor may rise; all those opposed may rise; the substitute motion is lost. Now Mr. Graham did you have something to say on the original motion.

MR. GRAHAM: No I have nothing to say. I want to make another motion.

PRESIDENT HUTCHINSON: Let us vote on the approval of the report of the recommendations therein; all those in favor of the original motion to approve the report and recommendations, say aye; opposed no; motion is carried.

MR. GRAHAM: It seems to me we have had considerable talk here. So far as I can see there is still no plan to do anything. If we are going to do anything, now is the time to do it and approve some method of doing it. With that in view, I move that the chairman of the Executive Committee appoint a prosecuting committee of three members to

take up the matter which has been submitted by Mr. Bangert and bring suit, and also take up any other matters which may be submitted, or which they think there is proper ground to commence suit, and to finance that, to call upon each member of the Association here in the state to donate the sum of $2. (Several seconds to the motion).

MR. BOTHNE: I make a substitute motion that this prosecuting committee consist of this committee we now have. They are all good lawyers and they can act as prosecuting attorneys.

MR. HALVORSON: Do I understand, Mr. Bothne, your motion to be that this committee act as attorney.

MR. BOTHNE: Yes.

MR. HALVORSON: I think that should be clear in the record.

PRESIDENT HUTCHINSON: I don't want to make any particular suggestions, but I sort of doubt the advisability of the committee being the lawyer. I think we should have it that the committee may employ the attorneys to do the business; perhaps it would be a better arrangement.

MR. REMINGTON: I agree with what the chair has just said. I think some one should be employed outside of the committee. I think I am going to vote for the motion but I do not know whether we should dig down in our pockets and donate $2. Here we are paying $10 a year and that money is used for the discipline of ourselves but none of it can be used, as it seems, for our protection. Here is a fellow down here, to my personal knowledge, has been instrumental in filing four distinct charges against a man who is a fairly reputable member of the bar, but here is this other man, he says, "You can't disbar him because he doesn't have to pay $10; it is a ridiiculous situation."

PRESIDENT HUTCHINSON: All those in favor of Mr. Graham's motion to make an assessment of $2 per member and appoint a committee to prosecute same, say aye; opposed; motion is carried.

Now I think that disposes of that situation except this Section Six on the unauthorized practice of law. Time is short and let's make our remarks very brief and to the point.

MR. WEHE: At this time, I move you the adoption of that part of the Legislative Committee's report, Number Six, relating to the unauthorized practice of law.

THE UNAUTHORIZED PRACTICE OF LAW

We recommend that a bill be drawn up again and presented to the legislature defining the practice of law, and in the shape of an act to prohibit the unauthorized practice of law; and we recommend the North Carolina Law, which was passed and approved March, 1931, and which is entitled "An Act to Prohibit the Unauthorized Practice of Law", and as drawn to meet our conditions would be as follows:

Be it enacted by the Legislative Assembly of the State of North Dakota:

Section 1. It shall be unlawful for any corporation or any person or association of persons, except members of the Bar of the State of North Dakota admitted and licensed to practice as attorneys at law, to

appear as attorney or counsellor-at-law in any action or proceeding in any court in this State or before any judicial body; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counselling in law or acting as attorney or counsellor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except members of the Bar, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or for or without a fee or any consideration, to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust serving purposes similar to those of a will, except life insurance trusts, or for a fee or any consideration, to organize corporations or prepare for another person, firm or corporation, any other legal document.

Provided, that nothing herein shall prohibit any person from conferring with a person, firm or corporation with respect to the creation of a fiduciary relationship, or from cooperating with a licensed attorney of another in preparing any such legal document, if such attorney maintains his own place of business and is not an officer of a corporation represented by such person; or from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law.

Section 2. It shall be unlawful for any corporation to practice or appear as an attorney for any person other than itself in any court in this State, or before any judicial body; or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents not relating to its lawful business, or draw wills, or practice law, or give legal advice not relating to its lawful business or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular; provided, that the foregoing shall not prevent a corporation from employing an attorney in regard to its own affairs or in any litigation to which it may be a party.

Provided, further, that the above provisions of this act shall not be construed to prohibit a person or corporation acting in a fiduciary capacity from transacting the necessary clerical business incidental to the routine or usual administration of estates, trusts, guardianships, or other similar fiduciary capacities, such as offering wills for probate in common form, securing authority to expend principal as guardian or trustee, filing accounts, preparing and filing tax returns of every nature, and other such administrative acts, where no special compensation is charged for such service and no compensation whatever is charged or received other than the usual commissions allowed by the Court for administering the trust, or provided for by the instrument creating the trust or other fiduciary relationship.

And provided, further, that nothing herein shall prohibit any insurance company from causing to be defended, or prosecuted, or from offering to cause to be defended, through lawyers of its own selection, the insured in policies issued or to be issued by it, in accordance with the terms

of such policies; and shall not prohibit one such licensed attorney at law from acting for several common carriers and/or other corporations and/or association or any of its subsidiaries pursuant to arrangement between said corporations and/or associations.

Section 3. It shall be unlawful to exact, charge, or receive any attorney's fee for the foreclosure of any mortgage under power of sale, unless the foreclosure is conducted by a licensed attorney at law of North Dakota, and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being directly or indirectly shared with or rebated to any one else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same, or to share with or rebate to any other person, firm, or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted, and has forwarded the case to the attorney conducting such foreclosure.

Section 4. The State's Attorney of any county or the Attorney General of the State of North Dakota shall, upon the application of any member of the Bar, or of any Bar Association of the State of North Dakota, bring such action in the name of the State as may be proper to enjoin any such person, corporation, or association of persons who it is alleged are violating the provisions of this Act, and it shall be the duty of the State's Attorney of any county or the Attorney General of the State of North Dakota to prosecute any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of this Act.

Section 5. Any person, corporation, or association of persons violating the provisions of this Act shall be guilty of a misdemeanor and punished by fine of not less than $100.00 and not exceeding $500.00, or imprisonment in the county jail for a period of not less than thirty (30) days, and not exceeding ninety (90) days, or both, in the discretion of the Court.

Section 6. All laws and parts of laws inconsistent herewith are hereby repealed, and in case any section, subdivision, paragraph, or sentence of this act is declared unconstitutional, the validity of the rest of this act shall not be affected thereby.

MR. LACY: Second the motion.

MR. BANGERT: I doubt whether there has been consideration of this bill. For instance, Section 2 provides: (reads Section 2). I do not know of any law which authorizes any corporation to appear for itself. I would like to offer as a substitute motion, that this be referred back to the Committee on the Unlawful Practice for the drafting of such a bill as in their opinion should be presented to the Legislature.

MR. OWEN: Second the motion.

MR. SHAFT: I have an objection to offer to the substitute motion. My objection is this, that we are in a much better position if we have the Court determine what is the unauthorized practice of law, than if we have the Legislature attempt to lay down a definition of the unauthorized practice of law.

PRESIDENT HUTCHINSON: There is some merit, I think, in that contention.

MR. OWEN: Mr. President, the way this article reads here now, it merely licenses corporations to practice law. That first paragraph when you read that, it gives them a right to draw wills, to submit them for probate, and do many matters of that kind. What is the use of talking about the unauthorized practice of law and then turn around and authorize them to practice law?

PRESIDENT HUTCHINSON: The question now is on the substitute motion. I will put that to a vote. The substitute motion was that this bill be referred back to the incoming Unauthorized Practice Committee for further consideration and for the drafting of a new bill.

PRESIDENT HUTCHINSON: All those in favor signify by saying aye; opposed; the motion is carried. That disposes of that report. If there are any other reports that I have omitted, kindly call them to my attention.

MR. GRAHAM: I move that the Legislative Committee be instructed to draw an amendment so the funds belonging to the State Bar Board can be used in the prosecution of the unauthorized practice of law. (Several seconds to motion.)

PRESIDENT HUTCHINSON: This motion will permit the use of funds in the hands of the State Bar Board for the prosecution of violations under the unauthorized practice of law. All those in favor of this motion signify by the——

MR. ADAMS: I, as a member of the Board, should not say much about this matter, but I do not believe you have looked into the question as to the result of that kind of thing. It takes money to prosecute these matters, if you expect to prosecute very many, and there will be nothing in the State Bar Board for the original purpose of disciplining members of the Bar. We had one case that took $4,000 and we may have another. We have not a very large reserve, and while I shall not be on the Board beyond the first of next year, yet I feel that those funds should not be used for this purpose. It seems to me there should be some other way of raising funds. I think it is unwise and inadvisable to take the Bar Board funds. It would pervert the whole purpose of the original Bar Board statute.

MR. NORTON: It occurs to me that the matter would be settled if one case were to be taken to the Supreme Court and the law laid down clearly as to what were the unauthorized practices. I agree with the suggestion that if the law prohibits the use of Bar Board funds for the use of prosecuting those who are carrying on the practice of law unlawfully, that it be amended so as to provide that a reasonable use of funds may be made.

PRESIDENT HUTCHINSON: All those in favor of this motion, which would present a bill for the use of the Bar Board fund for prosecution of these cases, signify by the usual voting sign aye; opposed no; it is carried.

Now, is there anything further that should come before the Bar?

MR. FOSTER: In 1926, was the last meeting of the Bar Association in Bismarck. Since that time we have met in Minot, Valley City,

Devils Lake, Jamestown and Fargo. We at Bismarck feel it is now our turn to have this Association meet with us out there. Mr. Young just gave me a telegram which he received from the Association of Commerce instructing him in effect to extend to this Association an invitation to meet in 1933 at Bismarck. On behalf of the Burleigh County Bar Association, we extend this Association an invitation to meet next year in Bismarck.

PRESIDENT HUTCHINSON: We thank you for this invitation. This will be referred to the Executive Committee who has the power to fix the place. Is the Resolutions Committee ready to report?

REPORT OF RESOLUTION COMMITTEE

BE IT RESOLVED, That, we, the members of the North Dakota Bar Association, in convention assembled, most graciously convey to the lawyers of Cass County our grateful thanks for the unusually delightful, refreshing, and instructive program with which they have so happily favored us during the two days of our annual session; being fully and deeply appreciative of the thoughtful, kindly, courtesy and genuine hospitality which on every hand has been extended to our guests, our ladies and ourselves by the members of the Bar and their families, and the people of Fargo.

That we wish also to sincerely compliment Honorable Frederick H. Stinchfield, of Minneapolis, Prof. Jerome Hall, Judge George E. Q. Johnson of Chicago, and our old friends and former members, Wm. C. Green of St. Paul, and Judge Andrew A. Bruce upon the scholarly and masterly addresses which they delivered before this convention, assuring them of our pride in their achievements, our deep appreciation of the strength and vigor and timeliness of the message they have brought us, and to express our hope that the coming years will but bring them added glory, renown and success.

That it is with real pleasure that we recognize the visit of Judge W. W. Knight, President of the South Dakota Bar Association, and gratefully acknowledge the friendly greetings brought by him from the lawyers in our sister state. That we highly approve of the plan of reciprocity between the two Associations, and hopefully expect to see many of their members visit us next year, and promise that as many of us as possible will accept their fraternal invitation to be present at Aberdeen upon the occasion of their next convention.

That it is with kindest sympathy and best wishes that we express to Hon. John O. Hanchett, our retiring President, our gratitude for the work he has done for our organization during his encumbency, realizing that such work was often done under extraordinary difficulty, and assuring him that he carries from this assembly our cordial affection and high regard.

JUDGE GEO. M. McKENNA, Chairman
H. A. MACKOFF
MACK V. TRAYNOR.

Judge McKenna moved the adoption of the report. This motion was seconded by Mack V. Traynor, and carried by a unanimous rising vote.

MR. KVELLO: I move the adoption of this report.

MR. GRAHAM: Second the motion.

PRESIDENT HUTCHINSON: All those in favor of the motion, signify by the usual sign; opposed; it is carried.

I think that completes the business of the Association for this year.

MR. WEHE: I move you that we adjourn.

PRESIDENT HUTCHINSON: Before we adjourn I want to express my personal thanks to the local committees of the Fargo Bar for their every assistance in making this meeting the outstanding, I believe, success that it has been made, and I invoke the cooperation of the members of the Bar for the work that has been done this year.

MR. WARTNER: Shouldn't this meeting adjourn until this evening and then it will remain open for anything that might come up after the final disposition of the entire program?

PRESIDENT HUTCHINSON: I believe you are right.

MR. WARTNER: I therefore move that we adjourn until eight o'clock this evening to meet in the High School auditorium.

PRESIDENT HUTCHINSON: The motion is that we adjourn until eight o'clock for the next address, and that the closing of the meeting be left until then. (Motion was duly seconded and carried.)

EVENING SESSION

JUDGE MILLER: Members of the North Dakota Bar Association, ladies and gentlemen: You have all heard about Al Capone, late overlord of Chicago gangland—well, he is not here tonight. You have also heard of that distinguished lawyer, famous prosecutor, the district attorney for the Northern District of Illinois, the Honorable George E. Q. Johnson. In the language of Amos and Andy, he is here tonight and will presently address you in person. He is the man whose masterful prosecution not only rid Chicago of that famous gangster but attracted to himself the attention of the civilized world, and incidentally led him into the position of United States District Judge for the Northern District of Illinois, which includes the great City of Chicago. I take great pleasure, ladies and gentlemen, in now introducing to you the Honorable George E. Q. Johnson.

JUDGE JOHNSON: Judge Miller, ladies and gentlemen: It has been very pleasant for me to come here to North Dakota. I have enjoyed your typical western hospitality and good fellowship, which has been very pleasant.

The unenviable distinction of having prosecuted Al Capone, so far as I am concerned, is just one of something more than 10,000 criminal cases that I have prosecuted through the office of the United States attorney in the last nearly six years.

I have thought that, for a man in public office, speaking should be regarded as one of the hazardous occupations. I note with relief that a Court reporter is taking down what I say tonight for I have had the experience, unfortunately, of having something misconstrued in the past, and you may as well try to recall the echo. I think public speaking might be illustrated by a young man who had lost his job and he wanted very much to find a position, and so he applied to the keeper of the zoo for a job, and the keeper of the zoo said, "Well, I don't know, our orangutang died today; we skinned him, and we have got to have an orangutang to make this show. If you will get in his

hide and take the part of the orangutang, I will give you a job." Being hard put to it, the young man took the job. He performed so well on the trapeze that it gave way and let him down into the lion's cage. He began to call loudly for help and the lion leaned over and whispered huskily in his ear, "Pipe down, you idiot, or we will both lose our jobs."

Now my purpose in coming to you this evening was to discuss a problem that probably is the problem of every community in this great land of ours. We are burdened with the staggering cost of crime, a burden that is greater than the interest on the national debt, and possibly, if accurately computed, is as great as the amount of money that is required for the budget of our national government, so it becomes indeed the problem of every American man and every American woman, I think, to understand this problem of crime, particularly as we experience it in our great American cities; and so far as I have observed, the same system runs true to form everywhere, that better to understand the problem, that we attempt an analysis of it.

I think generally, we may say, that with a type of crime that I have termed sporadic crime, that is the crime of robbery and hold-ups and so on, that is a type of crime that has been with us always, and probably will be with us always. There is nothing particularly new about it except the alarming increase, and particularly the fact that so many of our adolescent youth are falling into this grievous error. I think we may dismiss sporadic crime by saying that that is a social problem and a problem that will have to be dealt with largely from the social viewpoint.

But there is another type of crime that is more upon us, and that has developed more rapidly since the close of the great World War, and that is a type of crime that makes a business of crime—just that, making crime a business, and we find that this business of crime has a close alliance with corrupt politics. We find also that what makes the business of crime possible is just one thing, and that is money. To understand the power of organized crime, we must analyze the sources from which the money comes that makes crime possible. From my experience in the City of Chicago, and in conference with United States attorneys in other large cities of our country, I think we can name definitely four sources that make up the income of the business of crime, and I will name them for you in what I consider the order of their importance. First, is the money that comes from the violation of the National Prohibition Act; the money that comes from gambling; racketeering, rackets in the trade organizations, and vice. These are the constant sources of money which makes the business of crime possible. And then following that, the gang is the natural product of the business of crime, and the gang living outside of the law and not being able to seek redress in the Courts, make their own laws, and they have their own Courts, and there are no appeals from the judgments that are entered by the business men in crime, living outside of the law. They must have their own police power and the police power of the business of gangsters is the gun man. Now the gun man is a product of our civilization, a Goliath type of man, so hideous that he can take the life of another for hire without having any motive of his own, or any purpose for the taking of the life of another, except the hire that is paid to him for the commission of that crime, and the business of a gun man in our large cities has become a fairly safe business.

I made a catalog in my own City of these roguish situations, of these roguish murders. For a five-year period, it totaled something like 376 murders, and for the commission of these murders there had been but a few arrests and no convictions and some of my fellow citizens said to me, "Oh, well, just another gangster gone, and they will kill each other off." That is a great fallacy because every gang murder leads to another, and so it goes around the vicious circle, but that is not the only result—that is not the only result we have. How does this affect the law enforcement officer who is trying to do his duty? It breeds in the mind of every witness and it breeds in the mind of every citizen, the psychology of fear, and it is a fear that is so great, that it places the seal of silence upon the witnesses who have knowledge of the facts.

During the years that I was United States Attorney, and it has only been two weeks since I relinquished the responsibility of that office, it was almost a daily occurrence in the grand jury room, or in talking to witnesses who had been called for interrogation, to say, "Well, Mr. Johnson, I don't mind telling you, and I will tell you, but if you ever ask me about it in a Court, I will tell them I never talked to you, for you know this, that I will be taken for a ride." And I knew they were telling me the truth, and there came a time when I was reluctant about taking the responsibility of having a witness testify under those circumstances, for I had a number of very painful experiences.

To illustrate the difficulty, let me digress to relate just one to you here. We had had in a little suburb of Chicago, twenty miles south of Chicago, a city of 23,000 people, where in a five-year period there had been 62 murders, for which there had been no arrests and no prosecutions. I had had early in my experience one case in that City, a conspiracy case for violation of the National Prohibition Act, and before the case could be brought for trial, six of the defendants named in the indictment were murdered, and eventually before it was brought to trial, eight of their associates were murdered, fourteen murders out of one case growing out of this City. A young man who had been a druggist came to me and he had become the chemist for this gang distilling alcohol in this little City. He had been convicted and he said, "Mr. Johnson, I can't go to the penitentiary. We have two small children and another baby coming soon," and he said, "If you can arrange probation for me, I will give you the facts about this case," and he did. One morning after he had finished his testimony before the Grand Jury—I talked to him about eleven o'clock in the morning, the facts became known, and that night before nine o'clock his body had been found by a lonesome road riddled with bullets. That was not an unusual experience.

This same little City, in five years, had become the rendezvous of automobile thieves, the rendezvous of criminals from all over the country, and as a corrupt municipal government was at the head, they were able to conduct their illicit enterprise without interruption. The better element in the City came to me and asked me to do something, to give them relief. I caused an investigation to be made and some bribes were offered the government agents, which they took and reported to me as part of the evidence. When arrests commenced to be made, the man who was the principal witness, an Italian by the name of Merino, was standing in front of his store. An open car came by

and they killed him with a sawed off shotgun. Then in this little town adjoining this larger town was a chief of police. It was a town of only five or six hundred people; they appointed their own town marshal. He attempted to give the government some aid in its work and while he was sitting in a little cottage and eating his evening meal, a gunman stepped up on the back porch, shoved a sawed off shotgun through the window and killed him in his own kitchen. An Italian man and his wife who were suspected of giving aid and comfort to some of the government agents likewise were shot down with machine guns in front of their own house. At this time the government's investigation had reached a point where we were ready to act, and after the killing of the government witnesses that I referred to, I made up my mind that the time had come that this town must have a lesson. I went to the new State's Attorney who had been elected and I went to the Chief of Police of the City of Chicago and induced him to deputize some Chicago police as deputy sheriffs in order that they might extend their jurisdiction beyond the City limits, and at four o'clock on a Sunday morning, we assembled 100 City police, sheriffs and government men. Warrants had been issued by the Court and at daybreak these men went and took possession of the City Hall, took possession of this town of 23,000. The State's Attorney and his men went out to raid the town for slot machines and in these raids their books were seized. I am detailing these facts to you at some length because it serves to make a point which I want to bring to you this evening. They seized something like 450 slot machines and with fire axes split them up in the public streets and arrested some twenty of the leaders. To dismiss that end of it, let me say that the political leader in this town is at Leavenworth and the rest have served, or are serving prison sentences. But here is the thing, in the books that were seized, for a period covering nearly three years, from the slot machine racket alone operating in these southern suburbs, there had been an income divided equally between the syndicate and the owners and the road houses and public places that had the slot machines of over $700,000 a year so that the slot machine syndicate had had an income of over $350,000 a year. What the profits had been from the hundred or more large stills, we were never able to figure out. Those murders had been committed in this town, 62 murders in five years, in a fight over the illicit income from these unlawful enterprises, and the very point I tried to bring to my fellow citizens in Chicago for a long time is that there is just one remedy, there is just one power that these gangsters fear, and that is the power that comes from money, and that if we are able to take easy money out of it, this thing will wind up and die, like the North Dakota weed that is pulled up at the roots and exposed to the sun.

In this little town after these men had been prosecuted after this raid, where there had been 62 murders in five years, after the better element procured control of the government, they went three years without a single murder.

Now I have spoken to you about the power that comes to these gangsters through money. You have had some reference to the prosecutions that were conducted through my office in my district; in the case of Ralph Capone, a brother of Al Capone, in a three-year period we were able to prove an income of just a little short of two million dollars. In the case of Jack Gusak, a powerful under-world character in Chicago, who was the key stone in the Al Capone mob, we proved

an income of $1,100,000 in a two-year period. In the case of another member of this same gang, in a two-year period we proved an income of $770,000, and we never believed that the income that we were able to trace was the entire income, and was probably the smallest part of the income.

Now the indifference of the average citizen to a condition which we have to deal with in our large cities is no small part of the problem. I note in our primary elections in Chicago that about one-third of the registered vote, even when the plain trend of events in our City was toward the better, had sufficient interest in public affairs to go to the polls and vote, and if we consider what the eligible vote might have been, it probably would not have exceeded 25%. Contrast this with what we might term, or what we call a river ward, where there is a foreign language population and a great many of those men and women are illiterate or have not sufficient familiarity with the ballot so that the larger number vote by an instructed vote, that is to say they may call on the judges or clerks of election to mark their ballots, and in those wards in these elections about 91% of the men and women went to the polls and voted, so that the balance of power lay in those wards, while in the fine wards where they had the American tradition, where there were fine churches, the fine homes and the fine lodges, and where the men and women live who were best qualified to exercise their judgment upon the qualifications of candidates, there is where we had about one-third of the vote.

Now it brings the problem right home to every man and woman and there the distressing experience that every prosecuting attorney in a large City has, largely through fear but more through indifference or being unwilling ever to come forward and help. Time and again I have had the experience of bringing reputable men and reputable women right into my office and into the Grand Jury room and met with nothing but evasion. In all of my experience of nearly six years, I have had but one refreshing example of real courage, and I think it is such an inspiring example that I would like to take just a moment to tell it to you. In the prosecution of Al Capone, to which case your Chairman referred, we had a great deal of difficulty. Al Capone was a master mind in criminality. He was the only man whom we ever tried to trace who was able to cover his tracks. He never had a bank account; never keeps any books, and everything that ever happened, he was always two or three removed, and that was the great difficulty, we never could complete the chain because there were always two or three between him and between what happened, so we determined to prosecute him on the income tax laws, and after a great deal of very clever work in investigations conducted by agents of the Treasury Department, we finally did discover the books that had been kept of his gambling places in the village of Cicero.

It might interest you to know just how the system worked. They had three places rented fully equipped for gambling, and whenever the outcry became too great against one on the part of the citizens, there would be a fake raid, and in an hour they were going full force in the next place, so they traveled around the circle. We discovered these books after a long search and the man who kept them; and then it became a problem to prove ownership, and on this particular part of the case, we were able to prove it by three very courageous men; a man by the name of Baker, who was president of the real estate board

in this west side suburb and a man by the name of Morgan and a minister by the name of Hoover. They had complained bitterly to the local authorities about the spectacle of these places running, of gang control openly and brazenly, and in the adjoining suburbs they were responsible for disorderly houses. They complained bitterly about that and not being able to get any relief, they went to the justice of the peace in another town and procured a search warrant, and they made the raid and while the raid was in progress, one of the few times that we were ever able to see this defendant, Capone, in flesh and blood, he came in under the most natural impulse, because they were taking his property, and he knocked on the door and was very aggressive, and when some one asked who was at the door, he replied, "Who are you, this is my party, I own this joint," and made other admissions of that kind. Well, immediately after the raid, Baker, president of the real estate board, was set upon by hoodlums. They crushed his nose in and marred him for life. They kicked and beat him within an inch of his life. Morgan was going home one evening and they started to pull him into a car. He ran and got in some underbrush. They shot him and he was severely wounded but managed to get away, and after seven weeks in the hospital he recovered. The Reverend Mr. Hoover they threatened, and they threatened his family until they were almost distracted, and three years after this happened, government agents came to them and warned them to leave.

Well, the ordinary experience we would have had would have been evasion and lack of knowledge and "I don't remember;" but these men came to the front and notwithstanding the threats and the shootings and the beatings, these men had the courage to take the witness stand and to testify what had occurred in that raid and thus enabled the government in that particular part of the case to prove ownership. Before I leave that, it might be interesting to add that these books showed twenty cents of every dollar of revenue that these gambling holes made, were marked on the books for the town, presumably the public officials of that particular village.

Now I mentioned to you another of the sources of income of the business of crime, the racket, and I would like to take just a few moments to explain to you just what the racket is. You may have it to deal with here, I don't know; if you haven't, it is an encroaching thing, and you may have it to deal with, the Simon-pure racket. Under the Federal laws, we were able to prosecute these in the Federal Courts and everywhere they run true to form and the racket is nothing but this: a trade association is formed, and for a good purpose, and with reputable citizens, and then competition becomes keen and profits become small, and they enter into rules and regulations to give service to the public, to govern competition particularly with reference to localities, and then let me illustrate what happened, by one of the rackets, the "Candy Jobbers" case we prosecuted in Federal Court. They had such an association started to which I have called attention. The jobbers couldn't sell to those outside of the racket, outside of the organization, they couldn't sell to dealers who would not comply; then as always the independent comes in and the existence of the organization is threatened. Here the evil genius of the racketeer enters in. I have referred to you before that the gunman was the police power of the gang, and that the business organization embraces the gang and

the gang power enters in. They have a very persuasive argument and I have had occasion to see some of these arguments. Ordinarily it is this, a six or eight inch steel pipe two inches in diameter, a steel cap that closes over one end, a steel cap perforated closes over the other end, and they fill it with black powder, and out on the west side of Chicago where many poor folks live, where they had a candy shop in the front and live in the rear, many small shopkeepers do that, they throw these bombs and blow out windows and ruin the man's stock, and that is what happens to a large number of these small dealers who would not comply with the regulations of the trade organizations. Now that is a Simon-pure racket; that is the type of racket that is the means or is assumed to be the means to an end to stabilize competition. When I began my investigations of the racket, I thought that the racket overcame business, but I soon changed my mind. The racket is embraced by the business men in these trade organizations for the financial advantage that comes to them, and we have had many of these in Chicago. I think we have squelched a good many of them but they still persist, and it is a great danger that may enter every community, and if it does, there is only one way to meet the thing, as we did in the candy jobbers case. Some of the men who were convicted in that case and received prison sentences under the conspiracy statutes, came to me and said, "I am a reputable man." I replied, "I grant you sir, that you are." "Well, I didn't do these things, I didn't know these bombs were thrown." I said, "But it was your business to know." It was the dues that these reputable business men paid into the organization that paid for the bombs and paid for the men that threw the bombs in front of these shops. If you ever have to deal with these trade organizations, there is only one way to deal with them, squelch the man who is primarily responsible, not the man or two who throws the bombs. That, my friends, is the second great source of income of the business of crime.

Now the third great income I have never felt any particular interest in. I have never had any particular interest in slot machines. I have never cared if they put them on every fence post, along every lonesome country road. I have not been shocked at that, if the sucker who wants to play a crooked mechanical device that pays a possible twenty cents out of every dollar, it ought to be his own business, but the thing about it is this, that these things do not go but what somebody is paid either in cash or in political help or both. That is the great evil in the thing, as I see this problem, and in our large cities this polluted money enters into politics and thus poisons the very springs from which the well-being of government comes.

These are the three great sources of money, and the fourth is the question of vice. In our great cities, it is no small problem. I do not care to enter into a detailed discussion of that phase of the business of crime, except to say this, that we have it, and that it produces much money for gangs and for the business of crime, and I see no way of meeting this problem. I see no way of meeting this problem in our great cities except for our citizens to cease being so tolerant about it and to take an interest in government. Whenever I have touched it, in any City where we have had investigations and prosecutions, whenever the public sentiment was aroused, whenever there was a crystalized public sentiment to support the law enforcement officers, then

the thing died. There is just one great power in America that can make things move, and that is the power of crystalized public sentiment. Unless we have back of law enforcement, this keen interest and a crystalized public sentiment, that will not tolerate it, we are not going to make very much progress toward better things in the way of government.

We had in the western part of my district in one of the finest—what I should call one of the finest American cities, the City of Rockford, Illinois, where the people had become tolerant, and they had gang killings, they had a reproduction of what we had in Chicago. We made a careful investigation there. One conspiracy indictment resulted in some thirty-six sentences to the penitentiary. Once public interest was aroused against the thing, it could not go and that is true everywhere. Now looking at the question, so far as it affects every man, and as it affects every woman, there isn't anything that comes nearer to us, there isn't anything that so affects the future of the country as this great problem of crime, and it is going to be one that will remain with us until we meet it squarely and face it squarely. I have suggested to you before that it is the power of money, and it is the power of money only. I have talked to police captains about it and one police captain said to me one day, "Oh well, you know who they are, when they have money they drive down the boulevard in a Rolls Royce and when they haven't got money, they sneak down the alley." I think you can tell in every community that you go into, if you will observe whether organized crime is present as a business. I think if you will dig underneath the cover, whenever you see open and notorious violation of the National Prohibition Act, whenever you see gambling that is so open and notorious that it is generally known where the place is and who operates it, and whenever you see open and notorious vice, you may be sure that organized crime is present, and that there are men who are making a business of crime. The great difficulty with the American people is that they can't stay mad very long. Our rage and public indignation is aroused and then it immediately subsides. The enemy lies in wait, and they are organized so they can wait, and time and again when the public interest has subsided, I have seen the same power that was wielded before come back. So I conclude, my friends, by saying this to you, that the problem of crime is the problem of every American man and every American woman, and that you cannot escape the responsibility of it, and that we are never going to cope with it until we meet it squarely and meet it, not in the sense of enforcing the Blue Laws, but meet it in the sense of drying up the revenues that makes a thing that is so hideous possible. We have been confronted in some of our American cities with a futile system, going up from the bottom, instead of as in the old days, from the top. It has become a power so great that men who attempt to either obtain public office or remain in public office many times deal with it. It is a real thing, it is not an imaginary thing, and as I suggested before it is one which every one must assume some responsibility for and try to meet squarely. I thank you.

JUDGE MILLER: I am sure, ladies and gentlemen, that you have been entertained and instructed by Judge Johnson's address, and in behalf of the Bar Association, I am going to take the liberty of thanking Mr. Johnson for his presence here tonight and the splendid address he has just delivered.

In Memoriam