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Proceedings of the State Bar Association, at Its Annual Meeting, Held at Jamestown, North Dakota, August 18-19, 1931

North Dakota State Bar Association

PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT ITS ANNUAL MEETING, HELD AT JAMESTOWN, NORTH DAKOTA, AUGUST 18-19, 1931

FRED J. TRAYNOR, President, Presiding

PRESIDENT TRAYNOR: We are about to open the annual meeting of the State Bar Association of North Dakota, and fittingly, I will first call upon the Reverend Mr. Olsen for the invocation.

Rev. Olsen delivered the invocation.

PRESIDENT TRAYNOR: The address of welcome will be given by the Honorable R. G. McFarland of the Stutsman County Bar.

JUDGE MCFARLAND: Mr. President, members of the Bar Association, guests and friends:

It is a very pleasant duty that has been assigned to me—that of expressing a welcome to you on behalf of the Stutsman County Bar Association, the City of Jamestown—"The City Beautiful," and her citizens. Could I but adequately express the pleasure and gratification it gives us all to meet and greet you here!

You have the aggenda of entertainment and the business, which you are to transact in the formal program in hand. It is our great concern that your meeting may be pleasant, interesting and instructive. While you tarry for a moment on our threshold, our sentiments could be conveyed to you in no greater expression than to say to you sincerely, "You are welcome."

The Stutsman County Bar Association has a deep sense of being honored by your presence. There is united in this sentiment the whole City of Jamestown.

It has been the pleasure of Jamestown in times past to entertain many distinguished guests. The two hundred acres of beautiful parks; convenient and central location and transportation facilities; and its unique attractions and cordial people has made of Jamestown somewhat of a convention city.

We have had with us "Fighting Bob" LaFollette, Presidents Roosevelt, Harding and the notable Villars party, who lingered here on their journey westward to drive the Golden Spike, commemorative of the spanning of the great Northwest by the Northern Pacific Railroad. With the Villars party was the redoubtable Grant, who, as Commander-in-chief of the Northern army, wrapped in the solitude of his own silent greatness, dictated terms of unconditional surrender of the Southern Confederacy at Appamattox, marking the period of transformation of the first experiment in a scientific government known to mankind to be confirmed as a reality.

But the occasion of these sojourners did not furnish inspiration for the distinctive joy and happiness as is suggested to us by the gathering here of the Bar Association. In your assembling here, we recognize the coming together of a body of true North Dakotans, and their guests, imbued with high ideals, and trained in sound and orderly thinking, with the welfare of the state and country uppermost before you; therefore, we welcome you.

As specialists, not in a narrow and limited sense as those who confine themselves to a single organ of the human body, or particular branch of private practice; but in a broad and comprehensive conception as those who have taken all law to be their province; as men of talent, accurate in giving counsel, of unbounded confidence and trust, and of great eloquence and wisdom; as officers of the Court, who, with the Judiciary, are charged with the proper functioning and administration of one of the three departments of the government; as guardians of the spirit and body of the law, impressed with the obligation to guide in the perfecting and perpetuation of the government itself; it is more—it is for such as these that we unitedly welcome you to our city, our homes, and our hearts.

PRESIDENT TRAYNOR: The Honorable I. W. Siltman, Mayor of the City, will now give us an address of welcome also.

MR. KNEELAND: I was requested by the Mayor to speak in his stead. I happen, Mr. President, to hold the office of City Attorney of Jamestown, and some of you know it is the duty of the city attorney to perform almost every function, as a substitute for any member of the city government on various occasions.

A few days ago the Mayor told me that he thought he would be unable to be here this morning and asked me to speak in his stead. I didn't know what to say and he didn't tell me what to say, but a short time after he asked me to be here, I realized it would be a distinct pleasure to speak this morning.

I noticed in one of our local papers a picture. Underneath it was the name of Fred J. Traynor, President of the State Bar Association, and I felt very certain that it would be a great pleasure to speak to a body presided over by such a handsome, fine looking man as the picture above that name represented. However, looking at that picture closely, I could not see any resemblance to the President of our Bar Association the last time I saw him a few months ago. I could not see any resemblance as I knew him twenty-two years ago when he was one of the same class as I at the University of North Dakota, but after looking over on the other side of the picture, I found the problem solved. The printer had taken the name of the President of our Bar Association and placed it under the picture of the President of the Minnesota Bar Association.

As I said, the Mayor did not tell me what to say but I am sure that after this address of welcome, which we have heard from Judge McFarland, there isn't anything left that I need to say.

I am sure that I express the sentiments of the people of Jamestown, and the Mayor of the City in saying that we are very glad to have the Bar Association meet in Jamestown this year. We hope that you will enjoy yourselves here. We feel certain that the people of Jamestown who come in contact in any way with this Association or the members of the Association, during their stay here, will be especially glad that you are meeting here this year. Not only that, but we expect to profit—the people of Jamestown will expect to profit from the meeting in this city.

The Bar Associations always listen to a great deal of oratory, many profound thoughts, and many things looking to the improve-

ment of our laws and the administration of our laws. Many noble sentiments are always expressed, I think, in regard to the observance of the laws, and the sanctity of our constitution, and I am sure that from these meetings, a great deal of benefit must result to the people of the State, and especially to the people of the community in which the Bar Association meets.

The Mayor of the City of Jamestown has a great deal of respect for the Constitution of the United States and of the State of North Dakota, and I am sure that he will appreciate the great benefit that will come from the meeting of this Association here, through the greater observance of law, and especially through the greater respect for the Eighteenth Amendment, which of course, will result from these noble sentiments, which will be expressed in this meeting.

He is quite interested in the maintaining of the Constitution and the laws of the country and the state. Now I am afraid that on that account, he and Judge Knauf, who has something of the same sentiments, will fail to provide that entertainment which some other organizations might expect, but which the Bar Association, of course, will not.

Now, Mr. President, Judge McFarland has told you all about the natural beauties of Jamestown, the advantages of the city, and the committees, I am sure, have arranged in every way that they can for the entertainment of the members of this Association. I trust they will all enjoy themselves here, as the people of Jamestown will enjoy having the Association hold its meeting here, and that in the years to come, in due season, the Association will again return as it has in the past and will hold other sessions here to the mutual benefit of the people of Jamestown, and the members of the Association.

PRESIDENT TRAYNOR: I may say to Mr. Kneeland, I was quite flattered to have my name under the picture of Mr. Mitchell. I very much fear, however, that Mr. Mitchell will bring an action for libel against the newspapers.

Mr. E. J. Gurski, President of the Chamber of Commerce, will now address us.

MR. GURSKI: Members of the Association and guests:

I have been able to observe in a small way that one of the outtanding characteristics of your Association is the individual pride of membership to advance the objectives and the prestige of the Association. This too, is a characteristic of the Jamestown Chamber of Commerce, and its members, and to increase our prestige, we shall do all we can to make your stay as enjoyable as possible. It is a pleasure to welcome you.

PRESIDENT TRAYNOR: The response will be made by Vice President John O. Hanchett, of Valley City.

MR. HANCHETT: Mr. President: It would indeed be a pleasure for me, if I only had the ability to do so, to reply and respond to these wonderful addresses of welcome we have just heard. We know they are all true.

Most of us have been at Jamestown before in the past, several times at Bar Association meetings.

I think we all remember the last meeting here some six or seven years ago, and what a wonderful time we had. We all remember the response of President Bagley two years ago made at Valley City, and how wonderful it was. He had that instinct of being able to tell things that needed to be told, and still not offend anybody.

I will always remember his address and especially the remarks he made with reference to myself. You probably remember that.

I have no ability, either in language, wit or wisdom to tell of the things I would like to say at this time, except that we know that all of the things that have been said here in the addresses of welcome are all true, and I think we fully realize that with reference to the remarks made by the City Attorney on behalf of the Mayor.

Several years ago, when we had our last meeting here, the committee in charge went all over the United States, I guess, to find able and brilliant men to bring here. They brought here Robert H. Saner from Dallas, Texas. I don't know as to his being an actual descendent of Robert E. Lee, but he was a very eloquent Southern gentleman, and I think the handsomest man in the Bar Association. He had been in charge for many years of the Americanization work of that wonderful organization. We had with us at that time also, the ex-Governor of the State of New York, Mr. Whitman. He had been prosecuting attorney in the City and County of New York at one time, at which time some celebrated crimes were committed and had by his vigorous prosecution brought several people to be executed, and by reason of that he acquired a great reputation in the State of New York, which enabled him to be elected Governor of the State of New York, and he came clear out to Jamestown, North Dakota, to give the people here the benefit of his study and experience.

Well, we have no ex-Governors today, but we have on our program the name of a real Governor of the State of North Dakota, although I understand now he is not to be here, but we have here in the City of Jamestown a Lieutenant Governor. I do not see him just now. He is a real Lieutenant Governor, however, and will be here to take part in the Bar meeting.

The President and the program committee this year looked over the United States, and picked out, not the Chairman of some committee, but the President of the American Bar Association, who practices law down on the banks of the Hudson River in the City and County of New York, and who is known throughout this country as one of the ablest lawyers in the United States, the Honorable Charles A. Boston. We have brought him here to address this association and we are to have the privilege of listening to him this afternoon.

We thank you for your affectionate welcome and know our stay in Jamestown will be pleasant and profitable.

PRESIDENT TRAYNOR: Before proceeding with the regular business of the meeting, I would like to introduce to you some guests that we have here so you may all get to know them. Honorable Charles A. Boston, President of the American Bar Association, of New York City, will you just please stand.

MR. BOSTON: While it is not my purpose to say anything at the present time, since you have spoken of the mistakes made by the

press in putting the wrong picture over the subscriptions, I want to say I have recently seen the President of the Chamber of Commerce labeled with the name of the Prince of Wales.

PRESIDENT TRAYNOR: May I now introduce the President of the South Dakota Bar Association, Judge Miser, of Pierre, South Dakota.

JUDGE MISER: Gentlemen, I could not be oblivious to this very attractive program which is before you. This occasion reminds me of an incident which happened at Rapid City some years ago where I was holding court. I was trying a court case and it was a rather difficult case. I had a feeling that I was going to need all the help I could get to lead me through the murky phases of the law, so I was rather liberal in allowing time for counsel to present their arguments. That afternoon, when we reconvened, counsel for the plaintiff got up carrying all the books he could carry, followed by his junior partner encumbered likewise. Counsel mopped his brow and said, "Your honor, what this argument may lack in depth and breadth, I shall endeavor to make up in length." Of course, I couldn't say that at this time, but I do want to say that I bring you the greetings of your brothers in the Sunshine State, and I wish you well.

PRESIDENT TRAYNOR: I have the pleasure also to introduce Mr. Morris B. Mitchell, President of the Bar Association of the State of Minnesota. He is from Minneapolis.

MR. MITCHELL: Mr. President, and gentlemen: With due regard for the length of the program, I shall follow Judge Miser's suggestion and not take any considerable time this morning. I simply want to bring you the greetings from the bordering state. I understand you have a good many members of your Bar here who migrated from our State. Let me say that I deeply appreciate the honor which the printer did me in putting my name under the picture of your very honorable President.

PRESIDENT TRAYNOR: We are very happy indeed, to have these distinguished gentlemen with us, and we will hear more from them during the day and evening. We will now pass to the regular business session, the committee reports. The first under that heading is the Executive Committee and the Secretary-Treasurer.

The Secretary presented an oral review of the action of the Executive Committee during the year, previously published in Bar Briefs, and the following financial statement, audited by a special committee and approved by the Executive Committee:

RECEIPTS

Balance on hand last report	$ 898.09
1930 license fees (39) from Bar Board	195.00
1930 license fees (12) from Bar Board	60.00
Loan from Secretary	31.00
Loan from Bank	200.00
Sale of 1930 banquet tickets	114.50
1931 license fees (260) from Bar Board	1,300.00
1931 license fees (130) from Bar Board	650.00
1931 license fees (117) from Bar Board	585.00
Total Receipts	$4,033.59

EXPENDITURES

	Budget	Expended
Outstanding on 1930 annual meeting	$160.00	$ 260.41
Reporting 1930 annual meeting	100.00	100.00
Postage and Printing	150.00	93.02
Bar Briefs	425.00	427.50
1930 Proceedings issue Bar Briefs	425.00	442.00
Executive Committee	250.00	290.04
President's Expense Account	200.00	79.50
Legislative Committee	150.00	42.22
Local Organization Committee	100.00	.....
Bar Board Referendum	60.00	62.00
Secretary-Treasurer-Editor	720.00	720.00
1931 Annual Meeting	600.00	43.42*
Citizenship Committee	50.00	4.50
Dakota Law Review (old account)	100.00	100.00
Miscellaneous	100.00	112.50
Repayment of Loans (Int. to Bank)		233.93
Total Expenditures		$3,198.57
Balance on Hand		$ 835.02
Total		$4,033.59

Certified, accompanied by vouchers and statements of Bank and State Auditor.

Verified by Committee.

Approved by Executive Committee.

PRESIDENT TRAYNOR: What do you wish to do with this report, gentlemen?

MR. WARTNER: I move that it be accepted and approved.

MR. CAIN: Second the motion.

PRESIDENT TRAYNOR: Any discussion? If not, those in favor of the motion, signify by saying aye; opposed the same sign; carried.

Do you wish to take any action on the recommendations of the Executive Committee regarding authorizing the Executive Committee, or other committee, to take some definite steps regarding the overage from the Bar Board to the State Bar Association, or do you wish to leave that to the Executive Committee?

MR. TAYLOR: Before any action on that matter is taken, would it not be well to hear from the Bar Board. They may have some reasons to present why it should not be wise to make that change.

PRESIDENT TRAYNOR: With that suggestion, we will defer action until later.

MR. WENZEL: May I add just a word. You will find there is some discrepancy in the report of the Secretary and the reports given by the Bar Board. For example you will find this year a statement to the effect that during the past five years there has been an average amount of $2,838 turned over to the Association. You will also find, if you analyze the report made by the Secretary-Treasurer dur-

ing that same period, that I have acknowledged receipt of a little over $2,900 or $62 a year more than the Bar Board claims I have received. I think the difference in those figures comes about by the fact that the Bar Board is using an entirely different period for its calculations. It is possible, also, that the Bar Board has omitted figures with respect to back payment of fees which were also divided with us. At any rate, we have received $310 more than the Bar Board claims we have received.

PRESIDENT TRAYNOR: We will now pass to the report of the American Law Institute and Judicial Council, Hon. A. M. Christianson.

JUDGE CHRISTIANSON: Mr. President, members of the North Dakota Bar Association and guests: Apparently there is a mistake somewhere. I didn't understand this was to be a committee report. When I first heard from the Chairman of your Program Committee, he urged that some special attention be given to the Judicial Council to the end that the members who were here might have as full information as possible on the subject. Later something was said about the American Law Institute and correspondence was had with my associate, Judge Burke, and he was asked to cover the Judicial Council, and it was suggested that I cover the American Law Institute. We conferred on the matter and it was agreed between us that one of us should take one subject and one the other so, in view of Judge Burke's great familiarity with the American Law Institute, having attended more sessions than I have, it was suggested or agreed between us that he would take that subject, and he also suggested himself that in view of my greater personal contact with the regime of the Judicial Council that I discuss that subject, so with those preliminaries, I will proceed to tell you something about the Judicial Council, such as I understood was the desire of your Program Committee.

JUDICIAL COUNCIL

JUDGE A. M. CHRISTIANSON

The Judicial Council movement which has spread so as to include more than one-third of the states of the union is of comparatively recent origin. The first specific suggestion for the creation of a Judicial Council of the kind now in existence in the different states, appears to have been made in 1921 by the Massachusetts Judicature Commission, a temporary body appointed under an act of the legislature to investigate the workings of the courts and to make recommendations. In its report the commission called attention to the fact that the different courts of Massachusetts had developed separate organizations having little relation to each other and that there had never been "any central body of a permanent character for the accumulation of information and the consideration and discussion of questions of organization, practice and procedure bearing on the subject of judicial administration." The commission said that "it is not a good business arrangement for the commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to the casual interest and initiative of individuals," but that there should be a central official body, consisting partly of judges and partly of lawyers, for the continuous study of questions relating to the courts, charged with the duty of investigating the facts and reporting annually to the Governor.

Massachusetts, however, was not the first state to follow this recommendation. Ohio took the lead by establishing a Judicial Council in 1922. Oregon followed in 1923 and Massachusetts in 1924. In 1925 such Councils were established in North Carolina and in the State of Washington.

It has been suggested by a high authority that the Judicial Council idea is traceable to the proposal of a ministry of justice advocated by Dean Pound in 1917. He said that such a minister was needed "charged with the responsibility of making the legal system an effective instrument for justice," and consisting, as he put it, of "a body of men competent to study the law in its actual administration functionally, to ascertain the legal needs of the community, and the defects in the administration of justice not academically or a priori, but in the light of everyday judicial experience and to work out definite, consistent, lawyer-like programs of improvement." The suggestion was indorsed by Judge Cardozo in 1921, in his brilliant address before the Association of the Bar of the City of New York, in which he deplored the fact that the courts are not helped as they ought to be in adapting law to justice, for the reason that they and the legislature "work in separation and aloofness," and there is no one to mediate between them, no one to give warning that help is needed. "The legislature," he said, "informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. . . . The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged."

However, the need of some agency to promote team work among those charged with the administration of justice had received recognition not only by recommendations on the part of individuals but by governmental action even prior to the time Dean Pound made the statement quoted above. As early as 1913 Wisconsin had provided for an organization of all the circuit judges of that state to be known as the Board of Circuit Judges. These judges were required to meet at least once in each year and charged with the duty of making "such rules and regulations as they shall deem advisable, not inconsistent with the statutes or rules of practice adopted by the justices of the Supreme Court, to promote the administration of the judicial business in the circuit courts of the state." In 1922 Congress, acting upon the recommendation of Chief Justice Taft, provided for an annual conference of the senior circuit judges of each circuit. While the organizations of judges provided for in Wisconsin and by the act of Congress were intended to allow team work and to throw upon the council of judges certain responsibilities for the administration of justice, they did not fill the place which it was hoped the Judicial Council would take. As was said by Robert G. Dodge, chairman of the Massachusetts Judicial Council, in his address at the meeting of the American Bar Association in 1926: "The idea is that the Council, although containing representatives of the courts, shall be an official body, independent of the courts, that it shall include practicing lawyers, and that its functions shall be very different from those of an occasional conference of judges.

It may be said in passing that the need, if there be one, of a Judicial Council can by no means be supplied by conferring broader rule-making powers on courts. Many of the problems which must be considered by the Councils are problems with which only the legislature can ultimately deal. Not the least important function of the Councils, moreover, is to assist in the exercise of the rule-making power by making suggestions to the courts based on a study of the facts which the judges alone have not time to make and on a combined practical experience with the working of existing rules much broader than that of any one court. If in a sense the Judicial Council supplies the need, expressed by Judge Cardozo, of an intermediary between the courts and the legislature, so also it may serve as an intermediary between the Bar and the courts for the transmission of considered suggestions concerning matters of practice which do not require legislative intervention."

At the annual meeting of the North Dakota Bar Association in 1924, the committee on the Judicial section, in a report signed by two members, recommended the creation of a Judicial Council. In that report it was said:

"The administration of justice requires continuous study. We can not construct some system, admirable though it may be, and leave it to work perpetually. The State is the unit and the work of the courts should move harmoniously and uniformly. We need a better and more continuous study of the work of the judicial system, its results, its methods, rules of procedure, practical workings. If justice is to be rendered to the best advantage, it must be prompt, cheap and effective. It is only by a systematic study of the problem, by those who are familiar with it and who are competent to determine its availability and who are imbued with a desire to see the great end accomplished that we can bring our administration of justice down to date. At present the system is decentralized. Each man works for himself and under his own plan, even in the same district. So far as the State as a whole is concerned, we are working in the dark. True, the Constitution gives to the Supreme Court the supervising power over the lower courts, but after all, this power can not be exercised to the best advantage without a complete study of the whole problem. There is no way of getting the actual conditions to the court. There is no way of telling what rules are satisfactory, what are archaic; how far the administration of justice is uniform. There is no way of finding out, for example, how uniform is the actual working of the Conciliation law; whether the Juvenile division operates in much the same way in each district. * * *"

The recommendations of the committee were approved by the Bar Association and the committee was requested to formulate such law as in its judgment seemed proper. A bill was prepared, but after due consideration it was deemed inadvisable to have it introduced in the 1925 session of the legislature and the proposed bill, together with an extended report, was submitted to the Bar Association at the annual meeting in 1925. The committee at that time recommended that the whole report be submitted to the members of the Bar for a year's study, that the committee be continued and that final action be taken at the annual meeting in 1926.

You probably will recall that I was Chief Justice of the Supreme Court of this state during 1926. There confronted us at that time a situation which in my judgment rendered it highly desirable that the judges of the district courts and those of the Supreme Court be called in conference. The matter was discussed with such judges of the district court as I came in contact with as well as with my associates. All believed a conference to be desirable. The proposition was thereupon submitted by letter to all the district judges. Every judge, both of the district and of the Supreme Court, approved the plan. A meeting was called in May, 1926, and remained in session two days. Lack of time forbids to even attempt to enter into detail. At the conclusion of the meeting a motion was made and unanimously carried that the Chief Justice be requested to call similar conferences at stated periods in the future.

You are aware that only a few years prior to 1926 radical changes had been made in our laws as regards administrative matters concerning the district and Supreme Courts. For the first thirty years after statehood the terms of the district courts had been fixed by statute; the district courts had formulated their own rules of practice and in case of disqualification of a district judge, either upon application of a litigant or otherwise, the judge disqualified would designate his own successor as trial judge. This had been changed and the power and duty to designate terms of district court and to fix the location of the chambers of the judges thereof had been conferred upon the Supreme Court and the Supreme Court had been required, in the exercise of its supervisory control over district courts, to adopt uniform rules of procedure for all the district courts of the State. Provision had further been made that where an affidavit of prejudice was filed against a judge of the district court, that the Supreme Court should designate the trial judge. The members of the Supreme Court had no part in the enactment of these laws. They were not consulted. They recognized, however, that the duty having been imposed it was incumbent upon them to carry out in letter and spirit the legislative will. It had not always been easy to administer the law effectively. At the outset there at times were complications. In some instances affidavits of prejudice would be filed in such a large number of cases as to completely disarrange the calendar. The only way the work could be carried on effectively was through mutual co-operation and arrangement between the presiding judge and the trial judge who was called in. In some instances district judges resented being ordered to go to a certain county to try some litigation in which affidavits of prejudice had been filed against the presiding judge.

The conference called in May, 1926, was addressed by the then Governor Sorlie, and the then Attorney General Shafer. Both made suggestions as to matters wherein they felt improvement could be made in the administration of justice, particularly as regards the aid that district judges could render the Pardon Board by preparing statements of facts in each case and filing the same with the warden of the state penitentiary to the end that when inmates of the penitentiary seek pardon or parole, these statements might be available for consideration by the Pardon Board. The discussions had in the conference covered a large range. As a result the different district judges agreed to furnish to the Chief Justice a statement from time to time as to the condition of work in their respective districts and when he would

be available to try cases in other districts. A spirit of co-operation and desire to serve was manifest on every hand. Some consideration was given to the proposition then pending before the Bar Association as to the establishment of a Judicial Council and the unanimous belief was expressed that it was desirable that such a body be formed by statutory authority. At the annual meeting of the North Dakota Bar Association held in September, 1926, the committee on the Judicial Council presented its report. There was an extended discussion. I presented rather fully the views of the judges as expressed at the meeting in May as regards the membership of the Council. The Bar Association adopted a resolution that a committee be appointed to meet with a conference of judges and that this committee be empowered to act for the Association in preparing the bill for a Judicial Council; that the Judicial Council consist of members of the Bar in addition to the judges.

A meeting of the judges was again called in October, 1926. Prior to such meeting a letter had been sent to each licensed attorney in North Dakota informing him of the purpose of the meeting and asking for suggestions as to any deficiencies in the administration of justice that had come to his attention and asking that he submit whatever recommendations he might have to offer as regards any proposed change in either procedural statutes or rules of court. Interim the meeting in May and the one in October a complete survey had been made as regards the operation of the law relating to affidavits of prejudice. This involved in all an investigation and analysis of the disposition of some eight hundred cases. A survey had also been made of the operation and administration of the Juvenile Court Act. Committees were appointed to consider and work out the details of the matters upon which the conference had agreed and where it required legislation to prepare the necessary bills. No action was taken on any matter unless it had the unanimous approval of the members of the conference.

At this meeting the members of the committee appointed by the Bar Association at the meeting in September met with the judges and the essential features of the bill for the creation of a Judicial Council was agreed upon and a committee named to prepare and have it introduced at the coming session of the legislature. The bill was prepared and introduced accordingly and the North Dakota Judicial Council came into being July 1, 1927.

The first meeting of the Council was held in December, 1927. The meeting was called to order by Chief Justice Birdzell; rules for the conduct of the business were formulated and adopted; reports were received from the committees that had been appointed by the Judicial Conference; among others there was considered (1) the organization of a statistical bureau; (2) the operation of the conciliation statute and the advisability of substituting a small claims court for the conciliation plan; (3) complaints which had been lodged by attorneys as regards conflicting terms of court in adjoining districts; (4) the advisability of limiting appeals from justice's courts to the county courts and from such courts to the Supreme Court; (5) revision or amendment of the Juvenile Court Act. Committees were appointed to carry into effect the recommendations of the Council. The amendments to the Juvenile Court Act were introduced in the legislative session of 1929 and became law.

The last session of the legislature enacted two statutes having the approval of the Judicial Council, namely, the statute authorizing a juvenile court to commit a feeble-minded delinquent to the feeble-minded institution; and the statute relating to the administration of trusts. The legislative assembly also recognized the desirability of invoking the aid of the Council by requesting it to make an investigation and study of poor relief, the laws pertaining thereto and the administration thereof and to report to the next legislative assembly such findings and recommendations and changes in our poor relief laws as shall seem advisable to the Judicial Council.

I am aware that it may be said that the Judicial Council has not performed any outstanding feat. I note that similar questions have been raised as regards all Judicial Councils. The members of the Council are all busy men. The work they perform there is added to their other duties. No funds are available to defray any expenses. The Judicial Council of California had at its disposal $170,000.00 for the biennium, $40,000.00 of which was available to defray the expenses of the Council itself. Do not misunderstand me, I am not urging, nor have I any intention of urging, that a large sum of money be appropriated for the Judicial Council. I am merely pointing out that the work of the Council is after all an added labor, a by-product as it were, of the men who hold membership in it. They have tried to make it an agency for the improving of the administration of justice in this State and I am constrained to believe that they have succeeded in doing so, possibly to a greater degree than they are given credit for doing. The fact remains that the Council furnishes a medium through which misunderstandings and difficulties such as conflicting terms of courts, over-crowded calendars and matters of that kind, are taken care of through mutual co-operation and that such obstacles and inconsistencies as are found in our laws and called to our attention, are at least given some consideration and, if found to be of real merit, are called to the attention of the chief executive and the legislative assembly.

PRESIDENT TRAYNOR: Gentlemen, I do not understand really that the Association has any action to take upon the very fine and informative and interesting address given us by Judge Christianson.

Do you wish to take any action? If not, I will just suggest that the speech be printed in the record. Personally and for the Association, Judge Christiansen, we thank you for that very fine address.

The next is the report of the Committee on Bench and Bar Ethics. Is there a representative of that committee here?

MR. BOTHNE: That was printed in the Bar Briefs I believe, for July, and there were no suggestions or recommendations, I think.

REPORT OF COMMITTEE ON BENCH AND BAR ETHICS

No complaints have been filed with our committee. A few minor questions were submitted to Mr. Charles Ego, a member of the committee. These were duly answered. He did not consider them of sufficient importance to call a conference of the committee, and has kept no record of them. Nothing relating to our committee was brought to the attention of Mr. N. J. Bothne. The past year has been singularly free from any complaints, and, indeed, from any

inquiries. Such questions, very few in number, as were submitted to me I have answered, apparently to the satisfaction of all concerned. I have nothing, therefore, to report.

I want to say, however, that the bar of the state is on a higher plane than ever before. This relates to the bench as well as to the bar. So on the theory, that no news is good news, I remain

ALFRED ZUGER,
Chairman.

PRESIDENT TRAYNOR: It appears there is nothing of importance to be acted on in that report.

If not, we will pass on to the Committee on Citizenship and Americanization. That report was also printed in Bar Briefs, I believe.

MR. WENZEL: It was not, Mr. President, but I have a report from Mr. Johnson, which I will read.

REPORT OF COMMITTEE ON CITIZENSHIP AND AMERICANIZATION

Your Committee on Citizenship and Americanization begs leave to report:

That shortly after appointment in February, the Chairman of your Committee, deeming it inadvisable to call a meeting of this Committee on account of its size, wrote to each member thereof, requesting that they arrange a program for their County, and your Chairman took the liberty of appointing a member in each County not represented, in order that each County might be represented on this Committee.

So many inquiries came back from various members, that your Chairman prepared and mailed to each member of the Committee the following letter:

April 3rd, 1931.

Committee on Citizenship and Americanization,
State Bar Association:

Gentlemen: Before I finished writing a letter to each of the members of the above named Committee, informing them that unfortunately Mr. Acker had withdrawn as Chairman and that I had been chosen in his place, I had received so many letters asking various questions, that I am now taking the liberty of sending you a circular letter, in order to save time and labor, which I trust will meet with your approval. Yes, you are named as a member of the above named Committee. See October Bar Briefs, page 271, also December issue, page 158.

If County Chairmen have been appointed, I know nothing about it, and trust that you will see that one is appointed in your County, if you will not do the work yourself. Why not have a meeting with the other members of the Bar in your County, and do whatever you think best under the circumstances? You could sponsor an Essay, Oratorical or Declamation Contest, offering small prizes, provided you can raise the prize money, or you could have members of the Bar address the school children on subjects which you feel are in line with our work.

On page 272 of the October issue of Bar Briefs you will note that our Committee is given an appropriation of $50.00, this means that there is nothing for work in the Counties, except perhaps to cover a little postage. I understand no report was made at the last meeting, and I do hope that we can make a report this year, showing that something was done in every County in the State, and just what the nature of it was.

Would you please report to me about June 1st, without further notice, just what you have accomplished, regardless of how little it may be, so that I may incorporate same in a report for the annual meeting.

Sincerely,
THOS. G. JOHNSON.

Only four members out of fifty-two responded to this letter with a report of what had been attempted or accomplished, during the past year. No doubt the lack of time (this work should start in the early fall) and no appropriation for prizes is to blame for some of this indifference, although some of the members seemed to feel that there was no occasion for such a Committee.

There has been some work done throughout the State along the line of Oratorical and Essay Contests, classes to teach foreign born, and programs at naturalization hearings, in which members of the Bar took part, along with other organizations.

THOS. G. JOHNSON,
Chairman.

Mr. President, I move you on behalf of the Committee that the report be filed and printed.

MR. KVELLO: Second the motion.

PRESIDENT TRAYNOR: All those in favor of the motion, signify by saying aye; those opposed the same sign; it is carried.

We are next to be favored with an address by Mr. Herbert Nilles of Fargo. The subject of his address is not announced in the program, so he will announce it himself.

MR. NILLES: Mr. President, and gentlemen: To term this discourse an address would perhaps be a misnomer, because it is really a discourse, rather than an address. My purpose in discussing this subject is somewhat prompted by the fact that in meetings of this kind, we are inclined sometimes to get off a little too far into generalities.

A subject which is of interest to a great number of the members of the Bar, and which is directed to some specific question may be of more interest, possibly, interspersed with general statements, than a continuous program of general talks.

The subject of automobile accidents and automobile litigation is one which is of interest to all of us, both as citizens and as lawyers. It forms the subject of the great part of the law of insurance liability and casualty companies have, for quite a number of years past, issued what are known as liability insurance policies.

INTERROGATION OF JURORS

THE RIGHT TO INTERROGATE JURORS WITH REFERENCE TO INSURANCE IN NEGLIGENCE CASES

The rising tide in the number of automobile accidents has likewise given rise to an increase in the number of negligence cases for the recovery of damages arising therefrom.

Liability and casualty insurance companies have for some years past issued a type of policy whereby the owner and operator of an automobile may procure insurance whereby he may indemnify himself against claims urged against him which arise out of his ownership or operation of his automobile.

This type of policy is of course to be differentiated and distinguished from the ordinary form of accident policy. An ordinary accident policy of course simply grants to the person purchasing it certain benefits where he, the holder of the policy, sustains injuries arising out of an accident.

The automobile liability policy on the other hand, represents merely the effort on the part of the wise and prudent automobile owner to protect himself if, becoming involved in an accident, he is or may be legally adjudged to have been responsible for it and thus to be required to respond in damages.

In the trial of this class of cases, it has been observed that ingenious attorneys representing plaintiffs have attempted to devise many ways and means of bringing to the attention of the juror, directly or indirectly, the fact that the defendant in the case is protected by liability insurance, to the end that the juror may understand that a verdict against the defendant will not ultimately be paid by the defendant himself but by the insurance company who carries the defendant's liability insurance.

Some of the methods which have been tried to bring such fact to the attention of the jury have been rejected as improper by the courts. Some of such methods have been approved for various reasons.

It seems to be the universal rule that direct evidence in the case that the defendant in a personal injury or death action carries liability insurance protecting him from liability to third persons on account of his own negligence, is not admissible. This rule finds support in decisions from practically every jurisdiction including that of our own State. It was so held in the came of *Beardsley vs. Ewing, (N. D.) 168 N. W. 791,* and was again reaffirmed in the case of *Stoskoff vs. Wicklund, (N. D.) 193 N. W. 312.*

In the Ewing case Judge Birdzell in delivering the opinion of the court among other things said:

> "The inherent vice of the objectionable questions lies in their probable effect upon the minds of the jury. The consideration as to whether or not the defendants are insured is entirely foreign to the question of negligence; but the fact must be conceded to have a bearing upon the interest of the defendants in the outcome, and to belong to that class of

matter which it is proper ordinarily for the jury to consider in weighing the testimony of witnesses. * * * * * *

In fact, the rule of exclusion is so well understood in the profession that there seems but little excuse for even asking such questions. It is passing strange, too, that an attorney, cross-examining hostile witnesses, should undertake to establish their lack of interest in the outcome, when ordinarily it would be to his interest to establish exactly the opposite. This gives rise to the current suspicion, which is the philosophy of the rule of exclusion, that the testimony is really offered for its prejudicial effect upon the jury."

It can hardly be questioned but that this rule of exclusion of direct testimony in the case on the subject of insurance is correct. In cases of this character there are two questions involved, the first question is whether or not the defendant was guilty of negligence, giving rise to a cause of action; the second question, if the first be answered in the affirmative is the amount of damages which will compensate the plaintiff for his injuries. No logical reason can be observed for the introduction of evidence showing that the defendant is insured. It cannot be assumed because a defendant is insured that he will be more careless than he might otherwise be, if he were not indemnified, because such proof would not tend in any degree to sustain the issue of negligence. It cannot be conceived that the existence or non-existence of liability insurance would in any way assist the jury in determining whether the plaintiff was injured by the negligence of the defendant. It has no bearing on the question of negligence.

Likewise, on the issue of damages. The fact that the defendant is indemnified can in no manner be said to be relevant since the plaintiff's damages ought and should be exactly the same, whether the defendant be insured or not. It is no more competent than evidence in a case of this kind tending to show the poverty of the plaintiff and the wealth of the defendant.

These general principles are pointed out as a background for discussion of a rather mooted question which arises upon the questions propounded to a jury upon examination before the trial.

In the courts of practically every jurisdiction, attorneys for plaintiffs in this class of cases have claimed and asserted the right to examine prospective jurors as to any connection which they might have with an insurance company who may have indemnified the defendant in the particular case in order that a challenge for cause, if the facts justify it, might be interposed; the right to interrogate the prospective juror in connection with any liability insurance company has also been asserted, it being claimed that connections with companies of like character constitute information which might justify the exercise of a peremptory challenge.

In a case where Black is plaintiff and Green is defendant, an inquiry directed to a juror as to any connection which he might have with a certain named insurance company, or with any insurance company, being apparently so foreign to the situation as originally presented to such juror, can have but one effect and that to inform him that an insurance company is interested in the outcome of the suit, and that the defendant is no doubt protected by insurance.

The claim is made by plaintiffs in this class of cases that such questions are proper because they go directly to any possible interest, direct or indirect, that a juror might have in the outcome of the suit and form the subject of legitimate inquiry.

Plaintiffs in this class of cases contend that while it might be unfortunate for the defendant that such information is communicated to the jury, yet the inquiry made is one which the plaintiff has a legal right to make and that because such may have an unfavorable effect on the defendant's case, is no reason why the plaintiff should be denied his legal rights.

Defendants on the other hand contend that this type of inquiry is unfair and unjust because it is asserted that in most instances plaintiff's lawyers, at least in this part of the country, are thoroughly familiar with the antecedents of prospective jurors; that no necessity exists for the propounding of such questions since, if no mention is made of insurance whatsoever, even a stockholder of an insurance company who was called as a juror in a case, would not know that his company was involved; it is contended and asserted that practically all of such questions are asked not for the legitimate purpose of ascertaining information on these subjects but simply to call the existence of insurance to the attention of the jury.

It is further asserted that the defendant's case is prejudiced when the existence of insurance comes to the notice of the jury, not only because of a supposed prejudice which exists in the minds of jurors in favor of an injured plaintiff and against a supposedly moneyed corporation, but also because it is claimed the jury often have a misconception of what the insurance protection really is, believing it to be in the nature of accident insurance rather than merely a contract indemnifying the defendant against loss; and in cases where a defendant carrying limited coverage only is involved in an accident as a result of which he is sued for a larger sum than the amount of his coverage, it is a distinct prejudice to the individual defendant.

The foregoing are a number of reasons assigned on both sides of the question. It seems to me that there is one and only one good reason for permitting such a line of interrogation to the jury. This reason is well stated by the Supreme Court of Iowa in the case of *Foley v. Cudahy Packing Co. (Ia.) 93 N. W. 284,* in which the court said:

> "It is common knowledge that many companies and corporations have been formed in this country for the purpose of, and are engaged in the business of, insuring employers of personal injuries sustained by employees. Of necessity such business is carried on by agents, and so it is that in most cities and towns one or more of such agents can be found. It is easy to understand that the interest of such companies lies on the defensive side of cases such as the one at bar. And, if the defendant happens to be insured in some one or more of such companies, the interest becomes a direct and active one. That a defendant in an action of this character may be insured in some such company is immaterial of itself, but it is manifest that a plaintiff may not desire to have the jury which is to try his case made up, in whole or in part, of agents or employees of such insurance company.

> The fact of such employment would not constitute a ground of challenge for cause, but as parties and their counsel cannot be expected to know personally every juror who may be called into the box, an examination sufficiently broad should be permitted to enable the party to determine upon his peremptory challenges."

Certain it is that inquiry made in good faith for the purpose of ascertaining whether or not a prospective juror may be an officer, director, stockholder, agent or representative of an insurance company, which may be indirectly involved in a suit, cannot be denied as legitimate exercise of the right of inquiring into the qualifications of a juror. While most courts concede that principle, they are all agreed that the practice is permissible only when made "in good faith" and in such a way as not to advise the juror of the purpose of the examination.

So far as the defendant's case is concerned, however, the defendant naturally is not concerned so much with the good faith but rather the ultimate result as to whether or not the fact of insurance is communicated to the jury. It is practically impossible to ask these questions without conveying the information to the jury.

As I view the situation, it would be next to impossible to impute bad faith in such line of interrogation. The question, it seems to me, is not so much whether the motive be ulterior but whether or not the jury is in fact advised of the existence of insurance, because whether the motive be good or bad, it is not the motive which does the damage but rather the communication to the jury of the existence of insurance.

We have thus on the plaintiff's side of the controversy a perfect legitimate and legal reason for making inquiry of the jury as to whether or not they are directly or indirectly interested in an insurance company carrying liability insurance.

Let us briefly consider the defendant's side of the case. I do not think it will be doubted by anyone that when the existence of insurance is brought to the attention of a jury, that such fact is prejudicial to the defense. That the defendant is indemnified, has its effect not only in number of verdicts found for the plaintiff but it also has its effect on the amount of damages awarded. Some of the reasons which have been assigned for such results are: (1) the sympathy of a jury always goes to an injured plaintiff and the extent to which such sympathy controls the verdict is increased if a jury knows or believes that someone other than the defendant (and particularly an insurance corporation) will ultimately pay the verdict. (2) A jury composed of laymen almost uniformly have a misconception of what the liability insurance policy is. I have in fact talked even with lawyers who do not understand that a liability insurance policy is not taken out or issued for the benefit of one who may be injured but is procured by the owner of an automobile simply for his own protection against disaster, and that fundamentally the company issuing the policy cannot and should not be called upon to respond unless a legal liability for negligence exists on the part of the automobile owner or driver, and then only for the damages actually sustained within the limits of the policy. A rather popular idea seems to exist, that these policies are accident policies which immediately

upon the happening of an accident, charge the company with liability for such damages as have in fact been sustained; and because of this misconception of the situation, the average juror gets the idea that the question of negligence is merely an abstract question in the case and that all they have to find is that an accident occurred and then proceed to assess the damages; I do not contend that every jury takes this view but there are many of them who do and I think it has been within the experience of many of you who have observed the same thing. The zeal of plaintiffs in trying to get the facts to the jury is proof of this fact. There are likewise many cases where outside of the prejudice which results to the jury, an actual and serious prejudice results to the defendant himself. In these days of large verdicts many an automobile owner carrying liability insurance of limited coverage, finds himself sued for $50,000.00 or more, whereas his liability policy protects him only to the extent of five or ten thousand dollars. In such a case it can readily be observed that the individual defendant is subjected to a distinct handicap because the existence of insurance is brought to the attention of the jury, since the average jury will not stop to think that possibly there is a limit to the insurance protection carried, and even if the defendant in such case were willing to make a showing on his own account, to establish that he was only partially covered, we find the law to be that the defendant himself is denied the right to give evidence of the amount of insurance which he does carry since that is just as immaterial to the issues as evidence that insurance is carried. It was so held by the Supreme Court of Missouri in *Ternetz vs. St. Louis Lime and Cement Company 252 S. W. 65*

Because of the legitimate arguments which can be adduced both pro and con, the courts in passing upon this controverted question, have reached different conclusions.

We find the Supreme Court of Oregon in the case of *Putnam vs. Pacific Monthly Company, 130 Pac. 987, 45 LRA (NS) 338,* stating that it is reversible error to bring before the jury in any form, even by examination of the jury before trial, the fact that the defendant is insured against an adverse result of the action on trial; and in the case of *Schmidt vs. Schalm, 2 Oh. App. 268,* the court said:

> "The suggestion that an insurance company was the real party in interest in the action, and that the questions asked in impaneling the jury were asked for the purpose of safeguarding the rights of the plaintiff, does not appeal to us. On the contrary, we believe that this contention but thinly veils a subterfuge. After a very careful consideration of the question presented, and an examination of many authorities on the subject, we conclude that this practice is improper, and must cease."

and in the case of *Citti vs. Bava, (Calif.) 254 Pac. 299,* the court said:

> "This court and the Supreme Court have many times declared it to be the law in this state that during the trial of an action for damages, evidence that the defendant has been indemnified against loss by a surety company is not only inadmissible, but its offer on the part of the plaintiff is prejudicial misconduct."

On the other hand, the courts of Iowa, Minnesota, Nebraska and many other courts permit the jury to be interrogated as to its connections with liability insurance companies provided that the questions are so put to the jury in such a way as to be directed strictly to the matter of the juror's qualifications and not in the form of imparting information to the jury as to the existence of insurance.

I have pointed out these various reasons and arguments which support both sides of the controversy and referred briefly to the holdings of the courts, not so much with the view of criticising either side but simply as preliminary to a suggestion which if adopted, I believe, would have the effect not only of granting to the plaintiff a reasonable safeguard against getting a juror or jury composed of insurance men on the one hand, but also on the other hand of relieving the defendant from the unquestioned prejudice which arises from injecting insurance into the case.

I realize that possibly some members of the Bar would never agree that their right to inject insurance into the case if possible, should in the slightest manner be abridged. I believe, however, when we consider that the courts are for the purpose of administering justice, based upon law and upon established facts, and that verdicts based on prejudice are not just verdicts, the fair-minded lawyer and jurist will readily admit that matters of insurance brought to the attention of the jury, even in the methods approved by some courts, have a decided prejudicial effect in favor of the plaintiff and against the defendant.

I am not familiar with the practices surrounding the enrollment of a jury panel in the eastern part of the United States but in these central and western states, ordinarily a jury of thirty-six or forty jurors are called to try a stated term of court. The suggestion which I have to make with reference to this controverted matter, is that such court rules or legislation if necessary, be adopted whereby it shall be made the duty of the trial Judge holding the term, upon the first day thereof, to himself conduct an examination of each member of the panel with reference to his connections, if any, with corporations, either as officer, director, stockholder or agent. Such examination, which of course has for its purpose the development of any facts which might otherwise serve as the basis for a challenge for cause or the exercise of a peremptory challenge, could and should be directed along general lines in order that the juror's interest in any controversy which might thereafter come before the court, could be fully disclosed. In this section of the United States I venture to state that probably not 1% of any jury panel from such examination would disclose connections with any insurance corporation which would disqualify him to sit as a juror. The Trial Judge by such examination could propound such typical questions as the following:

1. Are you or have you ever been an officer, director, agent or stockholder of any corporation?

2. If so, give the name of such corporation;

3. What is your present occupation and name each business and occupation in which you have been engaged during the past ten or fifteen years.

The above inquiries as herein stated are compound in character of course and would necessarily have to be split up and put into

simpler questions, but inquiry along this general line possibly supplemented to some degree by fair questions suggested by the Bar to the court, will unquestionably develop that practically every member of the jury panel is in no way connected with an insurance corporation in any way which would disqualify such juror from sitting as a juror in the case. If a juror answered such inquiry in such a way as to indicate a connection with some corporation, such inquiry could in the individual case be pursued to develop the full nature of such connection.

Such examination held in open court before the commencement of the actual trial of cases with the privilege on the part of counsel having cases before the court to privately suggest questions to be submitted, which examination would be reduced to writing and filed available for the examination and inspection of counsel having cases to be tried at such term, would, it seems to me, furnish to every plaintiff a full and complete safeguard against there being drawn on his jury any juror who might be said to have any interest opposed to that of the plaintiff, from an insurance standpoint. Such plan should require that if such examination discloses grounds for challenge for cause, that such challenge for cause should be reduced to writing and filed with the court in the absence of the jury, if the juror subject to such challenge be called as a juror in the particular case on trial. Such plan if adopted would require that when such examination has been so conducted by the court, that the plaintiff would be prohibited from propounding to the jury any questions tending to bring to their attention, directly or indirectly, the fact that the defendant is indemnified.

I do not propose that the examination of the jury by counsel on other general matters should in any way be impaired. Some courts, however, have gone to the extent of taking into their own hands, the interrogation of the jury panel with respect to qualifications of the jury. I do feel, however, that if in advance of the trial of any cases whatsoever, the trial court should conduct a fair examination, fully and fairly developing the juror's antecedent and previous connections, in business ways, the plaintiff can have no legitimate complaint at being restricted when his case is later called for trial from directing questions to be put, having the effect of injecting the matter of insurance into the case. Possibly the jury panel, while being so interrogated by the court, may suspect or believe that the examination is made because there may be a case or a number of cases to be tried in which a defendant is indemnified by insurance.

This examination, however, coming as it does, at the opening of the term and particularly before any cases come to the attention of the jury, will minimize any harmful effect to defendants in that class since the jury will be unable to tell in which or what particular cases the matter of insurance is involved. In fairness to defendants of course a case of this type should not be called for trial as the first case following such examination by the court.

If plaintiffs in this class of cases are sincere and acting in good faith in demanding the right to examine the jury on its connection with insurance cases, in order that the plaintiff may have his case tried before a jury of disinterested jurors, no legitimate objection can be urged because such examination by the court in advance of the actual trial of cases, will give the plaintiff the very information which some courts say the plaintiff is entitled to. On the other hand, defendants

in this class of cases who are willing to be fair and reasonable, must concede that considerable logic supports the claims of the plaintiff that he is entitled to a full examination of the proposed jury and particularly with reference to any insurance connections, and so far as defendants are concerned, no objection should be found because it minimizes to the lowest degree any possible prejudice resulting from information conveyed to a jury through interrogation on the question of insurance.

I have not attempted to investigate the question as to whether or not such a practice could be legally adopted in North Dakota without legislation. Judge Miller of the United States District Court, however, has adopted a rule whereby the court propounds all questions to the jury, counsel not being permitted to conduct such interrogation but with the privilege on the part of counsel of submitting to the court interrogatories which counsel may deem to be material and which the court propounds to the jury or rejects as the court may view the propriety of such interrogatory.

I am advised that Judge C. W. Butts of the Second Judicial District follows substantially the same procedure. Our statutes with reference to the qualifications of jurors does not seem to establish the practice as to whether or not such interrogation should be conducted by the court or by counsel. It would seem to me without a detailed study of the situation, however, that no inherent right rests in any party to himself interrogate the jury, although a party has a right to have interrogations submitted which fully and fairly cover the question of the juror's qualifications.

I believe that the vast majority of our lawyers and jurists believe in fair play. I do not believe that much comfort is obtained through obtaining victory otherwise. I submit that the courts of this state and its Bar on this controverted question should in the interests of justice and fair play adopt and recognize such practice as will mete out justice without prejudice.

PRESIDENT TRAYNOR: Mr. Nilles, the Bar Association of North Dakota thanks you very much for this very interesting discussion.

I will say that I will open for discussion the recommendation made in this report, during the report of the Committee on Jurisprudence and Law Reform, because it seems to me that recommendation is in line with that discussion.

We will now pass to the Committee on Comparative Law. Is the chairman here?

If there is no report of that committee, we will pass to the committee on Constitution and By-laws, which report has been submitted, I know. Will the secretary please read it?

CONSTITUTION AND BY-LAWS

Your Committee on Constitution and By-laws has considered the amendment proposed at the last meeting of the State Bar Association. The amendment as approved at the last annual meeting was as follows: That Article V of the Constitution be amended to read as follows: "Executive Committee. The Executive Committee shall consist of the officers of this Association and one person for each district organization of the State as now organized who shall be the president

of such district association. 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 who shall serve until the following annual meeting of the State Association".

Your Committee is in favor of the purpose of this amendment but are of the opinion that to permit changes of boundaries of the several districts as such changes may become desirable and to prevent any misunderstanding as to the term for which the members of the Executive Committee shall serve, this amendment should be further amended to read as follows:

"Executive Committee: The Executive Committee shall consist of the officers 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. 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.

CLYDE DUFFY,
Chairman.

MR. WENZEL: On behalf of the Committee, Mr. President, I move the adoption of that report.

PRESIDENT TRAYNOR: Gentlemen that recommendation will be open for discussion.

I find, however, that by a little speed here, we have gotten ahead of our program, and while the President's Address is scheduled for 1:30 this afternoon, I see no reason why it should not be given now, and then, after that address is given, we will proceed to the recommendation of this report, as I offer a recommendation in my address along that line, so if there is no objection, I will proceed in that order of business and give the President's Address now.

PRESIDENT'S ADDRESS

F. J. TRAYNOR, DEVILS LAKE

There seem to be two types of annual address by presidents of bar associations. Frequently a president considers it as an opportunity for him to impress his fellow members of the bar with his erudition; to expound some highly intellectual and scholarly thesis involving the law, the sciences, the classics or what not. The other type of address confines itself to the business and the aims and ideals of the association with directness and without frills.

Being president of the association has not made of me a superman. I humbly confess my inability to produce for your edification a classical, scientific or legal masterpiece that will create or embellish any new or startling theory or principle for which the world will rise up and give me thanks. I am willing to leave to Einstein the honor of giving to the world all the great theories that no one understands; and may the intellectual elite continue to enjoy the ecstacy they experience in pretending to understand.

Therefore expect not any learned exposition or literary gem "of rarest ray serene" but settle yourselves to calmly listen to a brief account of my stewardship and to consider some matters which may be of interest to the profession at this time.

At the annual meeting last year a constitutional amendment was proposed and is to be voted upon at this meeting. It provides in substance that the members of our executive committee shall consist of the officers of this Association together with the Presidents of the district bar associations in the state. Though that proposed amendment is not yet effective, I adopted the principle thereof in my appointments to the executive committee this year. It has proved to be a very satisfactory arrangement and I recommend the amendment to your favorable consideration at this time.

I have attended one meeting of each district bar association. I have found that these meetings provide an excellent means of contact between the state and local organizations and an opportunity for the officers of the state association to discuss with the members of the bar in all parts of the state the problems of the profession and to bring to the rank and file a message from the parent association thus creating a more closely knit and effective state organization. These gatherings are delightful in their friendly informality. They present an occasion for the lawyers and their wives to mingle with each other in a social way that tends to the making and cementing of warm personal friendships. The discussions of matters of interest to the profession are usually spirited. Many of the younger members feel free, in these local meetings, to participate freely in the proceedings whereas at the state meeting they are very timid about expressing themselves. I hope that these ancillary associations will continue to grow and flourish and recommend that the state association encourage and foster them by every means at its disposal.

The proceedings of last year's meeting disclose a lively discussion of a recommendation made by the then legislative committee that the bar of this state go on record as approving legislation to bring about a more closely integrated bar. The proposal is to adopt the California system which gives to the State Bar Association full control of admission to the bar and disbarment, subject only to review by the Supreme Court. Action upon this subject was, upon motion, deferred until this meeting. In order that further intensive study might be given thereto I appointed a committee, of which Past President A. M. Kvello is chairman, to report at this meeting. I have not personally given this matter close study and make no definite recommendations thereon. I submit, however, that it is a matter of considerable importance and suggest that you give careful attention to the report of that committee and take definite action thereon.

All over the United States today the legal profession seems to be disturbed by the inroads, real or fancied, that are being made into the field of the practice of law by banks, trust companies, realtors, insurance agents and other laymen. The American Bar Association has a committee actively investigating the matter and will make its report in September. Last year this association considered the matter and instructed the legislative committee to present to the legislature an act to define the practice of law and to provide penalties for violation thereof.

Accordingly Senators Cain, Sathre, Lynch and Fowler, members of the legislative committee of this association, introduced in the last legislative session, Senate Bill No. 217. It met with violent opposition and defeat. I was surprised to learn from the legislators themselves, other than the lawyer members, the prevalence of the practice of drawing legal papers, and charging therefor, by laymen. Considerable resentment was evident against any attempt on the part of lawyers to interfere with such practice. Farmer members of the legislature were also strongly opposed to the bill. One of them at the hearing before the House committee suggested that instead of such legislation there should be a law to prohibit lawyers from engaging in farming.

In order that this association might have worthwhile information before taking any further action on this matter, following the legislative session, I appointed a committee, with Vice President Hanchett as chairman, to study this subject and to report at this meeting. That report will be presented to you for appropriate action. It should have careful, dispassionate consideration, keeping in mind at all times that the best interests of the general public, rather than some advantage to the profession, is the ultimate result to be desired.

The official publication of our association known as "Bar Briefs" is an important factor in advancement of the purposes of the association. It is ably edited by Secretary "Dick" Wenzel. I have been informed by members of the bar that they look forward to the coming of the monthly issue and that they feel the association could not get along without it. Nevertheless I am sure that the editor will at all times welcome suggestions or constructive criticisms that may tend to make the publication better serve the association.

In Bar Briefs for July was published the report of the Committee on Jurisprudence and Law Reform of which Mr. P. W. Lanier of Jamestown is chairman. That report is a thought provoking discussion of certain recommended changes intended to aid in the administration of justice. Briefly it recommends:

1. That the court shall instruct the jury before argument, so that the attorneys in the case may, in their arguments, comment upon the law of the case as given by the court.

2. That opening statements be made by both plaintiff and defendant before the taking of proof is begun.

3. That in civil cases, if there is no term of court to be held in the county in which the action is begun within ten days after the cause is at issue, either party may by proper notice have the case transferred to the nearest county in the district in which court is in session.

4. That if it be shown that a general denial is a sham pleading or interposed merely for delay, such general denial may be stricken on motion.

I submit these recommendations to you for your very careful consideration and appropriate action.

The president of the association is granted the privilege of a "President's Page" in each issue of Bar Briefs. At the outset I was informed that if I would confine my "Page" to approximately two

hundred fifty words each issue I might have the outside cover page. If I preferred I could take what space I desired inside the covers. I elected the front page with its limitation. From month to month I have discussed briefly on that page some topic I deemed of interest to the profession. One of these related to the practice of appellate courts in America of publishing written opinions in all cases decided by the court. Believing the position taken by me on this proposition is worthy of the careful study of the Bar I present it to you for consideration.

Our state constitution provides that when the supreme court makes a decision, "every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing."

While the supreme court has held such provision "not to require a literal compliance therewith," it is the practice to comply rather literally, almost slavishly, therewith. Such practice conforms to that in other states. The result is a great mass of judicial opinions in the United States, the cost of publication of which runs into great figures, and is borne by the legal profession. It is becoming an unbearable financial burden.

Does it result in clarifying the law? Does it result in the enunciation of definite, unequivocal statement of basic principles of law upon which the profession and the public can rely with confidence for future guidance? I think not. On the contrary, the result is a hodge podge of conflicting, inconsistent pronouncements, made worse by learned attempts to draw nice legal distinctions which oftentimes do not exist; and the practitioner finds himself in a sea of uncertainty, utterly unable to harmonize the varying statements of law by the same court on an identical subject. Supreme courts, as a rule, are too crowded with this work to give to the merits the careful consideration to which they are entitled or to write carefully worded opinions.

One law publishing company has sought to meet this problem by the selective case system. So long, however, as appellate courts publish written opinions in all cases, no selective system is effective. The remedy lies at the source. Curtail the output at the door of the court.

What we need is an amendment eliminating from our constitutional provision, the words—"the reasons therefor shall be concisely stated in writing,"—and leaving to the court's discretion the cases in which to publish written opinions. This would result in publication, only in exceptional cases, of carefully prepared written opinions involving the pronouncement of fundamental rules of law.

It would seem that the makers of our constitution had a fear that the court might be dishonest and that the written opinion was a necessary protection to the litigants and the public. Such fear is wholly unwarranted. Certainly the members of the supreme court in this state are of unimpeachable integrity. Their written opinions are sometimes criticized—the loser is never satisfied no matter what "reasons" are given in the court's opinion—but their honesty or fairness of purpose is never questioned.

Promulgate fewer, better written opinions, covering only fundamental principles of law, then we will have less conflict and less uncertainty in the law.

Even in the time of Blackstone this proposition was a live issue. Blackstone wrote as follows:

> "The uncertainty of legal proceedings is a motion so generally adopted, and has so long been the standing theme of wit and good humor, that he who should attempt to refute it would be looked upon as a man who was either incapable of discernment himself, or else meant to impose upon others. Yet it may not be amiss, before we enter upon the several modes whereby certainty is meant to be obtained in our Courts of Justice, to inquire a little wherein this uncertainty, so frequently complained of, consists; and to what causes it owes its original.
>
> It hath sometimes been said to owe its original to the number of our municipal constitutions, and the multitude of our judicial decisions; which occasion, it is alleged, abundance of rules that militate and forge with each other, as the sentiments or caprice of successive legislators and judges have happened to vary."

True Blackstone was not convinced that the written opinion should be curtailed, for he added:

> "People are apt to be angry at the want of simplicity in our laws: They mistake variety for confusion, and complicated cases for contradictory."

When Blackstone wrote that, he had no way of knowing; he could not have dreamed of the present extent and volume of the written opinions of our courts here in America. I think today he would be convinced that the variety of the decisions of his day was as nothing compared to the infinite variety of our day and that such variety has caused endless confusion and complicated contradictions.

I make bold to present to you another, perhaps somewhat revolutionary, change advocated by me during my administration. It relates to the manner of selection of our judges. In Bar Briefs the editor also has presented some views on this subject worthy of earnest consideration.

At our last annual meeting Hon. H. A. Bergman, President of the Manitoba Bar Association, compared the Canadian and American systems of jurisprudence. In discussing the method of selecting judges, he said: "In my humble opinion our (Canadian) system of appointing judges for life, the system that prevails in the case of your federal courts, is superior to the system of electing judges by popular vote for a short term." And notwithstanding the fact that the appointments are not always ideal, he further said: "The security of tenure and the knowledge that the work they were taking up would be their line of work for the rest of their lives, has made these men apply themselves whole-heartedly to their work and made them independent of all considerations other than their oaths of office."

It seems to be considered a fundamental principle of state government in the United States that substantially all official positions, including judgeships, should be filled by election. Yet in the beginning, our first state governments provided for selection of judges by appointment. The first variation from this was in 1812, when Georgia adopted the policy of election for certain inferior judges. Mississippi, in 1832, was the first state to provide in its Constitution for election of all judges. Other states have followed the lead of Mississippi until today there are only ten states having the appointive system.

If we put aside our prejudices and give this matter impartial consideration we can hardly escape the conviction that a system providing for appointment of judges for long terms should be adopted in North Dakota.

The necessity for judges, in the administration of justice, is apparent. Likewise, it is apparent that they should be men and women of the highest type with qualifications befitting them for the duties they have to perform. The necessity for lawyers is perhaps not so clear. It is not exactly a foolish question to ask—why is a lawyer?

For centuries nations have regulated the admission of lawyers to the Bar. Requirements have been provided which the applicant must meet in order to enter the portals of what is an ancient and honorable profession. Qualifications relating to education and good moral character have always been imposed. Universally it is the rule that only those who have met these requirements and have been formally admitted to the Bar may practice. All others must abstain therefrom. Why is this rule? Why these safeguards? Is it in order that there may be created a class apart, an aristocracy of the law privileged beyond their fellow citizens? In a word, are these regulations for the benefit of the favored few or for the benefit and protection of the public?

To ask the question is to answer it. The profession of the law was established and is maintained in the public interest. We have no vested rights that are incompatible with the best interests of the general public. Public policy in the beginning dictated and still dictates the terms upon which we shall "ply our trade" and the limitations and restrictions thereon. During the centuries a code of ethics has been developed by the profession itself even further circumscribing the actions of our members beyond any requirements of formal statutory law. Our aim is and always should be to build up our morale, to fit ourselves for service to the public. "We serve" stands as, and shall continue to be, our watchword.

For many years the American Bar Association has advocated raising the standards of admission to the Bar so as to require at least two years of general college training or its equivalent as a prerequisite to the study of law. Several years ago our state association approved the adoption of that standard, and instructed its legislative committee to present the matter to the Legislature. That was done at different sessions but failed prior to 1931.

In the recent session, however, the legislative committee was successful in having passed House Bill No. 279, now Chapter 90 of the Session Laws of 1931, wherein it is provided that after July 1, 1936, all applicants for admission to the Bar in this state

"shall have completed, with the required passing grades, two years (64 semester hours or 96 quarter hours) of college or university work in the State University of the State of North Dakota, or the Agricultural College of the State of North Dakota, or some equally reputable college or university, with course of study which shall include courses in English Literature, American and English History, Economics and Civil Government."

A great deal of credit is due to our legislative committee for its success in obtaining the passage of this act. There seems to be an inexplicable prejudice, as a rule, in the legislature against any measure advocated by lawyers. The lawyer members of the Senate and House and the chairman of our legislative committee exercised rare judgment in the methods pursued by them to avoid suspicion and prejudice and but little opposition developed.

Was this legislation intended to limit the ranks of the lawyers, to close the door against ambitious applicants for admission, to stifle competition in the practice of law? Not at all. It was and is in the interest and for the protection of the great general public. Public policy requires that those who aid in the administration of justice shall have the necessary training and character to fit them for the performance of the duties imposed upon them in protecting the property and liberties of the people and in maintaining the dignity and supremacy of our governmental institutions and courts of justice.

It is our duty, therefore, to consider the problems I have presented, as well as all others that come before this meeting for discussion and action, in the light of the relationship we bear to the public as I have endeavored herein to present it. I know that this ideal of our profession is maintained in the Bar in North Dakota. Always, the members of the Bar in this state can be relied upon for self sacrificing, self effacing public service. Their leadership is outstanding. In no other profession is there the same give and take, friendly, broad-minded consideration between man and man within the ranks and towards the public and the public good as in the profession of law. I confidently anticipate that the proceedings of this meeting will develop and accomplish much that will be well worthwhile.

During my administration, my personal contact, as president, with the rank and file of the Bar in the state and with the district organizations and their officers has been most pleasant. On every hand you have treated me royally and graciously. It has been a busy but happy year for me. I would be ungrateful indeed, did I not thank you sincerely for the honor you have conferred upon me and the opportunity you have given me to serve. I do thank you.

Now, gentlemen, we are ready to consider that report of the Committee on Constitution and By-laws, the recommendation which, is in substance, that the Executive Committee be composed of the officers of the Association and the Presidents of the District Bar Association.

The motion has been made that the report of the committee in that respect be adopted. We can have the amendment as proposed re-read so that the members will be familiar with it.

(Amendment read by Mr. Wenzel.)

MR. WENZEL: The change as you will note, is to provide for reorganization of the districts later, and also to definitely establish the fact that the District Presidents shall serve until the next annual meeting of this Association.

PRESIDENT TRAYNOR: Is there a second to this motion?

MR. KVELLO: Second the motion.

PRESIDENT TRAYNOR: Is there any discussion, or any objection? Are you ready for the motion?

(Question called for.)

All those in favor of the motion may signify by saying aye; those opposed; it is carried unanimously, and the amendment is therefore adopted.

The session this afternoon will convene after the adjournment at 1:30. We will start right in with reports of committees.

Remember there is a very important committee report, the report of the Committee on Jurisprudence and Law Reform. Please be in your seats, if possible, at that time.

We will stand adjourned until 1:30 this afternoon.

Tuesday, August 18, 1931

AFTERNOON SESSION

PRESIDENT TRAYNOR: The first matter of business this afternoon is the report of the Committee on Information and Cooperation with the Press. Any report of that committee?

SECRETARY WENZEL: No report has been filed, as yet, Mr. President.

PRESIDENT TRAYNOR: Then we will pass to the next report, Committee on Internal Affairs. I believe that report has been made and printed in the Bar Briefs, was it not?

SECRETARY WENZEL: It was, and I would like to supplement that, Mr. President.

PRESIDENT TRAYNOR: I will ask the Secretary to make a further report. We will listen now to the report of the Committee on Internal Affairs.

REPORT OF COMMITTEE ON INTERNAL AFFAIRS

The Internal Affairs Committee had four cases before it for consideration. We presume it is neither necessary nor advisable, in this report, to go into detail as to these cases.

Your committee's experience suggests the advisability of the Association defining the jurisdiction, scope, and function of its Internal Affairs Committee, and probably other committees.

Two of the matters referred to us were returned to the Secretary as we felt they absolutely were not within our jurisdiction. One of these matters we later handled at your request after the Ethics Committee had passed on it, and after their findings had been over-

ruled by the Executive Committee. This was embarrassing and, we think, can be avoided by a proper definition of the committees' functions. Then when a matter gets to the proper committee, it can be handled by that committee to a conclusion.

E. T. CONMY, Chairman.

MR. WENZEL: I desire to supplement the report which was published in the July issue of Bar Briefs. You will note that the committee chairman makes the recommendation that the jurisdiction, scope and function of the Internal Affairs Committee be defined.

Subsequent to the making of that report by the chairman of this committee, a certain matter came up in regard to which I would like to give you some details omitting all names.

A complaint was presented to the President who notified the complainant that the matter should be submitted in proper form to the Secretary. Complaint was subsequently filed with me in complete form.

All copies of letters and originals of letters, together with other papers required, were forwarded to me, as a result of which I wrote the attorney involved.

I want you to bear in mind that the incident arose in January, 1930; that the lawyer affected wrote to the complainant at that time admitting the collection of $50 but making no return. The matter was presented to me as Executive Secretary of this committee in July, 1931, about eighteen months later, and I wrote a letter, requesting response before the annual meeting, to the chairman of the committee.

I submitted this matter to the Internal Affairs Committee. The Chairman of the Internal Affairs Committee replied that the other members of the committee did not feel that it was a proper matter for the committee.

Now I want to submit today that, if we go on with our program as announced during the past two years, of soliciting the right to handle disciplinary matters, we can not take that stand. The public is not going to accept such action on our part.

I agree with the Chairman when he says it may be necessary to define the jurisdiction, scope and powers of this committee, but it appears to me that there are already sufficient records on hand upon which to base the jurisdiction, scope and powers of this committee.

I believe there should have been solicited from the other members of the committee a statement something like this—(I should insert this fact, that following this letter the attorney did write in to the commitee advising that he was immediately remitting the $50 acknowledging his delinquency):

"Your statement concerning Blank's complaint has been received. No further action will be taken because you have done all that should be required at this time. However, the committee is in complete accord with your statement that the ethics and ideals of the profession demand a higher type of service than was rendered in this

instance, and will accord complainants every assistance in maintaining proper professional standards." I believe that some such action was absolutely essential and proper.

Today I picked up a Bismarck Tribune which quoted an editorial from the New York World Telegram, which demonstrates that the lay public and the lay press will not accept that kind of service from attorneys; and we are not going to get proper recognition from the lay public and the lay press until this organization takes its stand on matters of this kind.

I believe the committees should accept the burden and take a definite stand when matters of that kind are presented to it.

I would like to make myself entirely clear because, apparently, it is purely a difference of opinion as to the procedure. I think we are all agreed on the general subject, but when it comes to dealing with matters practically, it seems to me we hesitate about going far enough.

In order that my position may be thoroughly understood, I wish to say that I am in agreement with the Chairman of this committee when he says that the jurisdiction, scope and function of the committee should be defined. I disagree in respect to the assumption that the jurisdiction, scope and function of the committee are not defined. They ARE defined by the Constitution, By-laws, Code of Ethics, Fee Schedule, and other resolutions and promulgations of the Association.

These represent the common object of the Bar. When, therefore, complaint is made that someone has violated any provision, this committee has sufficient authority by virtue of its appointment to take action, to do something about it. Example: A charge is presented that underbidding has been engaged in, whether directly or indirectly, by the acceptance of work on the basis of a fee not in accordance with the schedule. That is a definite violation, and unless justified by reason of the financial incapacity of the client to pay, the lawyer guilty of the practice should be quietly but firmly informed, by the committee, that his act is not countenanced and if repeated will subject him to disciplinary action—BROUGHT BY THE COMMITTEE ITSELF—before the Bar Board. The more noteworthy the attorney's position, by reason of his standing in the councils of the organization, the more speedy and definite should be the committee's action.

Again, an attorney enters a general denial for purpose of delay, knowing, or being in position to know, that the denial is not correct, and that there is no reasonable defense to the suit. The committee, if it finds the facts so to be, should advise the attorney that this is a violation of the Code of Ethics, that it is not and will not be tolerated, and that any repetition thereof will start the disciplinary wheels working at the instance of the Internal Affairs Committee.

Once more, a respected practitioner of long standing has a habit of pigeonholing matters. Communication after communication is left unanswered. When the Executive Secretary informs him of a complaint, he quietly drops that into the accustomed "hopper," where it remains in innoxious but obnoxious desuetude. The jurisdiction,

scope and function of the committee is to inform that practitioner that the practice is not and will not longer be tolerated, and if further persisted in will result in a prosecution, by the committee, before the Bar Board for the imposition of a public reprimand.

The ideas of the lay public with respect to the responsibility of the Bar Association are erroneous in many instances. If you saw the many letters that I get, you would realize, however, the importance of dealing with the situations above suggested. You can't satisfy the lay public by telling them, individually or collectively, that there is nothing in the three types of complaint above instanced to require any action on the part of the Internal Affairs or Grievance Committee. Such a report only gets the painstakingly efficient practitioner into the same disrepute with his careless brother.

Either let every member of the Bar as well as the lay public know that none of the aims and ideals of the profession can be disregarded without appropriate action being taken, or else let us repeal our rules, canons and codes, and forget about our aims and ideals.

And right here permit me to state, without going into details, that there are men in this meeting who know that the Executive Secretary has been as persistently militant in protecting practitioners against unwarranted attacks by laymen, but that it has not always been possible to get the other members of the committee to go the full length in support of the one attacked. I believe it to be within the jurisdiction, scope and function of that committee to require a retraction, in writing, of any charge proved to be unjustified, as well as to take appropriate action when a complaint is well founded.

Now, that is the situation. I believe, gentlemen, if you take the position that the jurisdiction, scope and function should be further defined, all well and good; but I do believe, among other things, the committee should be specifically instructed that matters of that kind should have action, something should be done about it, otherwise we shall not obtain or retain the respect of the lay press and lay public.

PRESIDENT TRAYNOR: In this respect, may I say that the Internal Affairs Committee of the Association has been the Grievance Committee. In other words, complaint comes from some layman, some client, that some lawyer has been unethical or unprofessional, or has embezzled funds, for instance. It has been the custom for this Internal Affairs Committee to investigate the matter, take it up with the complaining party, and with the lawyer complained of, and endeavor to adjust it, if it is one of the minor things that can be adjusted; if not, then to forward it on to the Bar Board for appropriate action with recommendations. We appointed this year on the Internal Affairs Committee, Mr. Ed Conmy, of Fargo, as Chairman. He seemed to feel that the Internal Affairs Committee should not take on such complaints, or have anything to do with it. For that reason, I have asked in the report that the jurisdiction of this committee be definitely defined. Personally I think that the custom that has been followed in the conduct of this committee in past years sufficiently limits and definitely enough defines the jurisdiction of the committee, and I think that the complaint that was made there should have been investigated by the Internal Affairs Committee, or adjusted, or passed

on to the Bar Board for appropriate action. There was another item of similar nature the committee took the same stand upon. The final result of those complaints is usually that they are properly adjusted, and it keeps a better standing in the public mind of the law organization.

Now gentlemen, you know substantially what the issue on that proposition is. Do you wish to take any action, or have you any suggestions? If not, I will simply let the record be that the matter be referred to the new Executive Committee of the new administration for such action in defining the limits of the jurisdiction of that committee as the Executive Committee and the administration may deem advisable.

MR. WENZEL: I will put that in the form of a motion, Mr. President.

MR. KVELLO: Second that motion.

MR. CASEY: Second the motion.

PRESIDENT TRAYNOR: Any discussion; if not, all in favor of the motion signify by saying aye; those opposed; the motion is carried.

Now, is Mr. E. J. Taylor here? In the proceedings of last year's meeting, there was considerable discussion regarding the possibility of having a recodification of the statutes of North Dakota. The committee, of which Mr. Taylor was a member, was continued in force with instructions to confer with the Executive Committee and to take such action as was deemed advisable. I will ask Mr. Taylor now to make an oral report upon that matter.

MR. TAYLOR: Mr. President and gentlemen of the Bar Association: As President Traynor stated, a year ago there was a committee appointed to report to the association on the feasibility of a recodification of the laws of North Dakota, or a codification of the laws of North Dakota. I was requested by that committee to correspond with publishing houses and to ascertain from them estimates as to the probable cost of a codification of our laws. At the meeting at Devils Lake last year, I presented the correspondence that I had had with a number of the leading law publishing firms of the United States.

None of them would submit figures, they said, until there was some legislative authorization of a new code.

It is the common sense of opinion among the attorneys and state officers, that to attempt securing an appropriation from the Legislature at this time, and under present conditions for a codification of the laws of this state, would not receive even a pleasant look.

My report, therefore, is that it is not an opportune time to request the Legislature for an appropriation for this purpose.

PRESIDENT TRAYNOR: Gentlemen, do you wish to take any action to continue the committee in force to again work with the Executive Committee the coming year, or any other suggestion you may have to make?

MR. ADAMS: I make a motion that we leave it to the Executive Committee next year.

MR. BURNETT: Second that motion.

PRESIDENT TRAYNOR: It has been moved and seconded that the matter of the recodification of our laws be resubmitted to the incoming Executive Committee; all those in favor signify by saying aye; those opposed; I declare the motion carried.

I think next we will call on the Committee on Law Enforcement.

MR. WENZEL: I have the report here and with your permission, will read same.

LAW ENFORCEMENT

Law enforcement has been an important problem in the affairs of governments and peoples from time immemorial, and by unanimous agreement it is today recognized as a serious problem in the life of this nation, requiring the constant attention and active support of every good citizen.

It is easy to draw up an indictment of the United States and its people on account of the lack of law enforcement and the increasing unpunished crime that prevails. On the other hand there are encouraging developments in the field of law enforcement that augur well for the future. The recent incarceration of former Secretary of Interior Fall and the evident determination of our Federal authorities to end the reign of Chicago's King of Gangsters are heartening demonstrations of the supremacy of Law and Order and are examples of what the rank and file of the citizens of our country are demanding. The tide seems to have turned and better law enforcement seems certain.

It is generally conceded that the most serious lack of law enforcement exists in the large cities. Here in North Dakota, where there are no large cities and no organized crime and gangsterism there has been no breakdown in law enforcement, and law enforcement can be said to be on a reasonably satisfactory basis. Perfection in law enforcement has not been reached in North Dakota, but the courts and officers of the law in North Dakota in the enforcement and administration of our criminal laws are functioning successfully and efficiently to a marked degree.

The capture and detection of bank robbers using high powered automobiles presents a problem which is receiving the serious consideration of the public officials and people of North Dakota generally, and improvement in the legal machinery and methods required to capture and identify such lawbreakers can reasonably be expected.

Your Committee on Law Enforcement has no recommendations to offer except that the members of the bench and bar might well dedicate more of their time, leadership and opportunity to the cause of Law Enforcement, and by so doing do much for the further betterment and improvement of law enforcement in this state and nation. In the trial of criminal cases, both in the prosecution and defense, there are many missed opportunities to raise the standard of the practice of law and thereby contribute much to the desired respect of law and law enforcement. However, as officers of the court and sworn defenders of the Constitution, the members of the Bar can confidently be expected to continue to do much to maintain respect for law and order, law enforcement and justice.

HAROLD P. THOMSON, Chairman.

Mr. President, I move you that the report be received and printed in Bar Briefs.

MR. LACY: Second the motion.

PRESIDENT TRAYNOR: All those in favor of this motion may signify by the usual sign; contrary the same; the motion is carried.

Do you care to have any discussion on this question of law enforcement or any recommendations? If any one has any ideas here that they feel should be aired we will be glad to have them.

If not, we will pass on then to the Report of the Committee on Jurisprudence and Law Reform. This report was published in Bar Briefs for July and has created considerable interest because of its recommendations.

It might interest you to know one of the daily papers in Los Angeles, California, carried on its front page a portion of this report calling attention to the advanced ideas that were being taken in the North Dakota Bar Association in the matter of jurisprudence and law reform. I also had a letter from J. F. T. O'Connor, formerly of Grand Forks, now practicing in Los Angeles, who stated to me that he had an occasion to try out the system recommended therein, and the trial judge gave his instructions to the jury before the arguments, and he found it very satisfactory. It was he who sent me this copy of the Los Angeles paper. While this report was printed in last month's Bar Briefs, I think it is of sufficient importance that the Chairman should read his report before the discussion commences, so I will call on Mr. Lanier to give his report.

MR. LANIER: I want to state, Mr. President, I am very gratified to know this humble little report has found its way into the Los Angeles paper. My business is largely trying lawsuits over a number of counties and this report is largely the result of things that have occurred to me from time to time, as I have had occasion to try lawsuits in the rough and tumble way of the North Dakota lawyer. The members of this committee with me are Mr. Peter A. Winter and Charles H. Shafer, and while this committee held no meetings, we do urge the ideas, and the report that is about to be submitted to you is a unanimous report.

JURISPRUDENCE AND LAW REFORM

Your Committee on Jurisprudence and Law Reform, beg leave to report as follows:

Trial by Jury

Trial by jury is being subjected to much criticism, and no doubt some of this criticism is just. However, no amount of adverse comment in this regard can discredit the results of trial by jury, but much can be done to make it more satisfactory and less likely to result in miscarriage of justice. One thought particularly occurs to us in this connection. Jurors, as a rule, desire to follow the evidence and law applicable thereto, but frequently are in confusion as to what the law is—they fail to understand the Court's instructions, and have different understandings of what the Court meant under its instructions, and this, in spite of the fact, that the Court may have fully and correctly instructed them.

For the ordinary layman suddenly to come in contact with legal terms and phraseology, necessarily means the likelihood of a failure to properly understand. This lack of understanding, necessarily means confusion in the juryroom, and, oftentimes, results in mistrials, and even verdicts that are against the law. So, we feel that any change in procedure that will enable juries to understand the Court's instructions, will greatly improve the efficiency of trial by jury.

Therefore, having in view the improvement of trial by jury, we recommend that such changes both by Court rules and legislation as may be necessary be made to the end that the Court shall instruct the jury before argument, so that the attorneys in the case may, in their arguments, comment upon the law of the case, which, of course, is the law given by the Court. This would give the attorneys a chance to be of service to the juries, not only in marshalling the facts, but also in applying the law to such facts, and should there arise a difference of opinion as to what the instructions meant, the Court in the presence of the jury, could settle such dispute, and the jury would retire having not only the benefit of a discussion of the facts, but also of the law applicable thereto.

Some states already have adopted this practice and it has proven highly satisfactory, and we believe that in North Dakota, it would add greatly to the efficiency of trial by jury.

Opening Statement to Jury

Opening statements of attorneys are of great importance, because they, in the outset of a trial, focus the minds of jurors upon what the lawsuit is. Under our practice, opening statement for plaintiff is made and the taking of proof begun with no statement from the defendant until the plaintiff has closed. This is obviously wrong and calculated to prevent that full and fair consideration from the jury which we all desire. We say this for two reasons:

First: Because when plaintiff makes his opening statement and proceeds with the taking of proof in support of same, with no statement from the defendant, there is a certain psychological advantage in the plaintiff that is not intended under the jury sustem.

Second: Because, if statements were made in the outset of the trial by both plaintiff and defendant, the jury has a clear mental picture of what the lawsuit is, and can follow the evidence much more intelligently in its application to the real issues as raised under the opening statements.

We, therefore, recommend that our procedure be changed so that opening statements be made by both plaintiff and defendant before the taking of proof is begun.

Speeding Trial Work

"The law's delay," is a pet phrase with many who criticise lawyers and courts, and if we are fair we must admit there is some room for criticism. As lawyers, in North Dakota, just how can we lessen the law's delays? We have a suggestion. With the exception of three or four counties in the State, courts meet in many instances only once per year, and in the balance only twice—six months to twelve months to get a case tried that should not take over sixty days.—The machinery

with which to expedite this work is functioning under full pay all the time, and we can obviate this delay by making slight changes in procedure.

We suggest that in civil cases, if there is no term of Court provided for under the law or the Court's orders, in the county in which action is begun, within ten days after the case is at issue, either party to the litigation may by proper notice to the other have such case transferred to the nearest county in the District in which Court is in session, and docketed and placed upon the trial calendar in such county, where it will come up for trial in regular order. Provided, the costs of such trial shall always be a charge against the county which is the residence of the defendant, and in case of several defendants from different counties to be prorated among the counties represented by such defendants.

We realize this will deprive the defendant of having a trial in his home county, in some instances, but in civil cases this would not prevent substantial justice from being done. Also, it will be said that many times this would result in additional expenses to litigants in preparation for and in trial of civil cases. Yes, some, but such additional expense we feel when compared with the good derived from speedy trial, would not be appreciable.

Sham Pleading

The general denial, in North Dakota, is probably used, at times, by all of us, for no other purpose than to delay action. While we may not approve the practice, we realize it is legal and is being indulged in generally, and will be, until, as lawyers, we not only condemn it, but also bar the use of the general denial as a sham pleading.

We, therefore, recommend such change in legislation and court rules as will enable a plea of general denial to be attacked soon after its service under an order to show cause, upon affidavits, and, in the event the court shall be of the opinion upon such hearing that the general denial is a sham pleading, he may order it as such, stricken, and allow ten days within which to serve an answer setting up in clear and concise language, a defense, and in case no further answer is served within such time, default judgment to be entered.

I move the adoption of this report.

MR. HANCHETT: I second the motion.

PRESIDENT TRAYNOR: That leaves the matter open for discussion, gentlemen. I believe these recommendations are important enough to be discussed thoroughly.

MR. ELLSWORTH: I want first to inquire for a little information. I suppose it is the purpose of the Association to make its work as constructive as possible and to waste as little time as possible. I want to inquire first, is there a standing Legislative Committee?

PRESIDENT TRAYNOR: There is not a standing committee. It is appointed during each administration. If by standing committee, you mean that is the usual committee?

MR. ELLSWORTH: Yes. Will there be such a committee during the present year?

PRESIDENT TRAYNOR: Yes, sir.

MR. ELLSWORTH: I do not think it is the part of wisdom to take those recommendations which the committee evolved in the way it is proposed because some of them might be acceptable to a certain part of the body here while others might be objectionable, and we can't vote intelligently that way.

PRESIDENT TRAYNOR: I think the point is well taken and if there is no objection, we will consider the various recommendations separately.

MR. ELLSWORTH: I move, therefore, that the recommendations be considered separately and acted on in that way.

MR. STUTSMAN: Second the motion.

PRESIDENT TRAYNOR: You have heard the motion, all those in favor may signify by the usual voting sign; contrary; it is carried. They will be considered separately. We will proceed first to the proposition, which is that the jury be instructed before the argument.

MR. ELLSWORTH: I move that it be adopted and referred to the Legislative Committee.

This motion precipitated a lengthy discussion, in which the following members took part: S. E. Ellsworth, W. F. Burnett, W. H. Stutsman, S. D. Adams, F. E. McCurdy, P. W. Lanier, P. W. Vieselman, A. M. Christianson, F. T. Cuthbert, Tracy R. Bangs, H. A. Mackoff, J. J. Kehoe, John Burke and L. J. Wehe. The advisability as well as the practicability of the change were challenged. Some thought it could be left to the Judicial Council, others that no change was needed but that the matter could be handled by agreement of counsel.

Mr. Ellsworth finally withdrew his motion and substituted one to leave the matter to the Judicial Council. This also met with considerable opposition, final disposition being on the basis of the following further proceedings:

MR. WEHE: I move as a substitute motion for this, that it be referred to the respective Bar Associations of the State, District Bar Associations, for action separately and discussion. It is a very vital thing.

PRESIDENT TRAYNOR: You mean to refer it back to this Association after they have taken it up?

MR. WEHE: Yes, that is part of the motion, after the District Bar Associations have acted on it, to report to our Secretary the action that was taken by the District Associations, and then be brought up and discussed here before the whole Association. By that time we will have something that we can act upon. I am not going to go on record at the present time in regard to this proposition. It affects us all too violently, you might say, in regard to our practice, to change it at this time. The Legislature does not meet until a year and a half or two years from now and we will have plenty of time in order to get this matter in if we want to change. I make that as a substitute motion.

MR. BUCK: Second the motion.

PRESIDENT TRAYNOR: The question is on the substitute motion, that the matter be referred to the District Bar Associations for their

action and recommendation, which is to be referred back to this Association, which will mean this Association will really not act on it for another year. Are you ready for the question on the substitute motion All in favor of the substitute motion say aye; those opposed the same sign; the ayes have it.

PRESIDENT TRAYNOR: What do you want to do with recommendation number two?

MR. BURNETT: If we are going to take that action on the first sub-division, we ought to take it on the others. I move you that the other three recommendations be disposed of in the same way.

MR. MCCURDY: Second the motion.

MR. STUTSMAN: It seems to me that there is some merit to some of the other points that we may determine for ourselves here.

PRESIDENT TRAYNOR: Would you suggest what the elements of merit are?

MR. STUTSMAN: I am opposed to the other motion and I am in favor of these.

MR. BANGS: Well, I believe in getting as close to the people as possible.

PRESIDENT TRAYNOR: The question is on the motion of Mr. Burnett, that the other three recommendations of the committee follow the same procedure as recommendation number one. All those in favor of this motion say aye; those opposed; the motion is carried.

Now then, there was a recommendation in the address this morning of Mr. Nilles. Do you want to do anything with that, or do you want to send that through the same course of procedure?

MR. BANGS: That is a matter that will have to be worked out somewhat in detail. I will move, Mr. President, that the recommendation be referred to the Executive Committee for action by the committee.

PRESIDENT TRAYNOR: You have heard the motion of Mr. Bangs that the recommendation contained in Mr. Nilles' address be referred to the Executive Committee for such action as it may deem advisable in that respect; is there a second

MR. BURNETT: Second the motion.

PRESIDENT TRAYNOR: Any discussion on that motion? If not, all those in favor of same will kindly signify by saying aye; contrary the same sign; the motion is carried.

MR. LANIER: I rise to a point of information. Now the committee has reported and the report has been disposed of, and I take it that this committee has been and is discharged.

PRESIDENT TRAYNOR: That would be my ruling, yes. The new administration will appoint a committee. As far as this present administration is concerned, all present committees expire.

Now we have gotten through the Committee Reports that were scheduled for 2:10 to 3:00. We have some musical talent here, and

CHARLES A. BOSTON
President American Bar Association

we will be favored with a violin solo by Miss Mary Free.

Other musical numbers were:

Piano solos by Miss Rita Tordahl, and vocal numbers by Miss Elizabeth Buck and Miss Mary Murphy.

PRESIDENT TRAYNOR: I will ask Judge Christianson and Past President Kvello to kindly escort our honored guest to the platform. (Mr. Boston was escorted to the platform.)

Ladies and gentlemen, it is with a great deal of pleasure as well as with considerable pride that I am privileged today to be able to present to the State Bar Association of North Dakota, and to the friends and members thereof, one of the very outstanding lawyers in America today. He is President of the American Bar Association and no man can attain to the presidency of that Association who has not spent many years of his life in the practice of law and attained eminence therein, so that the very fact that he has attained that eminence is sufficient evidence of the fact that he is an outstanding lawyer in America today. The record of the speaker today is such that he certainly is entitled to that great honor. It is with exceedingly great pleasure therefore, that I introduce to you Honorable Charles A. Boston, of New York City, who will now address you.

"THE LAWYER, THE LAYMAN, AND THE LAW"

CHAS. A. BOSTON, New York City

President, American Bar Association

You have honored the American Bar Association by inviting me as its representative to come here today and address you. I trust that you will give the American Bar Association an opportunity to honor you similarly, and when I say you, I mean all of you and members of your Association, on the 17th, 18th and 19th of the coming September, when it holds its annual meeting in Atlantic City, New Jersey, on the Atlantic coast. We are already advised that a number of you will attend. I trust that those advices will continue to come in and either directly, or through the Executive Office in Chicago, you will make your reservations to attend.

It may be of interest to you to know that the American Bar Association is a voluntary Association, which is now celebrating its fifty-fourth year, and which has an average membership of lawyers from the various states of the Union and the dependencies and territories of the United States and the District of Columbia of about 27,000 members in that organization. There has arisen through it, and its affiliated bodies, a great benefit of various kinds to the lawyers and the people of the United States, and among one of the earliest proposals that was made by the Conference of Bar Association Delegates, that meets as a section of the American Bar Association, was the all inclusive state wide organization of the Bar, and unless I am misinformed, North Dakota was the first of the states to have the courage to set that proposed activity in actual motion, and you are here today as the pioneer in that effort in the United States, but a great number of other states have now followed your example and have perhaps a more closely knitted and more effectively working organization

than you, because you were the pioneers, and the others have improved out of experience upon the activities that were first introduced by your Legislature.

But I am not here to talk about the American Bar Association except to say one thing more. It is the privilege and duty of the President of that Association to designate two members from each State in the Union to act as a reception committee, at the annual meeting, and it is the project of the President, that those ladies who attend with the members of the Reception Committee, shall themselves constitute a reception committee for the reception and greeting of the ladies from their own state, because in attendance at these meetings, we have almost as many women as men, and they are the best social events of the season that I have known anything about in the last quarter of a century.

Now I have selected for the talk to you this afternoon what you might consider was one of the most surfeited topics that any human being could select, and that any high school graduate could write upon, "The Lawyer, the Layman, and the Law," and yet it appears to me that a man who has had the opportunity for the perspective that I have enjoyed through the association with this enterprise for the last quarter of a century can offer a few germs for thought. It is possible that I may not say anything new to you; it is possible that I may say some things that will suggest others to you and that you may operate along the lines that I would suggest.

Now I have undertaken to speak of "The Lawyer, the Layman, and the Law" and I fancy that it rarely enters into the mental horizon of the average person in society, whether he be lawyer or not, to consider the history of the legal profession. It has indeed a curious and interesting evolution.

The first duty of the lawyer is advocacy; the next duty is advice; the third duty perhaps would be similar to advice—it is counsel. The evolution of that profession is to me a very interesting one. Take the feature of advocacy, for instance. It originated, as far as modern history is concerned, in the Patrician class in Rome. A Patrician was bound to represent his clients before the courts of justice, and his duty included the duty of fidelity.

There we have the original implication of the duty of an advocate—fidelity to his clients, and it has come down through the ages.

If you will take the perspective view through past history for a minute or two, you will picture these Roman Patricians and the evolution that came from them of the advocate, and the incidental history of advocacy, which had as one of its most interesting features, the question of compensation.

A Patrician could of course, receive no compensation. It was his honored duty to represent his client originally. When there came to be professional advocates it was equally his honored duty not to accept compensation for their services.

There is an interesting law that you will find winding its way through the legislation of Rome that deals with the compensation of lawyers. It was called the Cincian Law. It first prohibited compensation; it then prohibited contingent fees, and contingent fees

were prohibited by law throughout Roman history, as far as I know. Then there were provisions that there should be no agreement for compensation in advance, and that compensation should be paid to a lawyer as a matter of gratitude at the end of the service, and merely for the character of the service rendered.

It is not necessary to go into that ancient history beyond that, but bear in mind, that from Rome went the traditions of this profession into Gaul. And in Gaul the profession arose, and it was an inheritance of the Kings of France, and of the Monarchy in France, and in 1344 the King of France issued an ordinance which regulated the profession of advocacy, from which we derive by direct descent many of the traditions of the profession in the United States today, but few people have traced that direct descent.

The origin of the profession of lawyer as attorney or representative as distinguished from the profession of advocacy has a different history, that is peculiar to England, but before I leave France, I want to say that the Order of Advocates became an Order of Nobility in France. So highly was it regarded, it remained an Order of Nobility until the French Revolution, when as such it was destroyed.

A few of the survivors of the Order, however, formed an organization to preserve the traditions of its memory as an Order of Nobility. They operated without the authority of the law until 1804 when, after Napoleon as First Consul, had restored some of the order of the community, he restored to that Order some of its privileges, but not all. He was afraid of it and very cautiously he restored to them a part of their privileges.

When Napoleon's empire was overthrown, and the King returned, he restored more of their privileges, but still there was some suspicion of this noble Order. Its privileges of nobility have never been restored to it yet.

When Louis Phillipe came into power, he restored some of the privileges of the Order. When Napoleon III succeeded to the Presidency of France, he restored more of those privileges and as far as I know according to that restoration, those privileges still exist. It is still known as the Order of Advocates, but it is no longer an Order of Nobility.

I speak of this because we are going to have as a guest of honor at the coming meeting of the American Bar Association in Atlantic City, the Batonier—the man who carried the flag, as that term signifies, that is the chief officer of the Order of Advocates of the Bar of Paris. There are six of these provincial Bars in France. Those of you who come to Atlantic City will have the privilege of hearing the head of this ancient order that dates back to the Fourteenth Century.

Now I will refer again for an instant to England. Originally the King's Court followed the King. If you will remember for an instant the provisions of Magna Charta, you will recall that in 1215 in the period of King John, it provided that the Common Pleas should no longer follow the King.

One reason for that was the Court in which people's disputes were determined—when they had disputes with each other, provided

they didn't involve the commission of crime or the King's revenue—that the Common Pleas should no longer follow the King. Now there was a reason for that.

People were summoned to appear before the King, and they had to go, if they were within the King's Peace, because the King did not take under his cognizance all of the civil questions, or all of the criminal questions which might arise in his Kingdom—so goes the interesting story of the evolution of this idea of the King's Peace. However, I shall not dwell on that today, but it had its peculiar nature and peculiar history, and originated as long back as the day of Ina, King of the West Saxons.

Here is the fact, that an order of summons to appear before the King's Court required the man who was summoned to appear in person, no matter where the King was, nor how difficult it was to travel on the roads of England at that time, because at that time legally considered, there were only four roads, and those four roads were regarded as within the King's particular protection, and were defined as part of the King's Peace.

Now the King began to give privileged commissions to individuals to the effect that if they were summoned to appear before the King's Court, they need not do it. They could appear by an agent who was styled an attorney. When they appeared there, they could be represented by an advocate, who was called Responsalis, but the privilege was the privilege of the client, and not the privilege of the lawyer and he did not have to know the law. He was merely an agent to appear and answer in the King's Court to prevent default, and if there was any necessity for advocacy, it devolved upon the Responsalis.

After a while there came to be a lot of hangers on at the King's Court, which was established in Westminister Hall, and those men received commissions or personal privileges, and they were the original attorneys who were in attendance upon the King's Court.

They had the privilege of representing everybody, but after a while, it appeared that they were so ignorant, so corrupt that it became necessary to have them regulated by law, and in the reign of Henry IV—although there had been some prior legislation with respect to those attorneys who hung around the King's Court, in the year 1402, if I remember aright, the Parliament of King Henry IV passed an act for the regulation of those who were in attendance on the King's Court, which required them to be examined for admission to show that they knew something about the law. It required them to be certified or examined as to the fact they had good character, and made them take an oath.

Now that law was written in the French law of the day, that was used in the courts at that time, and seems to have been derived directly from the Ordinance of 1344. This was 1402, so that we inherited that ordinance through the law, known as the Model Act of the days of Henry IV.

Some of the traditions of the Bar which have been perpetuated and brought forward into this country were perpetuated especially in the Inns of Court, in which barristers were educated in England;

and many of our best lawyers in our Constitutional days, were men who had been educated particularly at the Middle Temple, one of these four Inns.

Such is the history of the lawyer, first as advocate and next as attorney. The two functions differ and in England and in France they are separated today as they were separated then.

In Rome there were advocates and juris consults; in England, there are barristers and solicitors; in France there are advocates and avoues. There are three other subdivisions, as I understand, of the legal profession in France.

There had been in England a sort of differentiation in the solicitors and some people were known as conveyancers. They, so far as I know, have never been really a separate branch of the legal profession. The traditions of those people differ in some respects from our traditions, owing to the weakness of legal ethics as a subject of instruction in the law schools, but its consideration by committees on grievances and on Professional Ethics of Bar Associations, has turned attention within the last twenty-one years in America, as it has never been turned before, to the question of the tradiional duties of the profession of the law which are inherent in its history, and in some instances, enforced by law.

So much for an early perspective of the legal profession as such, but the lawyer is not stopping there. He has inherited these traditions, but he has enlarging functions, especially in the United States of America, and these I have styled his expanding functions; and the lawyer should be prepared for it; in the more progressive communities of the United States, he is preparing for them; and they are business and finance.

It is unfortunate at the present time that both business and finance are in such a state of chaotic confusion, that it is difficult for anybody to suggest a way out during the present situation, but all social rule is the result of social evolution; and I fancy that the best way out of a difficult situation is for each man to do his own part in the performance of the functions that lie immediately before him, but until recently at least, the lawyer as such, has had an expanding function, which I say lies in the domain of business and finance, but in fulfilling it, he must appreciate and know the law, and he must apply the law.

Now those functions do scarcely involve litigation, and while advocacy and advice and counsel as early functions of the members of the Bar do almost invariably, and especially in the newer States of the Union, result in the necessity of every man becoming a litigating lawyer, it is not so in the more prosperous and older settlements of the country where lawyers have turned their attention to business and finance; and you will hear it frequently said that the leading lawyers in the eastern part, at least, of the country and in the larger cities of the country, do not any longer practice in the courts. That is becoming a very noticeable feature.

Now the lawyers who go into business and finance must, of course, know the law and they must turn the faces of their clients toward an appreciation of what the law will allow and what the law prohibits.

Within a relatively recent period in this country, it was popularly believed that they were instructing their clients how to evade the law, but that is not the general tenor of this entrance into business and finance at this time.

The advice which the lawyer gives, the result of his consultation at the present time, is a consequence of the underlying appreciation on his part that the law was made to be obeyed and that the client should observe the law in order to escape unpopularity, if not anything else, so that is the expanding function of the lawyer.

As I have spoken about the development of the past and recent present, the lawyer has also an expanding horizon. That horizon is the result of new statutes, of new conditions, and especially of new economic appliances and new efforts to combat the forces of nature —aeronautics, internal relations, radio communication—few of us know anything about either the mechanics or the physics or the law of radio communication, and yet it is a vital question today. It is a question which is engaging some of the best minds of the country. They are going out into an absolutely unprecedented field of human intelligence and human activity, and it is for the lawyer to appreciate that enlarging horizon, and go after it and get it.

Then there is the question of international finance, which at the present time is in the most critical position that it has ever been perhaps since the day of the Napoleonic Wars.

Then there is the question of form—form of doing all these things—and then a very embarrassing question which has arisen lately, especially in the banking circles of the United States is the question of the method of enforcing defaulted obligations where the money of American citizens has been invested abroad in various nations of Europe after the War, and in South America. Have you ever paused to consider and acquaint yourself with these facts?

You will learn that a great many private obligations which are held by private investors through the banks of the large cities of the United States are now in default in these foreign countries where they cannot be effectually enforced.

We hear about the moratorium and the questions of the enforcement of public obligations from one nation to another, but we hear very little about the distressing situations which have arisen in the efforts to procure some observances of the obligations to private persons of governments or municipalities in the other countries of the world. That is a matter with which certain international lawyers are now very deeply engaged.

The next thought that I had was the question of testamentary and other trusts, but I will digress for a single instant, to trace just casually the history of banking in this country.

One of the first questions that arose after the adoption of the Constitution of the United States at one of the earliest sessions of Congress was how they should finance the Revolutionary War. Alexander Hamilton had been made Secretary of the Treasury and he was consulted by President Washington.

I haven't refreshed my mind lately, but this is the way I recall it. He was consulted by President Washington to discover what

could be done. Alexander Hamilton was almost a monarchist in his ideas in respect to the foundation of the United States Government, but he yielded his assent to the Constitution of the United States—and he was the only man from New York that signed it. He advised the President that Congress might organize a bank as a part of the war power of the United States.

Now out of that has grown by evolutionary steps the present Federal Reserve Bank and the national banks, the form of which was taken over in the Civil War by the Secretary of the Treasury at that time, Chase, from the early general law of New York of 1838, which he found adequate for his use.

But the banks have expanded their functions until now, in order that the national banks shall compete on an equal footing with the state organizations, they have vied with each other in the solicitation and acceptance of executorships, and the solicitation and acceptance of testamentary and inter vivos trusts. There is one aspect of that subject matter which the lawyer has scarcely considered.

In the first place, the high powered salesmanship which is the result of the extension of these banking powers, that employs through the United States men who are not lawyers to counsel people in respect to the creation of testamentary and inter vivos trusts. This situation has scarcely received any consideration whatsoever from lawyers.

It was brought to my attention by an address which I heard last winter before the Trust Company Division of the American Bankers' Association, that is the danger to commercial business, or the taking out of the ordinary circulating capital of the country so many hundreds of millions of dollars without forethought, and without the utility which would be incidental to that capital, if it were legitimate to invest it in ordinary commercial enterprises.

The restrictions on trust investments which people enter into now without thoughtfulness, if they are satisfied with the form of the trust, are very apt to bring about perpetuation or continuation of our financial difficulty because of the amount of otherwise free capital which has gone into these restricted avenues of investments.

Now that is what I call the lawyer's enlarging horizon, but the lawyer has an additional function, as a legislator, and as a legislative draftsman. He has become a business executive, and then he becomes a judge. In all of these functions, he has to know and apply the law wisely.

How much confusion confronts us through the inadequacy and inefficiency of legislative draftsmen! How much confusion results from thoughtless enthusiasm! The lawyer can always utilize his knowledge of the law, and his studies, if he will look into this enlarging horizon and embrace the opportunities and assume the duties which it imposes.

But the lawyer has drags upon his effectiveness, and those drags, as I have watched them in a measure and in many places are: first, the result of his pre-legal education. He has not had enough of it to tackle the problems of the law as they come along.

The American Bar Association has endeavored to correct that situation and has adopted the American Bar standards for pre-legal education. Those standards are gradually making their way through acceptance by the legislatures or the courts of the respective states of the Union, and they have made further progress than any one could reasonably have foreseen.

But the lawyer also has in many instances, inadequate legal education. Of course the time was when a man could learn all the law that was necessary for him to learn for the prosecution of his legal profession in the community in which he lived by confining himself to the study of Blackstone in a law office. That condition no longer obtains and the man who does that, even though he be satisfied to do it, will find himself handicapped by the present generation which is coming along, even if he hasn't met it in the generation with which he is dealing.

The American Bar Association is endeavoring to set up standards in that respect. It has formed a council of legal education which investigates and approves law schools, and which studies the requirements in these law schools, and it has set up a standard. Now that standard, though adopted in many institutions and in many States, is making it difficult for some law schools to exist.

I have in mind an institution in my native state, where the great bulk of its eminent lawyers studied law. It is one of the most popular institutions in Maryland, the school from which I graduated. It has only recently been approved by the American Bar Association, but the Dean of that school told me that there was grave danger they would have to close the institution with its proud history, because when it adopted these requirements, the classes fell off to such an extent that perhaps it could not pay expenses—while another law school which required very much less was becoming prosperous as a result.

People do not look ahead. Those men who spend one year in studying law are handicapped although it may be a popular method of getting a smattering of legal education.

I have devoted some thought myself to the character of legal education. While I am not a grumbler, it seems to me that I am justified in putting down these reflections, that the legal education as given even in some approved law schools, is inadequate. It fails to teach reflection; it fails to give outlook; it has a restricted crystalizing effect contained within the four walls of the institution. It is very conservative, and it teaches the principle of stare decisis.

Of course, we want a more or less stable law predicated upon recognized, stable and certain principles but if you adhere too closely to the doctrine of stare decisis, you perpetuate its errors and they create an injustice.

I was once chairman of the Section of Legal Education of the American Bar Association, and I advocated a course in what the law ought to be. Let me illustrate—two illustrations only.

Going back to the ancient Peace of the King that I have mentioned, old indictments read: "Against the Peace of the King"; hence

to avoid this form it became a favorite practice in the early state constitutions to prescribe the form of the indictment as against "the peace of the state", or a substantial equivalent.

That ought never to be in a constitution, but it was a substitute for the form of the indictment which had prevailed up to that time "being incited by the devil", or words to that effect, and "Against the peace of the king"; of course, they could not formulate an indictment after the Declaration of Independence as "against the peace of the King", so they substituted the phrase in the constitution, that all indictments should read "against the people of the commonwealth", or against the "peace of the commonwealth".

In Missouri, in their State Constitution, they put the provision "against the peace of the people of the State of Missouri." Somebody apparently formulated an indictment and had it printed in considerable numbers, following the form "against the peace of people of the State of Missouri," omitting the word "the", and the Supreme Court of Missouri considered itself bound by the precise words of the Constitution and reversed convictions because of this omission.

The Court more recently reconsidered this attitude and concluded that the provision of the Constitution was to be liberally construed, when it came to punishment of murder in the first degree. That is one of the illustrations.

The other one was in the State of Maryland in 1874, or thereabouts, some lawyer discovered that a bill of exceptions was minus a seal, though allowed and signed by a judge.

The requirement of the judge's seal originated at a time when the judge had an individual seal, but the seal had deteriorated in Maryland until it was a scroll; yet the judge in the specific case had signed and not sealed the bill of exceptions, and the Court of Appeals of Maryland reached the conclusion that since they inherited the tradition from England, that a bill of exceptions without a seal was not valid, the Court had no jurisdiction to review the case.

It was corrected immediately by legislation in the following Legislature in 1874, but it ought to have been corrected in advance.

One other thing I am going to tell you as illustrative. It is now the practice of the Supreme Court of the United States, that unless a bill of exceptions is settled within the term there is no jurisdiction to settle or review a bill of exceptions, although you can take an appeal within three months after entry of judgment.

Chief Justice Marshall saw no necessity for this rule, but then came along Justice Grey and he said, after looking into it, that probably such technicality was still the law, but he didn't decide it, and then Chief Justice Taft decided it was still the law. If you have a statutory right of appeal, it ought to be given you in such shape it should avail until the last day you can have the appeal, and not be curtailed in beneficent effect for failure to prepare a bill of exceptions before the term ends.

Those are illustrations of what the law ought to be. Lawyers now learn what the law is. The American Law Institute sometimes has the courage to say, "Now in these states the law is so and so,—the

better rule is—" and that is as far as it has gone in this respect in attempting to restate the law. Somebody ought to go further. That is my idea of the public duty of a lawyer. That is my idea of a basis of attack upon a lawyer's efficiency.

Furthermore, a lawyer's practice imposes limitations upon him. Advocacy and its partisanship imposes limitations upon him. It prevents him from being broad-minded. He is using an unsafe weapon. Some lawyers use it against their clients.

We have a doctrine of the use of dangerous machinery, and one illustration of that, you may remember, is the holding responsible of the manufacturer, I think it was of a Buick car, for the breaking of a wheel, which it had bought from another, and though the maker of the car had not sold it to the person injured, he was held responsible for it because he was using and selling a dangerous machine.

We have what we call the milk bottle cases in New York. It was discovered as a result of a single determination that apparently there were more milk bottles sold with a live mouse in them and tacks than any other thing because people had discovered that somebody recovered for a live mouse in a milk bottle. So we have what we call the milk bottle cases because the public makes use of discoveries of that kind to pretend injury to it.

I once had a case of my own. An elevator company was called in to construct an elevator in accordance with specifications, an elevator manufactured by somebody else. It fulfilled the specifications of the requirements and left the elevator, and there was a loose wheel that it was not called upon to repair, but it was defective at the time of the repair, and it subsequently dropped on the elevator operator.

He happened to be a minor, so he and his father each sued, one for the loss of service, the other for damages. The Court of Appeals extended the doctrine to hold the elevator company responsible for not having discovered and advised the people in the elevator of the defective wheel, which it was not employed to repair.

Now the law, and the machinery of the law, is a dangerous weapon, and as long back, I think, as Edward the First, or somewhere way back that I was looking up the other day, I found a statute which penalized a lawyer for sueing out a false writ in the Court of Chancery, and gave damages to the man against whom he had sued it out. In these days, it is not held that lawyers ought to answer in damages to the people against whom they bring erroneous suits; however, it was done in early England.

Now then, there are other difficulties which the lawyer has. One is the uncertainty of his legal problems. My brother started to study law after I did. He went into the law school library and saw there Cooley on the Conflict of Laws. He thought all laws were in conflict with each other and this must be a treatise on all laws, and so it seems you can't get certainty out of a conflicting mass of laws. That is one of the reasons why lawyers are discredited in the community.

Now the multiplication of laws—lawyers cannot any more be responsible for that than the populace at large. These laws are often

improperly and unphilosophically conceived. They certainly are imperfectly expressed. After a statute once passes the Legislature, the whole legal profession is glad to try and determine what it means.

Then the lawyer has this other tax on his efficiency—his disinclination to change. That is human fault; that is economy of habit; that is not a defect; it is one of the greatest things that the human race has ever inherited, but unfortunately the human race has inherited it with respect to habits of every day life, and the legal profession has inherited the habits it has become accustomed to in its offices.

As a result of these things, you will find the legal profession does not do some things. It does not lead the people any longer. It does not conserve constitutional principles. It seems to me constitutional principles are being violated almost every day somewhere, and that it is being left to the courts to declare the determination of the Legislature as unconstitutional, and one lawyer fights the unconstitutionality, and the other fights for the constitutionality of a suspected law.

The profession does not conserve constitutional principles. It does not influence the exclusion of improperly equipped practitioners. It is doing a great deal to correct this in some states today.

It does not influence the selection of the best judges in some cases. It can't possibly do it. In my own state of New York, it has but little influence upon selection for judicial office.

It does not vigorously discipline unworthy practitioners. We had an illustration of that here this afternoon.

It does not prevent the multiplication of ill-conceived or improperly drawn laws, adding to the uncertainty and confusion of laws.

It does not curb political or official corruption. I am not blaming the legal profession for not doing these things. I am saying what it does not do, and why? Largely for causes beyond its control. The fault largely lies outside of the profession.

It does not lead the people because of indifference of its most conspicuous lights. It does not conserve constitutional principles because of its devotion to other activities, because the great public is ignorant of constitutional principles, and will accept pretty nearly anything whether it violates the constitution or not.

It does not accomplish this because propagandists and evangelists and emotionalists and enthusiasts are ignorant of philosophic principles, and are more persuasive of their nostrums than any man who steers by the North Star of experience and consistency and established habit. Therefore the profession is what it is.

It will not change except the people change, but the state organization of the profession, instead of a lot of independent units which operate each in its own orbit, using its own individual weapons for good or ill, can be useful in producing beneficial results. It can cultiate ideals; it can establish standards of education, of conduct, and of principle, and can point out possible improvements in the law.

Now where is the lawyer not responsible? He is not responsible for the exercise of any power that is denied to him by the law. He cannot do what the people will not let him do.

He is not responsible for legislative mistakes nor for the mistakes of the electorates in the choice of elective officers, nor for the standards which he is not allowed to establish for the pre-legal education of lawyers, for the character of their legal education, for the misconduct of judges.

But finally, I assert as absolutely true, that there is still no profession whose individual members are more helpful in striving to correct conditions of law and its administration, than the legal profession. So much for the legal profession.

Now for the layman. The layman is a sufferer under the law. He possesses the power to rectify its imperfections and hardships. He needs the help of a competent lawyer to advise him of methods, but not of ends.

The layman complains of the inordinate multiplication of laws, of the oppressiveness of laws, of the injustice of the application of laws, and of the unfairness of delays in the administration of law.

What is he doing to change the conditions of which he complains? As far as I discover, he complains, that is all. What can he do?

He can organize to prevent what he complains of. He can take wise counsel to rectify. He does not need to upset the foundations of civilization. Many men undertake that. He should survey existing laws and methods and point out their defects, and organize to eliminate them. He should deal with the subject scientifically, which means sensibly and philosophically, with due regard to actual need and actual habit.

He should not remove his neighbor's landmark. He should not advocate changes until he has surveyed the field. He should not start as a propagandist, evangelist, emotionalist, or enthusiast. He should start as one who wants to know, rather than as one who possesses his knowledge already.

He should not start with the design to force his neighbor to adopt his own views of life, nor to coerce his neighbors to do as he does. All of that has been tried and has produced merely handicaps and added perplexities.

The layman can investigate, not people, but law. He can bring laws before the tribunal of intelligence and weigh them, to discover their necessity, their oppressiveness, their injustice, their insufficiency, their confusion, their inconsistency.

He can investigate procedures to discover their adequacy, their waste, their economic effect, their relations to just results.

The lawyer has established many agencies, but they do not cover the field. He is restating some topics of the law through the American Law Institute. He is starting to study some legal processes through the Institute of Law of Johns Hopkins University. He is studying some problems of law through committees of the American Bar Association, which, necessarily, are not equipped in money or organization for very effective work.

He has established a number of instrumentalities that are making some progress without any legal power—the Council of Legal Ed-

ucation to classify law schools, the Conference of Commissioners on Uniform State Laws to advocate and formulate certain uniform laws, the National Conference of Bar Association Delegates to discuss legal problems, and which has evolved the idea, as I have already stated, of the all inclusive organization of the lawyers of the states, with organized powers and duties, looking to the elevation of the personnel in the practice of the law.

It has advocated through some of its organizations Judicial Councils to study judicial procedure in some of its aspects, and they are making progress, as you know.

The legal profession is not studying unnecessary laws by a process of complete review, nor unjust laws, nor law as it ought to be, nor the economic aspects of our judicial procedure, the cost in time and necessity of a jury system in civil cases, the comparative results of voluntary or enforced arbitration and litigation.

Let me pause here and say that this Institute of Law of Johns Hopkins University, which has been considering procedure in Ohio and in the City of New York, has announced certain conclusions in New York which it has reached from the study of some thousands of cases. I have not the figures before me right now.

Substantially those figures are that the average money recovery in these cases actually paid upon judgments is $110; that the average cost to the plaintiff of procuring that judgment is $76; that the average cost to the defendant of defending against the judgment is $57, so that in the average of the cases, they find that the litigation usually costs more than is realized on the judgments. The Institute is doing that and has done it consistently, and is going to continue that study.

It is obvious, as you know, that crime is better organized, better financed, more widely extended, more successful, than it ever has been in the history of the United States before. It is also obvious that our dealing with it is ineffective.

Certain voluntary and certain authorized crime commissions are at work on the problem, but very few suggestions have appeared or been put into effect to curb or suppress it. Is anybody studying the adequacy of our fundamental concepts? If so, I would like to know.

These are some of the things which intelligent laymen might organize to do, not with any preconceived remedy, but with a determination to find out.

Lawyers have not the power to correct any of them; they are scarcely charged with the duty to make those efforts. At all events, they should have the backing of intelligent and conservative common sense laymen, free from "isms". The layman can demand; it is his right, but his demand should be based upon comprehensive knowledge. I make these suggestions, not without a closing caution.

Mr. Melvin A. Traylor, President of the First National Bank of Chicago, in January of this year, speaking at Dallas of our present financial depression, which address was printed in the "New York Times" said in substance, that while it is deplorable, it is much less dangerous to our future than the multitude of remedies and cure-alls, that are suggested.

It is for a similar reason that I have advocated an exhaustive survey, not dictated by preconceptions, without propagandism, without emotionalism, and without enthusiasm; these are apt to produce a state worse than the one which it supersedes.

* * * *

PRESIDENT TRAYNOR: Thank you very much, Mr. Boston, for that very excellent and inspiring address.

Now we have a little more business to conduct. The report of the Committee on Unauthorized Practice of Law, but they have requested it to be held in Executive Session so we will excuse the ladies and those who are not members of the Association. We would like all the members of the Association to stay.

TRACY BANGS: I would like to make a motion that this Association at this time extend to our distinguished guest, Charles A. Boston, a vote of thanks for his magnificent address and message.

JUDGE BURR: Second the motion.

PRESIDENT TRAYNOR: We will take a rising vote on this motion.

MR. BOSTON: I thank the mover of this resolution and the members of the Association for their kindness in this vote. I take this opportunity to say what I neglected to say before. I spoke to you about my appointment of two members on the Reception Committee at Atlantic City from the State of North Dakota. I have appointed Mr. Clyde L. Young of Bismarck. I would like a volunteer who is going to be in Atlantic City. Who will volunteer? I wish you would communicate with the President of this Association, if there is anybody here who knows he will be in Atlantic City and will be willing to accept that appointment. I appoint Sidney Adams, I understand he will be there.

PRESIDENT TRAYNOR: Mr. Knauf, will you please round up those members in the back so we can conclude the business session.

SECRETARY WENZEL: Mr. President, may I offer a short report on the jury system that would not require any action?

"THE JURY SYSTEM"

Your committee, as its report, suggests that the statutes with reference to the selection of jurymen are not widely understood outside of the profession and that it would be well in some manner to bring home to the local officials, whose duty it is to select jurymen, a better knowledge of these statutes.

The Judges of the Sixth Judicial District in this State have circulated a short pamphlet, containing a digest of these statutes with explanatory comment, among the City, Village and Town boards in their District. The object of this circular is to call the attention of these officials to the legal qualifications of jurymen and it is particularly aimed at the tendency of these various boards to repeatedly select the same individuals for jury service. It calls attention to the legal requirement that the Township, City or Village Clerk or Auditor shall keep a jury book in which shall be recorded the names of jurymen drawn from time to time by the official boards of the respective municipal-

ities. It warns them against selection of persons by law disqualified for service or who cannot be compelled to serve as jurors and who may, therefore, if drawn, be excused from service, thereby reducing the number of jurors on the panel. It also calls the attention of these officials to the intent of the statute that all qualified citizens shall perform jury service and that none shall be called the second time before all those qualified have served.

We believe that if the Judges of the various district courts were authorized and empowered to draw such a pamphlet, have the same printed and mailed, the results would be wholly beneficial and that the quality of our juries would be thereby improved.

W. H. ADAMS, Chairman.

PRESIDENT TRAYNOR: The report will be filed and made a part of the record. It carries no recommendations.

Gentlemen, I call attention to the fact that we are strictly on schedule time with our program. We are just to 4:30 with the committee report on the Unauthorized Practice of law. We will now proceed with the Report of the Committee.

MR. HANCHETT: At the close of the session of the Legislative Assembly, I received a hurry up call from our President to the effect that our bill on the unauthorized practice of law had failed in the Legislative Assembly, and appointed me chairman of a committee to determine what should be done about the matter at the next session of the Legislature. I called a meeting at Judge Ellsworth's office in Jamestown within a few days. We went over the matter quite fully, and decided that it would be impossible to get a satisfactory law passed by the Legislative Assembly of this state.

We were also of the opinion that the present law is ample and sufficient to cover all cases. We concluded the thing to do was to have an equitable action brought in the courts of the state in the name of the State Bar Association against offenders and have them enjoined from further practicing law. We determined that would be the proper procedure to adopt, unless we could get together with the Bankers' Association in some way to avoid any necessity for action. Thereupon, I wrote the Secretary of the Bankers' Association at Fargo, outlining the situation and suggesting we might be able to get together. He wrote me a nice letter in reply saying he thought the matter was largely over-estimated by the Bar of the State and it would be little or no use trying to get together until after they had their meeting of the next Bankers' Association, which would be held in Fargo in June.

I called a meeting at that time, and Judge Ellsworth attended. I met with the Bankers and gave them to understand what I was there for, but I got not response at all as to any settlement of the matter.

I reported to Judge Ellsworth at the hotel, suggesting that he go ahead and draw up the report, and I would sign it, and I thought the other members would sign it also.

We recommend the enforcement of the present statute by an equitable action. I have the report here which will be read by the Secretary. It is all agreed to except the last sentence, perhaps. Some of the members of the committee thought there should be a limitation

upon the amount of expense which might be incurred. At the suggestion of one or two members of the committee, I put on the limitation of "not to exceed $300 for any one action." I request that the Secretary read the report.

THE UNAUTHORIZED PRACTICE OF LAW

The Committee from which the following Report emanates was appointed specially by the President of this Association on March 24, 1931. In the letter of appointment its duties and the limits of its inquiry and investigation are not explicitly defined. As stated, it is appointed by the President with the approval of the Executive Committee, "As a Committee from the State Bar Association on the Unauthorized Practice of Law Within this State".

Shortly after its appointment a meeting of the Committee was held at Jamestown. At this meeting other members of the State Bar Association were present and a general discussion was had in which the subjects were: (1) The extent to which the regular practice of law within the State is done or attempted by corporations and unlicensed persons; (2) The degree, if any, to which the Profession of Law is derogated, corrupted or demoralized by unlicensed practice of this character, if such exists, (3) The present condition of the State law regulating or prohibiting such practices; (4) The remedy against professional demoralization if the Committee should find after inquiry and investigation that there exists unlicensed and illegitimate practice to such extent and of such character as to constitute a menace to the public welfare and the integrity of the profession of law within this State.

Since this preliminary meeting the Committee has assumed that its authority and duties comprehended at least, those departments of the general subject of the unlicensed practice of law brought under discussion at the meeting; and its further inquiry has been substantially along these lines. This report will, therefore, treat of the different phases of the subject and will consider first,

I.

The extent to which the practice of law, within the State, is solicited, done or attempted by corporations or unlicensed persons.

In entering upon this department of the subject, obviously the first consideration is a concise definition of what constitutes the practice of law. By general understanding of the Courts of last resort in all States, except one, that have passed upon this point, the practice of law is not limited to the conduct of cases in Courts. A definition first announced by the Supreme Court of South Carolina and approved very recently by a comprehensive opinion of the Supreme Court of Illinois which will be further and more fully referred to, is: "According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the prac-

tice of law. The following is the concise definition given by the Supreme Court of the United States: 'Persons acting professionally in legal formalities, negotiations or proceedings by the warrant or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country.' "

It is of course, needless to suggest to the Members of the Bar of the State of North Dakota that their admission before the Supreme Court does not license them to practice law within the State. In addition to this, they are required to pay an annual license fee of Ten Dollars; and to conform substantially to a Code of Ethics adopted by the State Bar Association. They are under a strict discipline arising out of general professional sentiment and the enforcement of the rules of the Code of Ethics, which prohibits competitive advertising, undue solicitation of business and requires the constant exercise of ability, learning, skill, personal integrity and care in the business entrusted to them, and of courteous respect toward each other and the Courts before which they do business. Practice of law, subject to these limitations only, can be regarded as the licensed practice of law. Any practice of law other than thus defined, the Committee assumes, is to be treated as an unlicensed practice of law.

It is a universal holding of the Courts from time immemorial, that admission to the Bar of any Court and the right to practice law is a strictly personal and individual right. As is well known, the Supreme Court of the United States refuses to recognize the title of a partnership although composed exclusively of practising attorneys. The rights and privileges acquired by admission to the Bar are conferred exclusively upon the individual attorney and he is held personally responsible for the exercise of that right. He cannot assign these rights even to an association of attorneys or a combination of attorneys and business men; and much less can he exercise them in the service of a corporation, in the dispatch of its ordinary business, and for its convenience and profit.

It seems to be universally conceded that a corporation cannot practice law. This incompetency arises partially from the fact that a corporation, not being a person but a mere legal entity, cannot possess those characteristics that entitle it to admission to the Bar; and partly from the fact that State Legislatures refuse to authorize the transaction of law business by corporations. There is an express statute of the State of Illinois prohibiting the practice of law by corporations. Under the law of the State of New York it is a crime for a corporation, its officers or agents, to engage in the practice of law. In Minnesota, the Supreme Court in a recent opinion has held "That a corporation cannot itself practice law; nor can it lawfully do so by hiring an attorney to conduct a general law practice, under agreement whereby the fees received become the income of the corporation". The Court of Appeals for the Eighth Judicial Circuit of the State of Ohio held that the practice of law within that State is illegal; and that while a corporation so doing is punishable criminally, this does constitute an adequate remedy barring equitable relief against the corporation; and that it may be enjoined in a civil action at the instance of a Bar Association from such further practice; and as above suggested there is a uniform holding of all courts of last resort that have passed upon the question, that corporations are not and cannot be qualified or authorized to practice law.

In the opinion of the Committee, any corporation or unlicensed person who for profit or reward performs, for another, any of the acts falling within the definition hereinbefore given; or who publicly advertises to do those acts or in any manner solicits or importunes another to entrust to it or him business of that class, is engaging or attempting to engage in the unlicensed practice of law.

In its investigations, it has come to the knowledge of your Committee that, within the definition above given, the unlicensed practice of law is quite general within the State of North Dakota. In these practices, so far as the present information of the Committee consists, corporations and particularly Banks and Trust Companies appear to be the principal offenders. As an instance of the general advertisement for and solicitation of law business by members of the State Bankers' Association, it is found that a circular or poster described as "Uniform Schedule of Service Charges," is prepared and circulated by said State Association and posted, displayed or in some manner exhibited by National and State Banks generally, in words and figures as follows:

"UNIFORM SCHEDULE OF SERVICE CHARGES

Prepared and Recommended

by

The Service Charge Committee

of the

NORTH DAKOTA BANKERS' ASSOCIATION

May 15, 1929

Drawing Papers:	
Acknowledgments	$ .25
Affidavit	1.00
Agreement	1.00
Assignment of Contract	1.00
Bill of Sale	.50
Chattel Mortgage (minimum)	.50
Chattel Mortgage to Bank (filing fees)	.50
Contract for Deed	1.25
Inspection of Chattels	$3.00 to $10.00
Lease, City and Farm property	.50
Lien	1.00
Option Contract	1.50
Power of Attorney	1.00
Real Estate Mortgage	1.00
Satisfaction of Mortgage	.50
Deed	1.00

It is submitted by the Committee that the preparation of ten or twelve items listed in this Schedule with attached charges, is to be regarded as proper and legitimate, when done for others at a fixed charge as the practice of law; while the proper drafting and advice for use of some of these so-called "papers" or instruments such as "agreement" (meaning contracts generally), contract for deed, lease, option contract, real estate mortgage, and deed are to be regarded as involving the exercise of the highest skill, learning, ability and experience possessed by any member of the Bar of North Dakota. The one

item of agreement or contract, as every lawyer well knows, in its Protean forms, complexity and importance, transcends all forms of legal instruments and serves as a fundament to the Civil Law; and yet, from the proclamation of this Schedule, it may be "drawn" by a person unlicensed to practice law in any form, involving any subject matter and in reference to property or other rights, without limitation of value, for the sum of One Dollar.

Your Committee has every reason to believe that in the member Banks of the North Dakota Bankers' Association to which this schedule of charges was circulated since its issuance in May, 1929, and openly displayed or used for reference, the "papers" or legal instruments mentioned in the list have been prepared by clerks, stenographers or other persons, employees of the Bank not licensed to practice law and delivered to the public generally upon payment of the fee, attached to the description of the paper; that there was a general solicitation for such business by the member Banks whether State or National, by display of the printed schedules and by other means; and that the charges collected for the drawing of such papers became part of the income of the banking corporation receiving it.

Further than this there has been brought to the attention of the Committee, in the course of its investigation, a printed card, poster or circular issued and circulated by mail throughout the State by a corporation named, First National Bank and Trust Company, Fargo, which advertises itself to be "Oldest Bank in North Dakota. Affiliated with Northwest Bancorporation. Resources $485,000,000." Following is a full copy of the heading and body of this circular:

WHAT BECOMES OF MY PROPERTY, if I Die Without Leaving a Will?

The property of any person who dies without leaving a Will becomes subject to the intestacy statute. This is the State's provision for handling estates, based not on your plans and desires, nor on the needs and requirements of your heirs, but on a general average of many such cases.

The first disadvantage your heirs will feel in such event, is the length of time involved in probating your estate—naming an executor, taking inventory, listing obligations, paying current expenses and government fees and taxes, and so on—during all of which time your estate is dormant so far as your heirs are concerned, unproductive of income regardless of need or exigency.

How much more thoughtful of and helpful toward your heirs to have The First National Bank & Trust Company take hold at once and carry on for them without delay or danger of error!

Today is an ideal time to settle this matter of Your Will and we are ready to help you."

The Committee submits, that giving the wording of this circular its fair, usual and reasonable construction, this banking corporation, by this means, publicly advertises: (1) To draft Wills of persons who do not wish their property at their decease, to become subject to distribution under the intestacy statute; (2) To undertake the full pro-

bate and administration of any estate entrusted to it for that purpose; and (3) To use greater care, skill and dispatch both in the drafting of the Will and the probate of the estate than will be exercised by any person employed by the testator for that purpose.

There can be no question but that the drafting of Wills, the probate of the same and the administration of the Estates is law business often of the greatest difficulty and complexity. Further than this, the work of probate and administration must be done by an appearance in the Courts such as can be made only by a licensed attorney. And yet, it will be noted that there is nowhere in the circular the slightest mention of an attorney or that any of the services mentioned are to be or should be performed by a licensed member of the Bar. The only fair and reasonable inference to be drawn from the entire body of the circular is that all the services suggested and recommended therein are to be performed by the corporation, through its authorized agents and employees, and that charges made for any service are to be paid to the corporation and become part of its income.

The Committee finds that the First National Bank and Trust Company is not organized as a Corporation under the laws of this state and is not therefore in any manner authorized by the State to engage in the practice of law. It is, doubtless, organized under the National Banking Act to conduct a banking business which does not carry with it a franchise to practice law. While the Committee is not informed of any specific instance in which the drafting of a Will and the probate thereof or the administration of an estate has been, in all of its incidents, committed to this corporation, from its wide solicitation for business of this class and high sounding advertisement of its ability to transact such business with more than ordinary care, skill, and dispatch, a strong presumption may be indulged that it has been entrusted by many of the class of persons appealed to in its circulars, with cases that fall properly within a department of the practice of law; and is at this time continuing such solicitation and service as part of its regular business.

Another feature particularly objectionable to the Profession of Law, in the operations of the Corporation last referred to, is the substance of the advertisement contained in its circular distributed as has been stated. Even though the corporation were legally authorized and licensed to conduct the practice of law, under the restrictions of the Code of Ethics it could not thus advertise that the service that it was qualified to render would be superior to that of any other licensed practitioner. In other words, this corporation though not qualified for admission to the Bar and not licensed to practice law in the State, is advertising and soliciting business in a manner that is prohibited to a regularly licensed attorney.

As hereinbefore indicated, the Committee finds that within this State, Corporations and particularly Banks and Trust Companies appear to be the most widely dispersed and persistent offenders against the licensed practice of law. It is generally reported, however, that abstractors, real estate and insurance agents, hold themselves out in many parts of the State as capable of performing conveyancing in all its branches, conducting the foreclosure of mortgages, and drafting and probating wills. The conclusion is therefore that within the State

the solicitation of business that may be properly classed as law practice and the transaction of the same by corporations and persons not licensed to practice law is, at this time, quite general.

II.

The second inquiry considered by the Committee is, to what degree if any is the Profession of Law within the State derogated, discredited or demoralized by the existence of the practices of corporations and unlicensed persons such as are found by this report to be commonly present.

It is a self-evident truth that by qualification and admission to the Bar and compliance with the State Law regulating the right to practice, the attorney at law acquires certain privileges that are to him exclusive and which, by a wise policy of government are thus granted and confirmed for the public benefit. "Such privileges are exclusive in that they are restricted to a class of individuals, who, after continued and special training by way of general education and legal preparation, and after examination and determination of special fitness, are accorded the right to follow the profession of attorneys and counselors at law. This right has been designated a right in the nature of a franchise.

A franchise has been defined as the privilege of doing that which does not belong to the citizen of the public generally by common right."

As quoted from high authority by the Ohio Court of Appeals:

> "The right to practice law is not a natural inherent right, but one which may be exercised only upon proof of fitness, through evidence of the possession of satisfactory legal attainments and fair character. The privilege of practicing law is not open to all, but is a special personal franchise limited to persons of good moral character, with special qualifications ascertained and certified after study and examination. It is not 'property' within the meaning of the word as used in constitutions, nor is it a contract. When admitted to practice, however, an attorney at law becomes an officer of the Court; and, as such, he is entitled to certain rights and privileges, and subject to certain duties and liabilities, the due observance of which is necessary for the faithful administration of the law of the land, and in order that justice may be done."

Exclusive rights and privileges of this character, acquired as they are by large expenditure of time and money, are certainly entitled to respect from the Courts, legislators and particularly from the general public for whose better service they are granted. For the Profession of Law to permit these privileges to be invaded, perverted in their function and indiscriminately misused and prostituted in their purpose by a host of incompetent, unqualified and unlicensed persons or legal entities such as corporations, merely for personal profit, indicates in a manner and to a degree too obvious to require pointing out, a weakness and increasing impotency on the part of the Bar that tends in its final result to utter demoralization. It is needless that we should state to lawyers, that the paramount function of the Profession of Law to which it owes its very existence is to stand immovably for protection, preservation and enforcement of the Public rights and the lawfully

established privileges and franchises of others. How, it is inquired, can the Bar practice a profession such as this and maintain the respect of the Public, when it appears impotent to defend against aggression its own exclusive rights, franchises and privileges?

Further than this, if, as hereinbefore quoted from high authority, the due observance and protection of the attorney's "rights and privileges" is necessary for the faithful administration of the law of the land and in order that justice may be done; then, for the Bar to weakly permit these rights to be misused and frittered away, is a failure in public duty which if allowed to continue will inevitably derogate and discredit the Profession of Law in the eyes of the Public.

III.

The third inquiry considered by the Committee relates to the present condition of the State law regulating or prohibiting the unlicensed practices made the subject of this Report.

It is a remarkable fact that while the Legislature of the State of North Dakota has carefully, even elaborately regulated the practice of Law within the State, by prescribing the qualifications for admission to the Bar, the tests by which the requisite qualification in learning, character and professional ability may be ascertained and the conditions under which members of the Bar may be licensed to practice, the function and duties to the public of attorneys engaged, and the means by which attorneys may be disciplined, suspended from practice or the license to practice revoked, it has not in any manner prohibited an unlicensed practice of law. In other words, while duly admitted Members of the Bar are, by the statutes of North Dakota prohibited from practicing law, within the State, without special license, there is not a line prohibiting or providing a penalty against the same practices by corporations and persons wholly unqualified and unlicensed. If this anomolous condition came about merely through oversight or omission, it might be regarded as merely accidental. From the course before the Legislature and the ultimate fate of the Bill recommended for enactment by this Association at its meeting of a year ago, and the evident animus of the Legislature in refusing to favorably consider a proposed law drawn on these lines, it would appear that the absence of a prohibition of unlicensed practice of law from the State statutes is not a matter of neglect, but of intention.

Therefore, in view of the evident disposition of the Legislature on this point, as reported by our Legislative committee and the steadily progressive growth of unlicensed practices, it seems apparent that the relief which is at this time quite necessary to preserve the integrity of the profession of Law must come from another source, more direct, summary and powerful in its action.

IV.

The Committee having found, as hereinbefore set forth that the unlicensed practice of law by corporations and others is at this time carried on in such manner and to such degree as to affect prejudicially the public interest and to menace the Profession of Law within the State with discredit, derogation and ultimate demoralization, the final consideration arises, is there a remedy which has, at least, the appearance of effectiveness, that may be promptly applied.

Owing to misunderstandings and prejudices that appear to exist in the Legislative Body there is little prospect of relief from that source. Even if a law were enacted prohibiting under penalty the unlicensed practice of law within the State, enforcement of the same, in the present state of public feeling, might prove a difficult problem.

Quite recently, however, members of the Bar of a number of States either jointly or through their Bar Associations have resorted to the Courts in several different forms of action and have obtained results that are quite satisfactory. The most effective of these are here noted.

In a leading California case, the State, on the relation of the Lawyer's Institute of San Diego, initiated a proceeding in the nature of Quo Warranto against a corporation known as Merchant's Protective Association charging it with making and soliciting the business of giving its patrons (through paid attorneys) "legal advice and consultation on business, personal or private matters." The Court held that the corporation in so doing, "has attempted to enter a domain which, as a corporation, it may not lawfully invade" and sustained the granting of the writ.

In Idaho, a vigorous and successful attack was made upon the operation of a leading Trust Company in which the corporation and its president was charged "with having represented themselves as learned in law, and particularly in the preparation of wills and declarations of trust; with having solicited by various types of advertisement, that they are so able and competent; and with having, at various times advised persons desiring to make a disposition of their property by will or by trust, as to the law of wills and trusts." In this proceeding the Trust Company and its President were held to be in contempt of the Supreme Court of Idaho.

In Minnesota, on Complaint of the State Board of Bar Examiners, application was made to the Supreme Court for the discipline of an attorney at law, upon the ground that he was practicing law under an agreement made with a bank to pay him an annual salary, while his fees earned in the transaction of law business, became income of the bank.

In this proceeding the Supreme Court of Minnesota held, "That a corporation cannot itself practice law; and, as a consequence cannot indirectly practice law, by hiring an attorney to conduct a general practice under agreement whereby the fees received become income of the corporation." And that the Attorney-defendant "should be and is severely censured, by this court, for participating in the practice of law by a banking corporation."

In Ohio, a leading case on the same subject has just now been concluded by a final judgment of the Court of Appeals for the Eighth Judicial District (Cleveland District). This action was brought in equity by twenty members of the Cleveland Bar, jointly, to enjoin a corporation known as Apartment House Owners' Association, its officers, agents, directors, trustees and attorneys, from advertising that it maintains a legal department for the benefit of its members and others and from maintaining a legal department or carrying on the practice of law through itself, its officers, agents, directors, trustees, or attorneys. The Court of Common Pleas before whom

the suit was originally tried, held that the defendant corporation was engaging in the practice of law; that such acts were an invasion of an exclusive franchise enjoyed by the Plaintiffs and all other attorneys at law regularly practicing in Cuyahoga County; and granted in full, the injunction prayed for. This judgment was, in its entirety, affirmed by the Court of Appeals and by this action became finally, the law of the State of Ohio.

And a decision, if possible, still more important and far-reaching in its effects than that of the Ohio Courts was, on June 18, 1931, rendered by the Supreme Court of Illinois. This was entered in an original proceeding in contempt of the Supreme Court in which the People, ex. rel. Illinois State Bar Association and the Chicago Bar Association, were Relators and Peoples Stock Yards State Bank, a banking corporation of Illinois, was Respondent. The Relators sought to have the Respondent punished for contempt of the Supreme Court for engaging in the practice of law and enjoined from continuing such practice. The Supreme Court in an opinion most luminously able and instructive, held that the Respondent had beyond question deliberately engaged in the unauthorized practice of law; that it had, for several years, conducted proceedings in the Circuit, Superior and Probate Courts of Cook County under cover of the names of licensed attorneys who were its salaried employees, and appropriated to its own use, the fees allowed to or charged by these attorneys. That, for several years, it had also examined abstracts of title and rendered legal opinions thereon, prepared and attended to the execution of wills for its customers and others, and furnished the legal advice necessary to the performance of these services, all by the use of the names of attorneys employed by it and had appropriated to its own use the attorney's fees charged and collected for all such services and advice. The Supreme Court then unanimously agreed that such practices of the Respondent, deliberately and knowingly "aggravated" by a continuance for a period of years, constituted contempt of Court; and it appearing that the wrongful practices of the Respondent had been discontinued, as punishment, imposed a fine of $1,000.00.

The Committee finds, therefore, that remedies against the unlicensed practice of law by corporations and unauthorized individuals, resorted to in other States, resolve themselves into civil actions and proceedings of several distinct classes. There is the proceeding in the nature of Quo Warranto, for Contempt of Court and for the discipline of the attorney attempting to coordinate the practice of law with the legally authorized business of a corporation. There is also the suit in equity for a permanent injunction against the continuance of these practices. In the absence of a statute prohibiting the practice of law without qualification or license, this list of proceedings and suits seems to exhaust the remedies provided by which resort to the Courts for relief may be had.

In the opinion of the Committee, the most effective remedy for relief in the situation now existing in North Dakota, is a suit in equity against the offending corporation or individual as the case may be, for an injunction very much in the form of that followed in the case of Dworken vs. Apartment House Owners' Association of Cleveland, outlined in this Report and in the opinion in which the Court of Appeals of Ohio may be found in 176 Northeastern

Reporter at page 577. An action successfully proceeding on the lines of this case, in the opinion of the Committee gives the most satisfactory and comprehensive promise of effective relief.

It is, therefore, the recommendation of this Committee that a Special Committee consisting of three members of this Association be appointed by the President, with the concurrence of the Executive Committee, authorized and instructed to select as defendants or respondents from known offenders in the unlicensed practice of law, within the state, those corporations or individuals whose prosecution in the judgment of such committee will be most exemplary and effective, and, if deemed advisable, to commence in the name of the Bar Association of North Dakota against such parties and in such Court of the State as may be selected by the Committee, a suit against such parties, for an injunction permanently restraining it from further continuance in the unauthorized and unlicensed practice; and that such suit after its initiation be conducted in all its details by such Special Committee and the necessary and reasonable expenses of the bringing and conduct of such suit be paid out of that portion of the State Bar fund appropriated to the uses of this Association, not exceeding the sum of $300.00, for any one action.

Dated August 18th, 1931.

JOHN O. HANCHETT, Chairman,
C. L. YOUNG,
ARTHUR L. KNAUF,
S. E. ELLSWORTH,
A. P. PAULSON,

I also approve the foregoing report except as to the remedy proposed.

W. D. LYNCH,
Member of Committee.

MR. A. L. KNAUF: The limitation of the fee of $300 was not in the body of the report.

It was my idea, also, that several cases should be prosecuted, if necessary, and if our funds were not sufficient for the purpose of enforcing this law, that then the Bar Association should make a special assessment on the membership for the purpose of prosecuting these cases, and that the committee be given compensation for their work throughout. Therefore, I move that we strike from the report the limitation to $300. That phrase should be stricken from the report.

MR. WEHE: Second the motion.

MR. KVELLO: I move the adoption of the report with that phrase eliminated.

MR. WEHE: I second the motion.

PRESIDENT TRAYNOR: The issue is before you. What are your desires?

By specific order of the Executive Committee, the pyrotechnic display which was loosed, following the question of President Traynor, is eliminated, and it will be impossible, therefore, to catch the many "Oh's" and "Ah's" that readers of the proceedings, undoubtedly,

would have sounded upon the reading of the original record. The order being primarily in the interests of economy of publication, it should be said that reading now what the Editor heard, we are surprised to note how little there was to orate about. The meat in the language of those who discussed the matter—Tracy R. Bangs, L. J. Wehe, S. D. Adams, John H. Lewis, S. E. Ellsworth, F. T. Cuthbert, and B. F. Spalding—presented so much of agreement in principle, that the matter may reasonably be designated as one of unanimous judgment. The discussion was precipitated by reason of the suggestion of Mr. Bangs, and put in definite form by Mr. Adams, that the words "if deemed advisable" be inserted just before the words "to commence in the name of the Bar Association" as found in the last paragraph of the report. It was so moved. A substitute motion lost for want of a second, after which the motion to insert the words, "if deemed advisable," was put and declared carried. A division was called for, upon which the count was reported by the President at 37 for and 21 against the amendment.

This was followed by a motion to strike out the last phrase inserted by Chairman Hanchett, to-wit: "Not exceeding the sum of $300 for any one action," which motion duly carried.

Mr. McCurdy then offered a further amendment, that "the committee be given specific authority to institute and maintain such an action as is contemplated in whatever name, or in whatever manner may be necessary to fulfill and consummate the intent of the report." This, also, was duly seconded and carried.

PRESIDENT TRAYNOR: The meeting will stand adjourned until tomorrow morning at nine o'clock, when we will meet at the District Court Rooms in the Court House.

"THE TRIAL JUDGE"

WALTER G. MISER, Rapid City, South Dakota
President South Dakota Bar Association

To those who labor under the impression that South Dakota and all points therein lie hard by North Dakota, it may be well to state that Jamestown, North Dakota, where we are now enjoying a splendid meeting of the North Dakota Bar, is five hundred miles from Rapid City, in the Black Hills of South Dakota, where my home is. I mention this because it is with some feeling of apology that I state that this is only my third visit to North Dakota. At the time of the other two, neither North Dakota, South Dakota nor myself realized that twenty-two years later the South Dakota Bar Association would be sending an ambassador of good will to a North Dakota Bar meeting. This visit is different in several respects from the other two. This time I came in daylight. Then I came—and went—in the night, in fact in the same night. Having been admitted to the Bar in my native state of Ohio, and having given the leaders of the profession there an opportunity to which they appeared to be oblivious—I decided to come West. The Standing Rock Indian Reservation was then being opened up. Uncle Sam was betting any of his eligible nephews or nieces a quarter section of that land that he or she could neither live on it five years nor have $200.00 with which to commute at the end of eighteen months. In this beneficent plan the

Milwaukee Railroad was assisting. It was selling tickets to some station in Montana with return privilege for about the same or less than a one-way ticket to McIntosh. Having bought as much ticket as I could buy for my money, and seeing no reason why I should not get my money's worth—especially when it was just about all the money I had—I rode on through North Dakota into Montana, detraining about 1 A. M. Never before nor since have I seen so much unadulterated out-of-doors at one o'clock in the morning as I did at that box car station in Montana. Within an hour I was back in North Dakota going east on a cattle train. By daylight I was back in South Dakota and on the following day was in a Nebraska cornfield, where, except for a few hours each night, I husked corn until early spring. Probably never in the history of Nebraska agriculture, has anyone ever suffered so much in husking so little corn. The next spring I came to the Black Hills of South Dakota. On arriving I was told that the frost in those mountains nine months of each year makes corn raising unprofitable. I decided to stay and ever since that has been my home.

Under the circumstances of those two former nocturnal visits to this state, it is not surprising that I never realized till the present how charming North Dakota is. It improves with each passing hour. I was royally received. I enjoyed the splendid morning and afternoon sessions today, but this banquet session seems the best of all. The audience even looks better, although I presume that practically the same families are represented. It is that way in South Dakota, too.

Knowing the importance lawyers attach to precedents, especially bad ones, I am very anxious to perform my ambassadorial functions properly. It would be very embarrassing to me twenty-five or thirty years from now to have some one of the younger lawyers here tonight excuse some particularly awful error by saying: "Well, in 1931 that fellow from South Dakota—what's his name?—did it that way." Of course, everyone knows—or thinks he knows—what the Governor of South Carolina said to the Governor of North Carolina—"but them days are gone forever." Precedents for modern ambassadors of good will are not so well established. Lindy was about the first but he didn't have to make speeches. Then came your Mr. Kvello and our Wesley Clark. Last year Kvello gave us a wonderful speech at Sioux Falls. The lawyers still speak of it but of course I can not use his stuff here in his own bailiwick. Probably every orator here would be sueing Kvello for stealing some of his choicest eloquence. Then there was Wesley Clark. While tarrying at Oakes in the railway station waiting to begin my mad flight over the Northern Pacific to Jamestown, I discovered on a map there that Redfield, where Clark lives, and Jamestown, where we now are, are both on the banks of the Jim River; for anything I know to the contrary, Clark sails up here every now and then over its pellucid waters and charms you with his brand of eloquence. This leaves me without much to stand on by way of precedent.

In fact, I am in pretty much the same predicament as Fly Specked Billy of early Black Hill days. This happened before I became Judge of the Southern Black Hills Circuit but is doubtless as true as some of the things to which I officially listened. Gold was first discovered in the Hills at Custer which is now one of the most charm-

ing places there. When it was still just a mining camp, Fly Specked Billy was a none too exemplary resident there. One day while slightly illuminated, he borrowed a gun from an acquaintance and used the gun to shoot the man who loaned it to him. In order to insure a reasonable degree of safety in the loaning of firearms in that mining camp, the Vigilantes arose as one man and hanged Fly Specked Billy with celerity and despatch. In writing of the occurence in the next issue of the Custer Chronicle, the editor described the position in which Billy was left as "standing on nothing, looking up a rope." So far as precedents are concerned, that is just about my position.

However, you lawyer folk of North Dakota have so much in common with us lawyer folk of South Dakota that we ought to get along. We have the same, more or less occasional droughts; while we have more grasshoppers than you, they belong to the same varieties and operate the same way; it rains next year, quite the same; our congressional delegation loves the farmers in the same way, with the same results; our experiments in state government, though not identical, have produced about the same results; for about a third of a century we were part of the same territory; we entered the family of states at the same time; we have a common and valuable heritage in the acts of the legislative assemblies from 1862 until statehood, in the '77 Code and in those parts of the David Dudley Field Code written therein, in the Compiled Laws of '87, in those six volumes of wonderful decisions of the Supreme Court of Dakota Territory and in our system of courts.

My friends, I have never practiced in your courts. However, I appreciate their splendid quality. The ability of your splendid judges is recognized in South Dakota. Yet there is much I do not know about your courts. But that just should not prevent my discussing them. If all of us limited our talking to subjects about which we are informed, the silence which would descend upon this land of the free would rival the silence which for centuries draped the tomb of old King Tut. However, in attempting to speak of the trial judge to an audience of lawyers—many of whom have doubtless struggled, after some particularly heartbreaking decision, to avoid speaking eloquently on that same subject, I appreciate that more time spent in analyzing the subject would not have been wasted.

For eight years I was circuit judge of the Southern Black Hills Circuit and for now over four years have been Supreme Court Commissioner, so that for over 12 years I have either been making mistakes myself as a trial judge or looking over the alleged mistakes of other trial judges. Consequently, I have chosen a topic on which I might go round and round although I may not without abusing your patience go on and on. I have chosen this topic because I think no harm can be done and some good may be done by discussing it.

Under the South Dakota Constitution and under the North Dakota Constitution, trial judges must be human beings of a stated age who are learned in the law. I appreciate that after one has lost four or five cases in succession before the same judge, one is tempted to inquire in the stilly watches of the night whether the Constitution is operating in all its pristine vigor. It is remarkable, however, how the winning of a few cases, which one has no license to win, restores one's confidence in the beneficence of Divine Providence.

The successful administration of justice calls for the intelligent cooperation of many persons: county commissioners, those whose duty it is to make up the jury list, clerks of court, sheriffs, bailiffs, jurors, court reporters, attorneys, trial judges, judges and employees of appellate courts, pardon boards, the Governor, prison officials, in fact, all of us, through that powerful agency called "public opinion." Each of those directly connected with the administration of the law may, by his honesty, industry, efficiency and attention to duty, advance the work of the courts. Each by his neglect or incapacity may retard their work. For example, how helpful a sheriff may be by the vigorous, intelligent performance of his duties, whether serving process, summoning jurors, levying execution or collecting evidence in criminal cases—not merely enough evidence to make an arrest and get a laudatory write-up in the local paper—but all the evidence that honest, persistent, patient effort may secure. How helpful the attorneys may be by the careful preparation of pleadings so that the issues may be clearly defined, by the painstaking collection of evidence and its skillful presentation so that the facts are known, by intelligent, thought-riveting argument, all with due regard to the ethics and dignity of their most honorable calling, all these whom I have named serve in the administration of the law, some inconspicuously, some amid popular applause and some in popular condemnation. To each, as his merit warrants, honor is due. On each, as he fails in the discharge of his duty, should fall his share of the blame for any mal-administration of justice, all too frequently charged, in one sweeping, general indictment, against the courts.

It is to the trial judge as one of the many component parts in the machinery of the administration of the law that I would invite your attention for a moment. Not to the superior honor of his position, although few, if any, offices within the gift of the people of either of the Dakotas excell it in honor. After all, the real honor in any public position is the filling of it capably. Public recognition of that fact, while pleasing, is far from essential.

How valuable is the gift of understanding in the trial judge. The pages of fiction, unless they contain graphic narratives of actual occurrences, are indeed just fiction when compared with life's revealings in the now slow, now swift moving action of the trial courtroom. What a testing place of manhood and womanhood, those gloomy, often dirty, courtrooms are. There, indeed, is human nature seen as it is—stripped, naked, shorn of pretense. There, indeed, does one come in touch with "the virtues that are white, the vices that are black, the loves that live, the hates that burn," the trust that is broken, the faith that endures. Not for the trial judge, the jaundiced colored spectacles of pessimism nor the rose colored glasses of idealism, but the clear, unclouded vision of truth.

For it is an important part in the administration of the law, that is played by the trial judge. The appellate court may say he is right; the appellate court may say he is wrong; but in the swift moving action of the trial courtroom he makes the law of the case. How essential, therefore, that he have an understanding of the great fundamental principles of the law, a working knowledge of legal precedents—which are but the accumulated wisdoms of yesterdays—that he keep in touch with the progress of the law, that he be fearless, learned, courageous, just.

Of course, judges make mistakes. Even judges who are actually, as well as by constitutional inference, learned in the law, make mistakes. That is because they are human beings. Judges venerated like Marshall, Harlan, White, Taft and that best loved of living judges of that greatest of all courts, Oliver Wendell Holmes, have doubtless made mistakes. Why? The law is a rule of human action. You know Blackstone's definition: "A rule of civil conduct prescribed by the supreme power of the state, commanding what is right and prohibiting what is wrong." Whatever its modern American definition, the law still deals with human action in an ever changing world. Its rules are not like the rules of Geometry and Physics which may be applied with mathematical exactness. Its practical application always calls for the exercise of judgment by someone. That one is the judge. There is a Latin maxim: "Judex est lex loquens"—"The judge is the speaking law." While the judge may not be held altogether blameless when the speaking law is the law of injustice or oppression, generally the law speaks more clearly and more justly when the bench is aided by an able Bar.

Though the position of the trial judge is a position of great responsibility, it carries with it great compensations. What a delight it is to sit as trial judge in the trial of a case when counsel for the plaintiff and counsel for the defendant are—in all the glorious significance of the phrase—lawyers and gentlemen. I can imagine only one situation more thoroughly delightful: that is to be one of those lawyers and gentlemen of the Bar in the trial of a case where the trial judge has a mind well stored with the great principles of the law, a judgment ripened by experience, a heart which is in tune with the eternal principles of justice and a spirit of fairness and courtesy.

The law has been defined as: "A science which distinguishes criterion of right and wrong; which employs in its theory the noblest faculties of the soul and exerts in its practice the cardinal virtues of the heart." In the administration of the law, as so understood, the trial judge is indeed a minister of justice. It is as such that there comes to him the greatest reward of his office, the consciousness of service. In rare measure, is his the privilege of: "combining the principles of original justice with the infinite variety of human concerns."

On the occasion of his 90th birthday, Oliver Wendell Holmes recently said: "The root at once of joy and beauty is to put all one's powers to a great end—to hammer out as compound and solid a piece of work as one can; to try to make it first rate and to leave it unadvertised." Perhaps no profession offers greater opportunity for the achievement of that ideal than the profession which we practice. Of all the members of our profession none is offered a greater opportunity to realize upon the glorious gospel of it than he of whom I speak, and in whose honor it is a delight to speak, the trial judge.

Wednesday, August 19, 1931

Morning Session

President Traynor: Gentlemen, we haven't a very large attendance as yet but I think we better get started on the business this morning anyhow. We are now on the matter of unfinished reports.

There are no reports from yesterday that are unfinished. The first one this morning is the one on Legal Education and Admission to the Bar. P. D. Norton is Chairman of that Committee and I will ask him to give his report.

MR. NORTON: Mr. President, the report is very brief and at the outset, I may say that the members of your committee, Thomas B. Murphy, McLean Johnson and myself, have not been able to get together very often in the past year, mainly for the reason that I have been out of the state and gone pretty nearly all of the time.

LEGAL EDUCATION AND ADMISSION TO THE BAR

The American Bar Association has for several years in its annual meetings, expressed the need of raising the standards in the different states of the educational requirements for admission to the Bar. Within the last two decades, the influx of those admitted to the practice of law, having neither high school nor college training and without adequate knowledge of the fundamental subjects taught in our high schools and colleges, has been so great that the American Bar Association and many of the State Bar Associations have sounded warning to the Bar and to the public, of the need for higher educational requirements for those admitted to practice in our Courts. The business and educational developments of our country in this generation have created a condition where it is necessary for one engaged in the practice of law to have a thorough and comprehensive general education, in addition to a sound legal education, in order to enable him to properly meet the requirements of a good practitioner and to serve his clients with ability and success. It is considered by the best minds of our American and State Bar Association, that if the proper high standards of pre-legal education, legal education, Bar examinations, character and fitness are maintained for applicants for admission to the Bar, the personnel of the membership of the Bar will be greatly improved and the profession as a whole will command the confidence, the respect, and the outstanding distinction that its history and traditions merit, and which the great leaders of the American Bar have always striven to maintain.

The following are the educational standards of the American Bar Association for candidates for admission to the Bar, with rulings thereon by its Council on Legal Education and Admissions to the Bar, as revised up to May 5th, 1931. The resolutions of the American Bar Association are typed in CAPITALS; the rulings of the Council are in small type:

(1) THE AMERICAN BAR ASSOCIATION IS OF THE OPINION THAT EVERY CANDIDATE FOR ADMISSION TO THE BAR SHOULD GIVE EVIDENCE OF GRADUATION FROM A LAW SCHOOL COMPLYING WITH THE FOLLOWING STANDARDS:

(a) IT SHALL REQUIRE AS A CONDITION OF ADMISSION AT LEAST TWO YEARS OF STUDY IN A COLLEGE.

An approved school shall require of all candidates for any degree at the time of the commencement of their law study the completion of one-half of the work acceptable for a Bachelor's

degree granted on the basis of a four-year period of study either by the State University or a principal College or University in the state where the law school is located.

Each school shall have in its records, within twenty days after the registration of a student, credentials showing that such student has completed the required pre-legal work.

Students who do not have the required preliminary education shall be classed as special students, and shall be admitted to approved schools only in exceptional cases.

The number of special students admitted in any year shall not exceed ten per cent of the average number of beginning law students admitted during each of the two preceding years.

No student shall be admitted as a special student except where special circumstances such as the maturity and the apparent ability of the student seem to justify a deviation from the rule requiring at least two years of college work. Each school shall report to the Council the number of special students admitted each year, with a statement showing that the faculty of the school has given special consideration to each case and has determined that the special circumstances were sufficient to justify a departure from the regular entrance requirements.

The following classes of students are to be considered as special students unless the law school in which they are registered has on file credentials showing that they have completed the required pre-legal work:

(a) Those transferring from another law school either with or without advance standing in law;

(b) Those doing graduate work in law after graduation from an unapproved school;

(c) Those taking a limited number of subjects, either when registered in another department of the University or when on a purely limited time basis.

(b) IT SHALL REQUIRE ITS STUDENTS TO PURSUE A COURSE OF THREE YEARS DURATION IF THEY DEVOTE SUBSTANTIALLY ALL OF THEIR WORKING TIME TO THEIR STUDIES AND A LONGER COURSE, EQUIVALENT IN THE NUMBER OF WORKING HOURS, IF THEY DEVOTE ONLY PART OF THEIR WORKING TIME TO THEIR STUDIES.

A law school which maintains a course for full-time students and a course for part-time students must comply with all of the requirements as to both courses.

The curriculum and schedule of work of a full-time course shall be so arranged that substantially the full working time of students is required for a period of three years of at least thirty weeks each.

A part-time course shall cover a period of at least four years of at least thirty-six weeks each and shall be the equivalent of a full-time course.

Adequate records shall be kept of all matters dealing with the relation of each student to the school.

The conferring of its degree shall be conditioned upon the attainment of a grade of scholarship ascertained by written examinations in all courses reasonably conformable thereto.

A school shall not as a part of its regular course, conduct instruction in law designed to coach students for bar examinations.

(c) IT SHALL PROVIDE AN ADEQUATE LIBRARY AVAILABLE FOR THE USE OF THE STUDENTS.

An adequate library shall consist of not less than seventy-five hundred well selected, usable volumes, not counting obsolete material or broken sets of reports, kept up to date and owned or controlled by the law school or the University with which it is connected.

A school shall be adequately supported and housed so as to make possible efficient work on the part of both students and faculty.

(d) IT SHALL HAVE AMONG ITS TEACHERS A SUFFICIENT NUMBER GIVING THEIR ENTIRE TIME TO THE SCHOOL TO ENSURE ACTUAL PERSONAL ACQUAINTANCE AND INFLUENCE WITH THE WHOLE STUDENT BODY.

The number of full-time instructors shall not be less than one for each one hundred students or major fraction thereof, and in no case shall the number of such full-time instructors be less than three.

(e) IT SHALL NOT BE OPERATED AS A COMMERCIAL ENTERPRISE AND THE COMPENSATION OF ANY OFFICER OR MEMBER OF ITS TEACHING STAFF SHALL NOT DEPEND ON THE NUMBER OF STUDENTS OR ON THE FEES RECEIVED.

(2) THE AMERICAN BAR ASSOCIATION IS OF THE OPINION THAT GRADUATION FROM A LAW SCHOOL SHOULD NOT CONFER THE RIGHT OF ADMISSION TO THE BAR, AND THAT EVERY CANDIDATE SHOULD BE SUBJECTED TO AN EXAMINATION BY PUBLIC AUTHORITY TO DETERMINE HIS FITNESS.

(3) THE COUNCIL ON LEGAL EDUCATION AND ADMISSION TO THE BAR IS DIRECTED TO PUBLISH FROM TIME TO TIME THE NAMES OF THOSE LAW SCHOOLS WHICH COMPLY WITH THE ABOVE STANDARDS AND OF THOSE WHICH DO NOT AND TO MAKE SUCH PUBLICATIONS AVAILABLE SO FAR AS POSSIBLE TO INTENDING LAW STUDENTS.

Schools shall be designated "Approved" or "Unapproved." A list of approved schools shall be issued from time to time showing the schools that have fully complied with the American Bar Association standards.

No school shall be placed upon the approved list without an inspection prior to such approval made under the direction of the Council.

All schools, in order to be upon the approved list, are required to permit full inspection as to all matters when so requested by any representative acting for the Council, and also to make such reports or answers to questionnaires as may be required.

IN COMPLIANCE WITH THE POLICY ANNOUNCED BY THE AMERICAN BAR ASSOCIATION IN 1921, WE RECOMMEND THE ESTABLISHMENT IN EACH STATE, WHERE NONE NOW EXIST, OF OPPORTUNITIES FOR A COLLEGIATE TRAINING, FREE OR AT MODERATE COST, SO THAT ALL DESERVING YOUNG MEN AND WOMEN SEEKING ADMISSION TO THE BAR, MAY OBTAIN AN ADEQUATE PRELIMINARY EDUCATION, AND, THAT THE SEVERAL STATES BE URGED THROUGH THE COUNCIL ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TO PROVIDE AT STATED TIMES AND PLACES, FOR PRE-LEGAL EXAMINATIONS TO BE HELD BY THE UNIVERSITY OF THE STATE OR BY THE BOARD OF LAW EXAMINERS HEREOF, FOR THOSE APPLICANTS FOR ADMISSION TO THE BAR, OBLIGED TO MAKE UP THEIR PRELIMINARY QUALIFICATIONS OUTSIDE OF ACCREDITED INSTITUTIONS OF LEARNING.

During the last few years, considerable work has been done by various members of the State Bar and by the Law School of the University of North Dakota, to have the legal qualifications of the applicants for admission to the Bar raised to standard set by the American Bar Association and by our own State Bar Association. Working along this line last year, Atty. J. H. Newton, Clerk of the Bar Board, compiled the following statistics relating to candidates for admission to the Bar:

STATISTICS

RELATING TO ADMISSION OF CANDIDATES TO THE BAR

These statistics cover the period from 1925 to 1929, inclusive:

1.	Total examined			155
	Passed	137 or	88	per cent
	Failed	18 or	12	per cent
2.	Total number without high school education			13
	Passed	9 or	69	per cent
	Failed	4 or	31	per cent
3.	Total number having only high school education			33
	Passed	23 or	70	per cent
	Failed	10 or	30	per cent
4.	Total number with one year college education			5
	Passed	5 or	100	per cent
	Failed	0		
5.	Total number with two years or less than four years college education			57
	Passed	55 or	96	per cent
	Failed	2 or	4	per cent

6. Total number with Academic Degree (B.S.) or (B.A.)..... 45
   Passed ..... 41 or ..... 91 per cent
   Failed ..... 4 or ..... 9 per cent

7. Total number with LL.B. or J.D. degree 107
   Passed ..... 101 or ..... 95 per cent
   Failed ..... 6 or ..... 5 per cent

8. .....

9. Total number having no high school education but with LL.B. degree 4
   Passed ..... 3 or ..... 75 per cent
   Failed ..... 1 or ..... 25 per cent

10. Total number having high school only and LL.B. degree..... 11
   Passed ..... 9 or ..... 82 per cent
   Failed ..... 2 or ..... 18 per cent

11. Total number with one year college and LL.B. degree..... 4
   Passed ..... 4 or .....100 per cent
   Failed 0

12. Total number with at least two but less than four years college and LL.B. degree 50
   Passed ..... 49 or ..... 99 per cent
   Failed ..... 1 or ..... 1 per cent

13. Total number with Academic degree and LL.B. degree..... 40
   Passed ..... 39 or ..... 99 per cent
   Failed ..... 1 or ..... 1 per cent

14. Total number law office students examined 30
   Passed ..... 23 or ..... 77 per cent
   Failed ..... 7 or ..... 23 per cent

15. Total number without high school education and law office student 8
   Passed ..... 5 or ..... 62 per cent
   Failed ..... 3 or ..... 38 per cent

16. Total number having only high school education and law office student 12
   Passed ..... 10 or ..... 83 per cent
   Failed ..... 2 or ..... 17 per cent

17. Total number with one year college education and law office student 1
   Passed ..... 1 or .....100 per cent
   Failed 0

18. Total number with two years or less than four years and law office student 6
   Passed ..... 5 or ..... 83 per cent
   Failed ..... 1 or ..... 17 per cent

19. Total number with Academic degree and law office student 3
   Passed ..... 2 or ..... 66 2-3 per cent
   Failed ..... 1 or ..... 33 1-3 per cent

In referring to these statistics, Mr. Newton makes the following statement:

> "With reference to that portion of the tabulation, showing applicants without high school education, this does not mean that the applicant may not have had some high school work, but it includes not only such as had no high school but also those who did not graduate from high school. In view of the fact that the requirements in some states are that the applicant must at least have a high school education, I take it that this classification is correct. Also where the compilation shows students without high school education holding LL.B. degrees, will say that these degrees were obtained at night law schools, a number of such schools not requiring, as I understand it, even a high school education in order for one to become eligible for a degree."

These statistics show clearly that those passing the Bar examinations having a college education, made a much better showing than those who had not gone beyond the high school, and those having a law school education, in addition to their academic education, made a better showing than those who studied law in an office.

Your committee is advised that the Legislative Committee of which the distinguished young practitioner, Lloyd Stevens, of Cando, is chairman, made effective use of this, and similar statistics last winter before the North Dakota Legislative Assembly, in its successful efforts in having enacted into law House Bill No. 279, being Chapter 90, Session Laws of 1931, providing in the qualifications of applicants for admission to the Bar, that after July 1, 1936, all applicants for admission to the Bar shall have completed two years of college training or university work in the State University of North Dakota, or the Agricultural College of the State of North Dakota, or in some equally reputable college or university, with course of study which shall include courses in English Literature, American or English History, Economics and Civil Government. This new legislation placed in the statutes of our state last winter through the efforts of Chairman Stevens and his committee, is in close conformity with the standard set by the American Bar Association and by our own State Bar Association. The State Bar has made effective progress in raising the educational standard of requirements for admission to the Bar through this legislation. It is well in line with standards of education being set for admission to other much less important professions than that of the law.

It has been called to the attention of your committee, that the State Bar Board has found in all its examinations in recent years, that the men from the Law School at the University of North Dakota, have little or no knowledge at all of practice. Just why this deficiency in the training of North Dakota Law School students exists is open to conjecture. Some of the leading members of the State Bar have suggested to your committee that there should be a closer connection between the State Bar Association and the North Dakota Law School, and that the Bar Association should do more than it now does to supervise the admission of students and the work done in the North Dakota Law School. It is thought closer touch might be had with, and more needed co-operation and assistance might well be given

the Law School by the Association through a permanent committee of the Association especially charged with the duty of maintaining closer relations with our State Law School and its needs. As the main source of the supply of future practitioners in our state, is our Law School at the State University, it is important that its needs and its work be neither neglected nor overlooked by this Association.

Your committee has given some consideration to the draft of "A project or plan for formation of Senior and Junior Bars," prepared by a Sub-Committee on Admission to the Bar, of the Committee on Legal Education of the Association of the Bar or the City of New York.

In this plan which has been very carefully and fully worked out in detail, it is proposed briefly: that the State Bar consist of:

1. A Senior Bar.
2. A Junior Bar.

Only members of the Senior Bar would be permitted to appear as attorneys of record, or as trial or appeal Counsel, in the following Courts:

Court of Trial of Impeachment.

Court of Appeals.

Appelate Division of Supreme Court.

Supreme Court.

Court of Claims.

and only members of the Senior Bar would be entitled to be elected or appointed to office as Judge of any Court of record or appointed to the committee on character or fitness or as sponsors or Senior Bar Proctor.

In all other respects, the members of the Junior Bar would have all of the existing privileges and exemptions of members of the Bar of the State of New York.

Members of the Junior Bar would be admitted to membership in the Senior Bar after having served at least four years as members of the Junior Bar and after having passed examinations covering character and fitness for the practice of law and an approval of sponsors appointed by the Senior Bar.

Your committee is of the opinion that a plan for a Senior and Junior Bar for our state might be worked out to the general good of the profession and with much less complicated detail than the proposed plan of the Association of the Bar of the City of New York.

Respectfully submitted,

P. D. NORTON, Chairman.

PRESIDENT TRAYNOR: Gentlemen, you have heard the report of the Committee on Legal Education and Admission to the Bar. What are your wishes regarding same?

MR. CASEY: Mr. President, I have here a resolution a few of us have talked over a little bit, which I think should be considered with reference to this report of Mr. Norton.

"It is Resolved, that the Board of Administration of North Dakota and the President of the University of North Dakota and the Dean of the Law School of North Dakota be and they are requested to employ a majority of the faculty of the Law School of North Dakota from among the attorneys now or heretofore learned in the practice of law in the State of North Dakota."

I submit it at this time just for the purpose of a discussion and to find out what the sentiment of the members of the Bar is. I have not given it as thorough consideration as I would like to give it, but by offering it here it may be given some thought.

MR. KNAUF: I move the adoption of the report with the resolution of recommendations.

MR. CAIN: Second the motion.

MR. VIESELMAN: I would like to speak briefly with reference to the report. I notice there is some criticism of the work in procedure as conducted at the University of North Dakota. We have been urging for the last three years, that members of the Bar make suggestions to the faculty, suggestions looking toward the improvement of methods of instruction. We have asked the attorneys to supply us with a working library, briefs and records such as they have. We have received from Mr. Conmy, of Fargo, about forty-five bound volumes, and Justice Birdzell sent us two hundred briefs. When I spoke to the District Bar Association at Forman, and also at Minot, I outlined to the members of the Bar the method which we followed, namely, having the class in pleading take actual concrete situations, and draw at least four pleadings each, following this in the Junior year with a series of actual cases.

In office practice, we have followed the method of having each student work out something like ninety papers, starting in with the summons, complaint, answer, contest, garnishment, execution, summary proceedings, and so forth.

In the last three years, the student has gone out from the school with a thorough understanding of these cases, based upon model decisions in this State. This is exactly the same method as followed in the University of Minnesota for the past several years.

I do not know where the criticism originated, and I make this statement, that we are always glad to welcome the appointment of a committee by the Bar Association to cooperate with us. We would also appreciate your co-operation on the law, reporting anything published in the law books, any article or leading briefs. We are always glad to get them.

With reference to the members of the faculty, may I say that Mr. Hall had six years practice in Chicago; Mr. Baird had several years practice in Ohio; Mr. Muus practiced for a short time in Grand Forks. Personally, I practiced twelve years in Minneapolis. None of us have practiced in North Dakota as North Dakota attorneys, but we have, with one exception, practiced law.

MR. LEWIS: The report, I think, was a splendid piece of work, and the committee should receive the thanks of the Association. There are some things with which I do not entirely agree personally.

As to the resolution proposed by Mr. Knauf, it seems to me that it is pretty broad, and is a most vicious resolution. Hence, I say that with all respect to Mr. Knauf, that the suggestion that we employ North Dakota lawyers is contrary to all modern principles of education. The very idea of modern education in the Universities and Colleges of this country, the idea that is making them better every day, is the exchange of thought throughout the country, getting educators from the larger Universities, and having this exchange of intellectual food. We are much more broad-minded, we are accomplishing much more that way. To interfere with this method would be a backward step, I believe. I am satisfied that all educators, of whom I am not one, would agree that it would be one of the most backward steps that could possibly be taken.

Today the professor or teacher in law school is a specialist. It is not essential that he be in active practice. It is a special profession just as the practice of law is a special profession. We smile sometimes at the law school teachers for lack of practical knowledge. We have a right to smile at them; but they smile at us for some other things, and have just as big a right to do so.

There is one other thing I wish our law schools would go into a little more. There is the matter of legal ethics. The young men who come out have not, as a rule, I believe, been instructed particularly in legal ethics. They ought to have the general ethics of an honest man but the special rules of the profession, so far as I know, are neglected. They are ignorant of the courtesies of the profession. The young practitioner will not be granting an extension of time which the older one never refuses, if it is possible. I would like to see a little more of that done in our law school.

I oppose that motion as it is made because I am violently opposed to the resolution that goes with it.

PRESIDENT TRAYNOR: I would like to suggest that the report itself be merely filed and made a part of the record as has been done, and that we pass upon the resolution separately.

MR. LEWIS: I would move as an amendment that that be done.

MR. WARTNER: Second the motion.

PRESIDENT TRAYNOR: You have heard the motion; are there any remarks?

JUDGE BRONSON: I hesitate to talk on this subject matter, and yet I must because of my experience. For fifteen years I was instructor of law at the Law School, starting in 1902 and ending in 1918, when I went on the Bench. Seven years I was a member of the Bar Board; for thirty years I have been in the practice of law. During the period when I was instructor in the Law School at the University of North Dakota, we had practicing attorneys as instructors in the law—Sveinbjorn Johnson, Judge Corliss, Judge Cochrane, George A. Bangs, and some others. I want to call your attention to the fact, and I think it is a fact, that the North Dakota Law School graduates have made a most remarkable record. You have seen them on our Supreme Bench in this state and at one time they comprised 82 per cent of all the state's attorneys in this State. They have made a record in the east and in the west.

This is not a new question out here. It has been before the American Bar Association for years. I know the present teaching force at Grand Forks. They are men of high character and of splendid learning in the law and I surely would not want this Association to pass any sort of a resolution that would reflect on the kind of service they are rendering. The practicing lawyer who teaches law has a lot of defects in imparting such instructional training to the student. One thing is his time. The other thing is his ability to devote himself to preparation on the subject. I found that to be true. I taught at the University of North Dakota for fifteen years and I had to study all the time to be able to answer the questions of those young bloods.

Then there is another thing, that is that the North Dakota Law School is on the accredited list of recognized high standing law schools in this country, and in order to be on the accredited list, it has to have five full-time men teaching law.

With these things in mind, gentlemen of the Association, how can you say that these men have fallen down? Sitting here as the President of our Association is a member of our Law School. Sitting here as the Secretary, is a member of our Law School. Sitting down in the Governor's chair is a member of our Law School. The only glory I have in it is the light of reflection at the privilege and opportunity I had in the days of old. Now it wasn't because, for instance, Tracy and I were especially gifted, or that the other teachers were retired lawyers devoting all their time. I believe that law teachers should have had some experience at the Bar. We know that A. A. Bruce, Dean of the Law School, finally went on the Supreme Bench. There is Judge Birdzell, who is now a member of the Supreme Court. We heard a criticism at one time that he didn't have any training in law so far as practice is concerned. Yet no one at the present time will say that he has not been proficient on the Bench. I would not like to see this Association pass any resolution that in any sense of the word reflects upon the Law School of North Dakota, or the kind of men it puts out. I think we should not pass the resolution.

MR. MISER: I must go now, and I want to take this opportunity because I cannot meet and thank everyone personally. I want to thank you for all your courtesies to me. I thoroughly appreciate it and I know the Bar of South Dakota will appreciate the courtesy you have shown me and inasmuch as I cannot take each of you by the hand, I take this opportunity to thank you.

MR. KNAUF: At this time I would like to move that the degree of honorary member of the North Dakota Bar Association be given and conferred upon Walter G. Miser of South Dakota, the President of that Bar Association, one of the leading lights of their Bar, one of the best judges they have ever had in our sister state.

MR. KVELLO: Second the motion.

PRESIDENT TRAYNOR: All in favor, please signify by standing. It is confirmed.

MR. MISER: I certainly thank you gentlemen. You could not have made it more pleasant for me. I certainly appreciate it. Goodbye and good luck.

MR. TRACY BANGS: This matter of the Law School and the University is one in which I really have an interest. I believe I was on the first list of instructors in that Law School. I saw the work of the other practicing attorneys who were instructors. Judge Bronson had made a special study of real property law and is a natural instructor. From the start he was successful. Judge Corliss was one of the natural born instructors. I used to go over to the Law School just to hear him lecture, because it was instructive. We claim, some of us, to be fairly good lawyers. I do not suppose we had any better lawyers in the state than Judge Cochrane when he was alive. I do not suppose we have in the state any better lawyers today than George A. Bangs, but as instructors, they never recovered from this habit: They would load those students down with their particular subjects until they had no opportunity to study anything else, and I would have done the same thing myself if I had not been so all fired lazy to load them down. I never worked so hard in my life, real down-right hard work, except once in a while when I try to convince the Supreme Court of something, as I did in trying to prepare myself in order to present to the students the subject which I had.

Well now we got some pretty good boys out of that school back in those early days, but most of the students who came there in the early days were earning their own way and they came with a determination to work, to study and make lawyers of themselves; but even at that, my observation is that the students who have completed that law work under the regular full-time professors who have given their time and attention to these law students, have done better than those who were sent there under the practicing attorneys of the state. There isn't any reason because a man is a good practitioner that he would make a good instructor. You do not learn how to instruct by going in and having a knock down and drag out. The theory of the practice is there and they receive it from men who have made a critical study of the theory of the practice and that is all that is necessary with the student, if they are going to start him out in the right way.

I have known a good many students. I have known all of the professors. I have seen them work. I know that every man that we have there now, and I am not limiting it to now either, these men are all conscientious, hard workers. I do not want to be personal any more than is necessary, but my law education was gotten in offices. I never knew what a law school was until after I was admitted to the Bar. For several years I opposed the provision of the pre-educational requirements. I had an idea that we fellows who had gotten our law from the sidewalk, and had been a little bit successful, were really the whole cheese, and it was foolish to talk about these boys having a college education. But I have a boy and he had the college education, and he attended and graduated from the North Dakota Law School, and he came into my office. I never gave him any instructions; I didn't discuss the practice with him; he got his practice from the law school; and some of the men from whom he secured it are teaching in that school now. Inside of a very few years, very few, I recognized the fact that the advantage of his pre-educational training, the advantage of his schooling before he entered the Law School, the advantage of his training in the Law School, had

put him, inside of five years, ahead of what I was at the end of forty years, and that was because he had had every advantage of these trained men, trained in the art of education in the law.

PHILLIP BANGS: Mr. President, may I have a copy of the record, please?

PRESIDENT TRAYNOR: It is so ordered.

TRACY BANGS: I thought I saw that "kid" get up and go out a little while ago. He is still ahead—that proves what I said is correct.

Judge Bronson had told you that, in order to keep our school an accredited school we must have these five full-time men. That school is doing a splendid work. It is recognized throughout the country as a first class law school. The University stands high in the rating of Universities. I would dislike to see this Bar Association go on record as saying anything that would be a criticism of that institution and the manner in which it is carried on. I know from my own experience and my own observation that it can't be improved upon by placing upon the teaching force practicing attorneys. It will continue excellent by keeping the force it now has, or obtaining men of like experience and like abilities. That is what we want.

MR. NORTON: I merely want to say this, Mr. President, that I do not want to convey, or to have conveyed from the report of your Committee on Legal Education that it is the intention of the Committee to criticize the North Dakota Law School. Three members of that Committee are former students of the Law School and in my admiration of the Law School, I join most thoroughly in what Judge Bronson said; in fact, I think if anything, I am more enthusiastic about the results that the Law School had accomplished in the years since its beginning. We have in New York, Seattle, Chicago, graduates of our Law School, drawing fabulous salaries and receiving the highest honors of the profession.

I do not suppose that any one of us would pretend to say to you that our experience would qualify us for the position of instructor in the Law School. It does not. You cannot make a practicing lawyer in the Law School, but you can educate a boy in the Law School to a point that when he leaves the doors of that institution behind and goes into the courts and into the world, he has been taught how to find and learn the things to do and say, and that is all there is to it, and that is all the Law School is for. The rest of it comes with experience after he has left the law school. You can't learn those things, even in an office. You must simply learn in your younger days how to find out what to do and they are teaching them to do that, and it does not require the experience in court. Was there ever a man on the Bench of the Supreme Court of the United States that stood higher than Justice Brewer? Is there a man who has ever read opinions that read clearer than those of Justice Brewer, and yet he never looked in an office? From one court to another, starting with the County Court, until finally he attained such distinguished service. Another graduate, Attorney General of Massachusetts, Mr. Shaw; another man at the Law School just a few years ago, now in Washington—Charley Hamil—with a compensation of $50,00 a year, and not only doing well financially, but being recognized as one of the leading members of the Bar.

Now the suggestion to which attention was called in the resolution, came to us in the committee, and we thought it proper to make that as a constructive suggestion and I have been delighted to hear the discussion and the complimentary statements made in regard to the Law School. I am not in favor of the resolution at all; in fact, I am very much opposed to the resolution introduced by Mr. Knauf. I do not think it should be adopted, but I do think this Association should co-operate to the fullest and largest extent in helpfulness to the Law School.

PRESIDENT TRAYNOR: The motion of Mr. Lewis that the report of the committee be filed, with the exclusion of the resolution, is before the house; all those in favor of the motion signify by saying aye; those opposed; it is carried.

Now then, the motion is upon the resolution, are you ready for the question?

MR. CASEY: Now I did not introduce the resolution, Judge Knauf did. I presented it to be read and taken into consideration. I am pleased with the resolution put in just the same, for this reason, that I have heard our very distinguished lawyers here, men who are close to the University, say very nice things about it. They cannot say anything too nice about the University of North Dakota or the Law School. When the resolution was presented to me I looked it over a little bit and I thought there were some good ideas in it. I admired the zeal with which this resolution has been opposed by Mr. Bangs and Judge Bronson. As far as I am concerned I have enjoyed this talk immensely although I have no right to withdraw because I did not really introduce it. I suggested the reading of it.

PRESIDENT TRAYNOR: I find that the resolution was introduced by Mr. Knauf and seconded by Cain. Of course, you could not withdraw.

MR. KNAUF: I have in mind the Law School. I believe that so far as the faculty is concerned, they are doing everything that they can. The resolution in its preparation had no idea of casting any reflection upon the Law School, but having served for a number of years in the examination of students who come from that Law School, I want to say that while the classes have passed remarkably well during the time that I was on the Board, yet it did seem to me that there was an entire lack of ability to apply the law which they received to the questions which come up to Mr. Bangs and the rest of us in every day life.

The system had in the early days when Tracy Bangs and when Judge Corliss and Judge Cochrane and Judge Bronson and those splendid men were on the faculty was much better, so that the Law School was much better than it is today. I am not throwing any reflection toward the Law School. Perhaps they do not want any more of a faculty than they have now but for my part, I would be very glad indeed if men like Tracy Bangs, men like Judge Bronson, and men of that type were to be again employed to place in the minds of those students, as they did in your mind, Mr. Chairman, and in the minds of these splendid men who have come out of the North Dakota Law School. If we could have those men delivering lectures

on the practice of law and the law of North Dakota, it would be a great improvement to the situation of the students as they come from that school.

I did not prepare the resolution with the idea that I wanted to reflect on the Law School, not at all, but with the idea I would like to see the splendid faculty they already have aided and assisted by splendid practitioners. We have those with us who have given this assistance in years gone by, aiding and helping those students that needed it.

What would you say if I were to tell you that we examined students who could not draw and put through a plain suit on the plainest kind of promissory note. We have had that time and again; in fact, we have had pretty nearly a whole class where scarcely one student could go through it. Why we have had whole classes where not to exceed three students could draw the commonest kind of a will. It is not the fault of the faculty itself but the need in that institution right now is for a few men like Tracy Bangs, Judge Cochrane, Judge Bronson, who have had the actual experience and know the things that are required and I do not believe that it is possible to do this except by the lawyers who have practiced and who have learned the law of the State of North Dakota, and then practiced it and applied it.

PRESIDENT TRAYNOR: The question then is on the resolution, a motion to adopt the resolution. Do you require the resolution read again or are we all familiar with it?

All those in favor of this motion, kindly signify by the usual sign; those opposed; the "no's" have it, the motion is lost.

Now, then, Judge Christianson has a matter to present.

JUDGE CHRISTIANSON: Distinguished members of the Bar, especially the judiciary, have passed away in recent years and recent months, and it has occurred to us that this Association ought to arrange for appropriate memorial exercises to be conducted. Mr. Taylor will furnish you a list of names. You understand we cannot have the exercises unless some one is there to conduct them and make appropriate addresses and present appropriate resolutions.

PRESIDENT TRAYNOR: I suggest that some one make a motion that this matter be called to the attention of the incoming Executive Committee with the request that they take some action, as may be deemed advisable. Will some one make that motion?

MR. YOUNG: I move so.

MR. WARTNER: Second the motion.

PRESIDENT TRAYNOR: All those in favor of this motion may signify by the usual sign; those opposed; the motion is carried, and it is so ordered.

The next report we have is the Committee on Legislation. Is that committee represented here? The report was printed in the Bar Briefs for July so that we know what it is. We do not need to have it read except that it interlocks with the following report on Local Organizations. I will call on Mr. Kvello, Chairman, to give his report and hook it up with the other. (Report read)

LOCAL ORGANIZATION—INTEGRATED BAR

The Committee on Local Organization and Integrated Bar did not file any report nor recommendation as to the Integrated Bar feature of its work for the reason that the 1930 Legislative Committee of the Association filed a recommendation to the effect that the admission and disciplinary features of the California Act be adopted in principle by our Association. That recommendation was discussed and on motion carried over as unfinished business and will be taken up again at our 1931 meeting. The Legislative Committee has again this year renewed its recommendation.

A majority of this committee desires to strongly support the recommendation of the Legislative Committee. We feel that if the independence of the profession is to be maintained and fostered and our full responsibility as a profession met squarely we must become self-governing in every sense of the word. While North Dakota was first in line to adopt the Integrated Bar plan we have not followed it up with any effort to make it more complete. Since our adoption of the act the following states have approved it with complete self-governing features, to-wit: Alabama, California, Idaho, Nevada, New Mexico, Oklahoma and Utah. South Dakota has adopted our form with some improvements.

Doubtless our hesitancy in making the change has been due to the fact that the State Bar Board, comprised of lawyers nominated by ourselves, is doing this work now and thus, in this indirect way, could be said to be self-governing. At our 1930 meeting at Devils Lake the State Bar Board unanimously went on record as favoring a merger of the State Bar Board with the State Bar Association.

The experience of every state which has adopted the self-governing features in their bar act, if the reports thereof in the Journal of the American Judicature Society can be taken for their face value, has been that the following results have been largely achieved:

The level of effectiveness of the profession has been raised;

Professional consciousness has been quickened and promoted;

The trials and hazards as well as the responsibility that the profession faces have been thoroughly understood and in large measure met;

Relations between Bench and Bar have been clarified and a greater measure of co-operation procured;

The burden of setting up standards of conduct and enforcing them and largely taking the responsibility from the courts, where it does not rightfully belong, has been successfully undertaken;

That there has been created in its personnel a finer attitude in the trial of cases, in conduct towards fellow practitioners and towards the courts generally;

That once adjusted to the new duties, and the preliminaries of getting settled over with, they have taken up the chief responsibility to which all else is preliminary, that of taking charge of the administration of justice;

And, finally, becoming a real force in the state as a leader in solving the vital, social and economic problems, that are pressing upon us today and in getting ready to meet those problems that loom with increasing importance upon the horizon.

To accomplish the same results with certainty and dispatch we believe that we must train ourselves by first assuming full responsibility for the admission and discipline of those within our ranks. We must then weld ourselves together through a greater appreciation of our interdependence and individual and joint responsibility.

We therefore respectfully urge the adoption of the self-governing features recommended by the Legislative Committee, the details of which, if the principle is adopted, can be left to the proper committe to be submitted to the 1932 meeting.

A. M. KVELLO, Chairman.

LEGISLATIVE COMMITTEE

The first meeting of this committee was called for Bismarck during the first few days of the legislative session. There were present at that meeting P. O. Sathre, A. W. Fowler, Gordon Cox, W. H. Stutsman, Halvor Halvorson, Secretary R. E. Wenzel and Lloyd B. Stevens. Mr. Halvorson very kindly consented to assist this committee as it was the desire of the President to have all of the lawyer members of the Legislature on the committee.

Pursuant to directions given the committee by the Bar Association at its last meeting the following matters were considered:

1. It was deemed unwise at this time to urge any legislation seeking to raise the salaries of judges, the Attorney General and his assistants.

2. It was decided that the directions of this Association relating to legislation providing for a review of decisions of Boards and Bureaus of state-wide jurisdiction were too indefinite to enable the committee to have such legislation introduced.

3. The Committee prepared and succeeded in having passed and approved a bill amending and re-enacting Section 8074 of the Compiled Laws of North Dakota for 1913 which Act, in substance, provides that proceedings to foreclose a real estate mortgage may be enjoined ex parte only during the thirty day period stated in the notice of intention to foreclose and after that time only on motion.

4. As a result of the committee's efforts there was passed and approved a bill amending and re-enacting Section 790 of the Compiled Laws for the year 1913. This law requires applicants for admission to the Bar to have completed a two year course of study in our University or some other reputable school of equal standard in the United States, in addition to the qualifications heretofore provided for such applicants.

5. The committee prepared and had introduced a bill defining the practice of law in this state. This bill immediately met with real opposition. The bill was worded substantially as proposed by Judge Ellsworth's committee at the last meeting of this Association. The bill was first introduced in the Senate and when first voted upon there

the lawyer members of the Senate refrained from voting and the bill was defeated. Due to this action on the part of our lawyer members, one of the members of the Senate insisted that the bill ought to be reconsidered and that it could be amended in some way that would be satisfactory to the Bar and perhaps passed by the Legislature. This resulted in an amendment authorizing bankers to prepare deeds, mortgages and like documents for bona fide customers. This amendment did not meet with the approval of this committee nor with the President of our Association, as it might open the way to further amendments and in the end might result in allowing practically anyone not admitted to the Bar to prepare for others a great mass of legal documents and the object of the bill would be defeated. When this bill reached the House it again met with great opposition and was finally killed in committee. Both our President and this committee were well satisfied with that action because of the amendment above mentioned.

Recommendations

Legislation should be proposed empowering the Executive Committee of the State Bar Association to disbar, suspend, reprove or discipline the members of this Association, such legislation to be based upon the State Bar Act of California. In order to give those members not familiar with the California Act some idea of their procedure we give the following, copied from that Act:

> "Section 26. Disbarment, Etc. The Board of Governors shall have power, after a hearing, for any of the causes set forth in the laws of the State of California warranting disbarment or suspension, to disbar members or to discipline them by reproval, public or private, or by suspension from practice, and the Board shall have power to pass upon all petitions for reinstatement. The Board of Governors shall keep a transcript of evidence and proceedings in all matters involving disbarment or suspension and whenever ordered by said Board, but not otherwise, shall make findings of fact. In either case the said Board shall render a written decision on said proceedings. Upon the making of any decision resulting in disbarment or suspension from practice, said Board shall immediately file a certified copy of said decision, together with said transcript and findings, whenever findings have been ordered as aforesaid, with the Clerk of the Supreme Court. Any person so disbarred or suspended, may within sixty days after the filing of said certified copy of said decision, petition said Supreme Court to review said decision or to reverse or modify the same and upon such review the burden shall be upon the petitioner to show wherein such decision is erroneous or unlawful. When sixty days shall have elapsed after the filing of said certified copy, if no petition for review shall have been filed, the Supreme Court shall make its order striking the name of such person from the roll of attorneys or suspending him for the period mentioned in said decision. If, upon review, the decision of said Board of Governors be affirmed, then said court shall forthwith make said order striking said name from the rolls or of suspension. The Board shall have power to appoint one or more committees to take evidence and make findings on behalf

of the Board, or to take evidence on behalf of the Board and forward the same to the Board with a recommendation for action by the Board. Nothing in this act contained shall be construed as limiting or altering the powers of the courts of this State to disbar or discipline members of the bar as this power at present exists."

The Act also provides for the proceedings upon disbarment, but that is a matter which we do not deem it necessary to set out here, as the rules as to hearing, and the rights of the person charged, are similar to those which we now have in our own State.

The matter of the raising of salaries of judges of the supreme and district courts, the Attorney General and his assistants as approved by our Association at its 1930 meeting should be kept alive and at a proper time in the future legislation to that end ought to be sponsored by the Association.

Mr. Stutsman and Mr. Swendseid oppose the first recommendation of the report relative to disbarment.

As far as the Chairman of this committee is concerned after the first meeting of the committee at Bismarck he had little to do with the work of this committee. The proposed bills and acts hereinbefore set forth were left in the hands of the lawyer members of the Legislature, our Secretary and Mr. Stutsman. They together with President Traynor, who was in Bismarck during most of the Session, carried on the work of this committee, and whatever the committee has accomplished is entirely due to their efforts.

Report is by Chairman L. B. Stevens, other members being L. L. Butterwick, H. F. King, W. E. Matthei, P. O. Sathre, R. E. Swendseid, A. W. Fowler, Gordon Cox and W. H. Stutsman.

MR. KVELLO: I therefore move the adoption of the report.

MR. HANCHETT: Second the motion.

PRESIDENT TRAYNOR: The report as read by Mr. Kvello will be filed and made a part of the record. The question is upon the motion of Mr. Kvello to approve the recommendation of the report.

MR. KNAUF: I want to support that motion because of practical and personal experience on the Board. I am fairly convinced that the California system is way ahead of the system in North Dakota, but I am also aware of the fact that in addition to its being away ahead, we, as a state, have only 550 lawyers scattered over this wide expanse of territory, with every lawyer knowing each other in his various districts and in his various cities, and is to some extent at least different than the conditions which exist in California where they have many thousands of lawyers in such cities as Los Angeles and its adjoining towns and in such cities as San Francisco and Oakland and San Diego and other large towns. Their Bar Board can be picked from the City of Los Angeles where three or four attorneys are acquainted with thirty or forty lawyers in that great city, but here in our district, I think there is not a lawyer that I am not personally acquainted with; in fact scarcely a lawyer over the state, and it becomes a hardship sometimes for a Board of Governors, under the California act, to prosecute and control and discipline the lawyers of that particular community, where

they are acquainted with the lawyers personally, and it would seem to me that with the committee preparing a new system, making the Bar Act of California so that it will apply to the conditions and circumstances as they exist here in North Dakota, to prepare a bill which will improve the California system so as to apply it to all the circumstances as we have them here,—we have not large cities in North Dakota, and we are far from conditions that exist in the State of California. Their system works for them and with some modifications between their system and our system, it can be worked out to a beautiful theory and a beautiful system of practice in North Dakota. I would like to see the matter again referred to the Legislative Committee or to the Executive Committee because nothing can be done with it until after the next session of the Legislature.

MR. KVELLO: The recommendation I made was that we adopt the self government feature in principle, and that the Legislative Committee be instructed to draft a bill to submit to us next year embodying the principle that would apply to North Dakota. I think that meets Mr. Knauf's suggestion, but I am opposed to a continuation of the investigation of the general principle. It has been before the association now for two years. If we are going to do anything, let's say so, and if not, say so. If we are satisfied, let's say so, and do not pass the buck to the next meeting or another committee. Let us adopt it in principle and work out the details later.

PRESIDENT TRAYNOR: The motion is as you stated it now?

MR. KVELLO: Yes.

PRESIDENT TRAYNOR: Mr. Hanchett, do you consent to the modification as made by Mr. Kvello?

MR. HANCHETT: I certainly do.

MR. ELLSWORTH: As I understand the matter before the house, or before the Association at this time is as to whether or not the Association shall make a declaration of whether it desires to change this matter from an appointive Bar Board to the Association itself. Like Mr. Knauf I have had some actual experience and contact in the work of the State Bar Board; in fact I was a member of the State Bar Board at the time when we had the only organization of that kind in the United States. The State Bar Act was passed in 1919, as you remember. At that time the appointment to the State Bar Board was made by the Governor. Four years later, by amendment, the power of appointment was transferred to the Supreme Court where it has remained since. A period of eleven years has now passed since the law was first enacted. After pioneering the way for California and the other states, would it be wise for us to go back over our tracks and take pattern from California, however much California may have improved, or we may imagine she has improved, over the method that we first inaugurated? We have started out here in North Dakota to work out a system that is well fitted to our conditions. We have come, in the eleven years in which this law has been enforced, to a pretty well settled system of practice in the matter. There is one feature that has always puzzled me somewhat, and I am not clear about it yet. From the very nature of things, it can't be done. It can't be done here in North Dakota because again and again the Supreme Court has stated

that those powers are inherent in the court itself and it proposes to hold them and the Legislature cannot transfer the jurisdiction. I think that is settled.

PRESIDENT TRAYNOR: The California Act gives the right of review to the Supreme Court, it does not tend to take it away from the Supreme Court.

Any further discussion? If not, are you ready for the question? The question is on the motion of Mr. Kvello to the effect that this association go on record in favor of the principle of the integrated bar along the type of the California Act, with instruction to the Legislative Committee to prepare a similar act applicable to North Dakota and submit to this Association at its annual meeting a year hence for approval or disapproval. All those in favor of this motion, kindly signify by the usual sign; those opposed; the chair is in doubt, those in favor please stand; the motion is carried.

Now gentlemen, we are a little behind our schedule. We have arrived past the time when we were to hear from Mr. William G. Owens, representative of the Federal Farm Board. Judge Burke, is it satisfactory to defer your address until after Mr. Owens is heard?

JUDGE BURKE: Yes.

PRESIDENT TRAYNOR: Then we will proceed to that order of business, and we will hear from Mr. Owens.

MR. OWENS: Mr. President, Fellow Members of the Bar: Permit me to preface the talk that I am to give in expressing my happiness and pleasure at being back home. I assure you that it takes a little time away from home to appreciate what it means to be at home. Whatever degree of success in the profession I have attained, I attribute it to my experience here in North Dakota. My practice and contacts since leaving the state temporarily has brought back forcibly to mind and instilled a greater pride in my heart of being a member of this Bar, for the reason that the Bar and the members of the Bar, their high degree of standing and ability, is recognized all over the United States. The Government has come to North Dakota for at least five, or I think seven, of the outstanding members of this Bar to put into legal division, legal departments of your Government. Permit me to assure you brothers of this Bar that North Dakota is an outstanding state, not only in the legal profession but in a financial way, irrespective of the fact that we have politics, pestilence and drouth out here.

I would like to tell you something about our legal division. I went down there over a year ago, when there were only three of us. There are nine now and every member is what we call a country lawyer. There is not a member of the Legal Division on the Federal Farm Board from a town of over 7,000 inhabitants. I discovered that it is a great work, a great change from the general practice, to get into the educational work, and that is the great part of the business of the Federal Farm Board.

The great difficulty and the great work that we have in the legal division is to bring to the attention of the country lawyers and the cooperative organizations the necessity of contacting legal and financial men of ability. It is astonishing to me to learn the real lack of knowledge that the average lawyer has of cooperative laws, so by courtesy

of the Federal Farm Board, Mr. Stanley Reed, the General Counsel, and I have been out for the last two or three months talking to Bar Associations. It was my good fortune to be sent to Montana and North Dakota to bring to you the message or idea of the cooperative statutes and decisions of the United States courts.

The program says I am a representative of the Federal Farm Board. I was afraid when they announced that in the newspaper it might be construed politically; but it is not at all, and I want to offer to you as briefly as possible an accumulation of facts which I have spent some time in preparing on cooperative State and Federal Statues, as an illustration only, and to call your attention to some of the work that the legal division of the Federal Farm Board is doing. We have prepared the legal phases of cooperative associations which is a compilation of all the laws and decisions, and as far as that is concerned, we will be glad to send them out to anyone who desires them.

COOPERATIVE STATE AND FEDERAL LAWS

W. G. Owens, Farm Board Attorney

Michigan was the first state to adopt a statute (*Mich. Comp. L. 1922—9053*) providing for the organization of cooperative corporations by "mechanics and laboring men" for the purpose of establishing consumers' mercantile establishments. This was in 1865, and in rapid succession during the following years state after state adopted cooperative corporation acts permitting agricultural interests to organize marketing associations. We find these statutes containing various requirements and restrictions. The Michigan statute was amended in 1875 permitting the organization of agricultural and horticultural marketing associations. In 1866 Massachusetts passed an agricultural corporation act which was the basis for, and largely copied in 1870, by Minnesota (*Minn. C. L. 1870—C 29*) and in 1875 by Connecticut. New York and California passed cooperative statutes in 1878 which incorporated the patronage dividend and other mutual benefit features. Wisconsin, Pennsylvania, Ohio, Tennessee, Kentucky, Kansas, Nebraska and Illinois were pioneer states in the construction work of cooperative laws.

The Nebraska statute, passed in 1911, was later followed and used as a model by North Dakota and a number of other states until later amendments were adopted. That act was short and clearly stated the basic principles of the then prevailing ideas of cooperative organizations for marketing purposes. It contained nothing which had not before been written in some other like statute but eliminated objectionable requirements of the earlier laws. The same year the Wisconsin legislature reconstructed the cooperative laws of that state, which had been in existence since 1887, into a new, novel and workable agricultural marketing act. I say novel for the reason that the Wisconsin law makers wrote into the act several untried and unheard of restrictive regulations as applied to corporations. It limited the amount of stock per member, permitted the interdealing in products of associations formed under the act, the holding of capital stock in like associations, regulated and restricted the transfer of stock by members, detailed method of distribution of earnings and for the first time wrote into corporation law a provision permitting stock voting by mail, and

outlined the method of winding up the affairs of the association by court procedure when the organization failed for five successive years to pay dividends on paid-up stock.

The Wisconsin law was the basis for like legislation in thirteen states. (*Michigan, 1913; South Dakota, 1913; Washington, 1913; Massachusetts, 1913; New York, 1913; Virginia, 1914; Iowa, 1915; Wyoming, 1915; North Carolina, 1915; South Carolina, 1915; Oregon, 1915; Rhode Island, 1916; Oklahoma, 1919.*) Not that those states lacked cooperative statutes previous to the new Wisconsin law, but rather thirteen states revised the then existing laws along ideas suggested by Wisconsin.

The story of the struggle of producers to secure the enactment of laws which would permit their organization to form groups for the purpose of the orderly marketing of the fruits of their labor is a long and interesting one, containing chapter after chapter of disaster and failure, the enactment of laws which were compromises, others which were unworkable, some radical and undesirable, yet from it all, arising as a result of the untiring efforts of sincere builders, have eventually come laws which are now considered standard, the provisions of which have been tested in the courts under the Federal and state constitutions, so that today we may safely say that cooperative marketing is the public policy of the nation as well as the states. From the earlier statutes, in the form of supplements and amendments to the then existing general corporation laws, legislation has gradually distinguished between corporations of a general business character and those organized for cooperative marketing of the products of the stockholders until cooperative associations are recognized as a distinct business unit, and cooperative laws as a distinct branch of corporation law.

The underlying reasons for enactment of laws permitting of cooperative associations were not political nor the efforts of political groups or parties, but because of the fact that the farmers were not receiving their fair proportion of the sale price of their products, as stated by the Supreme Court of Tennessee (*Dark Tobacco Growers, etc. vs. Dunn, 266 S. W. 308-309*) in 1924.

> "Statistics show that the price paid by the consumer for farm products is sufficiently high, but that the producer receives only 35 per cent of this sum, the middleman (so to speak) receives 65 per cent. One of the main objects of the association is to bring about a more just apportionment of the price paid by the consumer. The righteousness of this claim on the part of the producer is generally conceded * * *. We are impressed with the idea that cooperative marketing of farm products is an economic necessity."

Chief Justice Taft expressed the recognition by the Supreme Court of the United States of the plight of the farmers economically when that Court sustained the validity of the Packers and Stockyards Act (*Staford vs. Wallace, 258 U. S. 495*) adopted the findings of the Federal Trade Commission in the following language:

> "The Commission reported that the 'Big Five' packing firms had complete control of the trade from the producer to the consumer and had eliminated competition."

In the Chicago Board of Trade case (*Board of Trade vs. Olson, 262 U. S. 1.*) the Supreme Court of the United States found that the evidence showed that 20 billions of bushels of grain were sold for future delivery in one year and that the grain actually delivered under such contracts was not 1 per cent of this volume.

Those and other cases recite the determination of our courts that at least up to the time of the enactment of cooperative statutes and Federal laws regulating trade of farm commodities in interstate commerce, that the law of supply and demand had been effectively destroyed on the public markets as an economic rule, to the detriment of the general public and injury to our national welfare.

Many farmers' cooperative associations, due to over-enthusiasm brought about by the success of the cooperative marketing plan, were getting away from the fundamental principle of the plan—that of returning the net earnings to the producer of the commodity—and were developing their oranizations commercially as profit-making concerns. Many state laws permitted this. The taking of profits on capital invested was not the underlying idea in cooperative marketing. The United States Department of Agriculture scented the danger of destruction to the entire structure unless a more uniform conception of the meaning of the plan was developed among those interested in the organization and management of the business of cooperative associations. In 1917 the Solicitor and Office of Markets of that Department developed, published and distributed a proposed uniform Cooperative Law, (*Bulletin 20, Service and Regulatory Announcement, Office of Markets, 1917.*) designed for the purpose of qualifying cooperatives in order that the same would come under the exemption of the Clayton Act. Many states used that draft as a model in the formulating of new laws and the amendment of old ones.

The right of states to enact statutes providing for the formation by farmers of cooperative associations, such statutes containing no authority for those engaged in other occupations to likewise organize under the statute, is recognized by the United States Supreme Court. (*Liberty Warehouse Co. vs. Burley Tobacco etc. 276 US 71. For discussion of various types of cooperatives see dissenting opinion of Justice Brandeis in Frost vs. Coop. Com. 278 US 528-537.*)

The cooperative statutes of the states are sustained by the courts on the theory that such laws are for the welfare and good of the public and, therefore, are within the police powers of the state granted by the constitution. (*See Potter vs. Dark Tobacco Growers Coop. Ass'n. 257 S. W. 33; Tobacco Growers Coop. Ass'n. vs. Jones 117 S. E. 174; Dark Tobacco Growers Ass'n. vs. Dunn 266 S. W. 308; Liberty Warehouse, etc. vs. Burley Tobacco, etc. 271 S. W. 695; Brown vs. Staple Cotton Coop. Ass'n 96 So. 849; Texas Farm Bureau etc. vs. Stoval 253 S. W. 1101, Kansas Wheat etc. vs. Schultz 216 Pac. 311; Oregon Growers etc. vs. Lenz 212 Pac. 811; Rifle Potato Growers, etc. vs. Smith 240 Pac. 937; Nebraska Wheat etc. vs. Norquest 204 N. W. 798. The Cooperative Act of 1909 of North Dakota is discussed and sustained in Chaffee vs. Farmers Cooperative Elevator 39 N. S. 585-168 N. W. 616. Discussion of cooperative marketing of farm products by producer associations see 33 A. L. R. 247, and 25 A. L. R. 1116.*)

From many years of study and agitation, from a variety of workable as well as unworkable laws, and from court decisions, state and federal, giving judicial consideration to the question of public policy of the principle of cooperative marketing, new ideas were developed along the lines of a desirable form of cooperative organization. All agreed that the plan for organization should be uniform. Many and varied were the suggestions. Agricultural states were clamoring for a law which would effectively and definitely set out the plan and restrictions for the farmers. The proposal of the Department of Agriculture did not quite meet the demands of the students in the field, although it furnished a mark at which to shoot. In 1921 Mr. Aaron Sapiro, member of the California Bar, wrote a new compilation of provisions and wrote into the proposed law novel features which, when adopted, gave legislative expression to proceedings theretofore approved by court decisions of the land. (*See Letter, Federal Trade Commission, 1st Session, 70th Congress, Gen. Doc. 95, p. 326.*)

The result of efforts to write a "Standard Cooperative Marketing Act" is that every state (*Montana adopted Standard Act in 1921* [*R. C. 1921-6428-49*].) excepting Delaware and Porto Rico, has such an act. The rapid development of cooperative marketing of agricultural products since the World War has demonstrated the unworkable features of some of the phases of the so-called standard act. In 1922, the American Cooperative Congress meeting at Chicago wrote and approved what it termed a "model" Cooperative State Law, which consisted largely of compilation of sections from the then existing cooperative state laws. The National Conference of Commissioners on Uniform State Laws recognize the demand for uniformity and has now a committee on Cooperative Marketing studying the legal aspects of farmer marketing problems. The National Council of Cooperative Associations is working on a proposed uniform act.

The formation of a cooperative association must be done under the state statute and, of course, involves much more in technical legal problems than the questions of standard requirements of a name, place of business, number of directors, powers and designation of capital or membership. The plan must necessarily involve writing into the corporate set-up plans for financing and limits, if any, of indebtedness, (*Simmons vs. Farmers Union Etc. 208 N. W. 144, N. Y. Canning etc. vs. Slocum et al 212 N. Y. S. 534.*) restrictions on issuance and transfer of stock or membership certificates, (*Chaffee vs. Farmers Coop. Elev. Co.* [*supra*] *Carpenter vs. Dummit, 221 Ky. 67-297 S. W. 695, Heeley vs. Steele, etc. Creamery 115 Minn. 451-133 N. W. 69.*) qualification of membership, (*Blien vs. Rand, 77 Minn. 110. See 14 C. J. 838.*) rights of members, (*McCauley vs. Arkansas Rice Growers, etc. 287 S. W. 419. Fergus Falls etc. vs. Boyum, 136 Minn. 411-162 N. W. 516, also see 22 A. L. R. 24-106.*) provisions for marketing contracts between association and its members, (*Warren vs. Ala. Farm Bureau, etc. 104 So. 264. Minnesota Wheat Growers etc. vs. Huggins 203 N. W. 420; Watertown Milk etc. vs. Van Camp Pack Co. 225 N. W. 209.*) regulation of pools of members' products, (*Ark. Cotton Growers etc. vs. Brown 16 S. W.* [*2nd*] *177.*) rights to recover the amount of excess advances to members, (*Re estate of Murphy Co., 114 N. E. 846-3 A. L. R. 287 — Calif. Raisin Growers etc. vs. Abbott 117, Pac. 767 — Farmers Union Coop. etc. vs. Schultze 112 Kan. 675-212 Pac. 670.*) liquidated damages for breach of contract, (*See 33 A. L.*

R.) questions of restraint of trade and monopoly. (*Reeves vs. Decorah Farmers Coop. Society, 140 N. W. 844-44 A. L. R.* [*N. W.*] *1104. See Connally vs. Union S. Pipe Co., 184 U. S. 541. See 33 A. L. R. 231.*)

The decisions of the courts sustain the provisions of the cooperative statutes and uniformly recognize by-laws and contracts when properly written in accordance therewith. Time does not permit a more detailed discussion of these interesting provisions, the effect of each in binding the farmers together in one business organization and the reasoning of the judges in sustaining those provisions as valid laws. (*Helpful suggestions as well as authorities are contained in bulletins carefully prepared by the legal staff of and distributed by the Federal Farm Board. "Legal Phases of Cooperative Associations," by L. S. Hulbert, Bulletin 1106; "Financial Structure of Cooperatives," by Stanley Reed, Circular No. 4.*) Too often a cooperative fails because of loose construction or lack of bringing into its corporate set-up and contracts enforcible provisions, generally for the reason that a lawyer of cooperative training was not consulted in the beginning. The lawyer is only too often brought into the picture in the role of an undertaker to then care for the "Body Corporate." I say to you lawyers as well as to all those interested in the cooperative movement that the lawyer should assume the position of the family physician at the birth of the child. Not only that, he should be permitted to watch over it until it has attained stability, maturity and a marked degree of successful self-management. Farmers cannot be expected to know the details of the laws, but we have a right to assume that leaders in all cooperative movements will exercise sufficient judgment and business insight to secure the services of a cooperative lawyer to create the corporation and the rules for its future conduct. As an illustration, I have in mind a set of corporation papers of a poultry and egg concern which came to my desk. Among the powers granted to the association by its charter was to "manufacture, process and gin eggs." Another not so far from home had written a clause into its by-laws to the effect that in the event a husband was unable to attend a stockholders' meeting his wife could go and vote his stock. The intention was fine but the plan inoperative, especially where votes were needed to amend the charter or do some other act requiring the vote of the stockholders.

FEDERAL LAWS

Congress has not passed a statute for the incorporation of cooperative associations, although from time to time Federal statutes have been enacted, each of which has to deal with problems of agriculture. Congress first recognized agricultural marketing associations, cooperatively organized as a distinctive type of business not in restraint of trade under the anti-trust laws, when it wrote section six in the Clayton Act of October 15, 1914, (*No. 8 Stat. 730-15 U. S. C. A. 12-27.*) in which it is stated that:

> "The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agriculture, or horticulture organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual

members of such organizations from lawfully carrying out the legitimate object thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

In 1922 we were given the Grain Futures Act (*42 Stat. 1001, Tit. 7, Chap. 1, U.S.C.A.*) which had to do with the regulating of grain exchanges and defining "Contract Markets" as grain exchanges which, among other requirements, did not exclude from membership representatives of "lawfully formed and cooperative associations of producers having adequate financial responsibility which are engaged in cash grain business" and that no rule of the exchange shall forbid the return of patronage dividend; the "Cotton Standards Act of 1923," (*42 Stat. 1517, Tit. 7, Chap. 2, U.S.C.A.*) giving authority to the Secretary of Agriculture to establish standard grades of cotton; the Grain Standards Act of 1916, (*39 Stat. 482, Tit. 7, Chap. 3, U.S.C.A.*) giving the Secretary of Agriculture the authority to establish standard of grades, quality and condition of grain; the Naval Stores Act of 1923, (*42 Stat. 1435, Tit. 7, Chap. 4, U.S.C.A.*) relating to standards of naval stores; Packers and Stockyards Act in 1921, (*42 Stat. 159, Tit. 7, Chap. 9, U.S.C.A.*) having to do with marketing of livestock in interstate commerce and preventing discrimination against producers' associations; the Wool Standards Act of 1928, (*45 Stat. 593, Tit. 7, Chap. 17, U.S.C.A.*) setting up standard for wool; then the Cooperative Marketing Act of July 2, 1926, (*44 Stat. 802, Tit. 7, Chap. 18, U.S.C.A.*) authorizing the Secretary of Agriculture to establish a division concerned with marketing and distribution of farm products which would, as a part of its work, assist the farmers in acquiring scientific and practical knowledge of crop production and to advise with and assist groups of producers in forming cooperative associations. The acquiring of statistics and estimates about cotton and prohibiting destruction and dumping of farm products by commission merchants, and other questions were dealt with by Congress in 1927, (*44 Stat. 1372, Tit. 7, Chap. 19, U.S.C. A.*). The United States Warehouse Act of 1916, (*27 39 Stat. 486, Tit. 7, Chap. 10, U.S.C.A.*) amended the last time by the Act of March 2, 1931, providing for regulation and licensing of warehouses storing agricultural products. Other Acts provide for the gathering of statistics and information for benefit of tobacco farmers, the regulation of importation of honey bees, distribution of pure seeds and destruction of noxious weeds. All such Acts had largely to do with production, marketing and distribution of the products of the farmer.

Another group of Federal statutes relates to the financing of agriculture. I refer to the Federal Land Bank and Joint Stock Land Banks, the War Finance Corporation and the institution of the Intermediate Credit Banks with affiliated Credit Corporations, (*44 Stat. 39, Chap. 7-8, Title 12, U.S.C.A.*) and I need only to mention the early land grants to agricultural colleges, the many appropriations by Congress of money to carry on extension work with field demonstrations, seed loans and drought relief all under the supervision and direction of the Secretary of Agriculture, whose department has also to do with the development of good roads throughout the country as steps in the government aid of agriculture.

Time will not permit a lengthy discussion of the interesting features of some of those Federal Statutes which I have mentioned, although the lawyer, dealing with farmers in his every day practice, is lacking in his knowledge of the agricultural laws unless he has attained some degree of familiarity with all of them. Here I will mention that only recently, and out in the district where we now meet, a legal question relative to the interpretation and effect of the Federal Land Bank Act as it relates to the enforcement of mortgages has been brought into court for determination. That question is attracting attention, for its ultimate determination will be basic in its effect as to the value of land bank stock.

I have yet to call your attention to the Capper-Volstead Act, (*45 Stat. 388, Chap. 12, Sec. 291-292, Tit. 7, U.S.C.A.*), the statute governing Federal income taxes (*Sec. 982, Chap. 19, Tit. 26, U.S.C.A.*) affecting cooperative organizations, and the Agricultural Marketing Act (*46 Stat. 18, Chap. 22, Tit. 7, U.S.C.A., Act of June 15, 1929*) under which last law the Federal Farm Board was created.

These three laws should be taken into careful consideration in every cooperative corporate structure, for the provisions of each have reference to and are intended for the benefit of "farmers, planters, ranchmen, dairymen, nut or fruit growers" who are interested in banding together in a corporate organization which has for its purpose the cooperative marketing of his product. The first has to do with the manner and method of formation of the organization in order that they and their organization may be exempt from the penalties of the anti-trust laws; the second defines requirements which, if met, exempt their organization from Federal income taxes, and the third provides policies, ways and means for those farmers to band together into nation-wide organizations and to finance their program. These acts are closely allied in benefits to cooperatives, and in fact all cooperatives must qualify under the first in order to receive the benefits of the last.

The Capper-Volstead Act says "that persons engaged in the production of agricultural products * * * may act together in associations, corporate or otherwise, * * * in collectively processing, preparing for market, handling and marketing in interstate and foreign commerce, such products of the persons so engaged. They make the necessary contracts and agreements for such purpose, provided:

1. That such associations are operated for the mutual benefit of its members *as producers;*

2. That no member shall have more than one vote irrespective of the amount of stock he owns or capital he has invested;

3. That the association shall not pay dividends in excess of eight per cent per annum on stock; and

4. In all cases such association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

When so organized, and by strict compliance with the terms of the Act, the cooperative is exempt from the operation and penalties of our Federal and most of the State anti-trust laws (*List vs. Burley, etc., Coop. Assn., 151 N. E. 473; Louisiana Farm Bureau, etc.,*

vs. Clark, 107 So. 115). It is to be noted that the Clayton Act uses the phrase "for the purpose of mutual help" and the Capper-Volstead Act says "operated for mutual benefits."

To obtain exemptions from the payment of income taxes, the cooperative must come within the restrictions of the Internal Revenue Act (*The Act of Congress exempting incomes of certain corporations is constitutional. Brushaber vs. U. P. Ry. Co., U. S. 1; 60 L. Ed. 493*) which provides that:

Farmers, fruit growers or like associations organized and operated on a cooperative basis

(a) for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales or profits on sale of supplies.

(b) Dividends on stock shall not exceed eight per cent per annum or the legal rate of interest fixed by state statutes.

(c) Substantially all the stock, excepting preferred, is owned by producers who market their products or purchase their supplies through the association.

(d) Value of products marketed for non-members shall not exceed that marketed for members or supplies purchased for persons who are not members or producers shall not exceed 15 per cent of the value of all purchases.

The Agricultural Marketing Act, the one law which has attracted the attention of the nation, is the subject of discussion among people of all classes and professions, it being the written expression of Congress of its understanding of the efforts of agriculture to be recognized on a parity with other industries, and the law representing the victory of farmers and farm leaders after years of agitation to achieve the legal right to collectively handle farm products in the world markets in a "manner designed to return to the producer the greatest possible share of the consumer's dollar." This Act, now the law, is the only Federal statute whereby the public and Congress accept the principle of cooperative marketing of agricultural products. It expresses four policies which tend to promote the effective merchandising of agricultural commodities in interstate and foreign commerce, namely (1) by minimizing speculation; (2) preventing inefficient and wasteful methods of distribution; (3) encouraging the producer in the organization of associations or corporations for financing and marketing, and (4) aiding in preventing and controlling the surplus of commodities. To carry into effect the policies thus announced, a Federal Farm Board of eight members was created. Its members, with the Secretary of Agriculture as ex officio member, are charged with certain duties subject to stated limitations and restrictions definitely set out in the Act.

Section 3 of the law definitely provides for the appointment of advisory committees consisting of men representative of and selected by cooperative associations which committees shall consult with and advise the Board in matters relating to the commodity represented. Sections 4 and 5 define the general and special powers of the Board. Section 6 creates a revolving fund of half a billion dollars to be administered by the Board, while Sections 7 and 8 set out ways,

means and methods which the Board must follow in making loans from this fund. The next three selections have to do with organizing and financing stabilization, clearing house and insurance corporations under the Act; 12, 13 and 14 are directory clauses and provide appropriation for the expense of the Board; and the last section, 15, containing five subdivisions, deals with miscellaneous restrictions. This section must be noted principally because it defines the term "cooperative association," when used in the Act, as meaning any association qualified under the Capper-Volstead Act.

As stated, a cooperative association must qualify under the Capper-Volstead Act in order to receive the benefits of the Agricultural Marketing Act (*Section 15 of the Agricultural Marketing Act*).

The press, as well as those opposed to the cooperative movement, has directed the attention of the public to the stabilization activities of the Federal Farm Board, much out of proportion to its activities in encouraging the farmers in organization work and the financing of the marketing program of organized producers.

The Federal Farm Board is interested in the problems of agriculture, and is bending every effort permissible under the law to assist the farmers in the building up, financing and understanding their own marketing, storing and processing organizations. The Board is *not* building a marketing system. It is not operating a marketing system when once organized. I bring to you the statement of the Board expressed by Mr. Chairman Stone to the American Institution of Cooperatives at the Manhattan, Kansas, meeting held last June, when the Chairman said:

> "The Farm Board is helping farmers to build a cooperative marketing system which they themselves will own and operate, in their own interest. The Board is not building a marketing system nor will it operate marketing associations when they are organized. The public seems to be confused on this point, for repeatedly we see references in the press and elsewhere to 'Farm Board Agency' or 'Farm Board Cooperative,' and so forth. There is no such thing as a 'Farm Board Cooperative'; no cooperative is an agency of the Farm Board. Every cooperative which is being assisted by the Farm Board is farmer-owned and controlled in accordance with the provisions of the Agricultural Marketing Act and the Capper-Volstead Act. The Board's duty and purpose is to help develop cooperatives on a sound financial basis with sound operating policies. So long as a cooperative borrows money from the revolving fund, a condition that any banker would make, which is, that the association's operating policies and management shall be satisfactory to the Board. Cooperative leaders and everyone else interested in the success of cooperative marketing can perform a most useful service by bringing the public generally to understand these facts."

That statement is at once recognized as sound by one who is familiar with the law. Section 1 of the "declaration of policy" of the law prescribes the limitation placed upon the Board, then if you turn to Section 7 (a) of the Act you will find that Congress said:

> "No loan shall be made to any cooperative association, unless, in the judgment of the Board, the loan is in furtherance of the policies declared in Section 1, and the cooperative association applying for the loan has an organization and management and business policies of such character as to insure the reasonable safety of the loan and the furtherance of such policies."

In the making of loans for the acquisition of physical facilities by a cooperative, the law makes further restrictions and safeguards for the safety not only of the loans made for such purposes, but for the protection of the cooperative which builds, buys or leases properties for the uses of its business.

It is obvious by a clear reading and fair construction of the law that it is a constructive and not a destructive law and that the Federal Farm Board is only concerned with the problems of building up the cooperative associations on a sound business and financial basis and with a management of such a character as to assure the carrying on of that farmer-owned and farmer-controlled organization for the benefit of the farmer. It is not engaged in a program of tearing down any established legitimate business or business organization.

Permit me to again quote from a statement made by our chairman which may be taken as an expression from the Board. It is:

> "The cooperative movement has two obstacles to overcome and protect itself against. Perhaps the more serious is that within the ranks of agriculture—apathy and indifference on the part of many farmers, who do not understand what the program means to them, and the limited number of so-called 'farm leaders' who are more concerned about their own jobs than they are about getting something done for the benefit of agriculture as a whole. Then there is the opposition coming from some of those who are engaged in handling of farm products. This opposition is directing its fire largely against the Farm Board with such charges as the 'government in business,' 'Price fixing' and 'Setting aside the law of supply and demand,' all designed and intended to stir up public resentment against what is being done. Its object is to kill cooperative marketing."

The rapid growth of cooperative organizations, the mounting volume of business of those organizations, the necessity for attention to interpret contracts, tax laws and member relationship needs trained legal minds. Irrespective of his political or economic beliefs, the practising lawyer is bound to and will interpret the law for his clients as it is written and will give sound advice and counsel as best how to organize under and function in accordance with the provisions of the laws as written so that his clients will have the protection and benefits of those laws.

You men are living and doing business out here in an agricultural state. Some of you, I know, are interested, financially in the farming business. The majority of you lawyers are advising and dealing with farmers every day. The organized business of your farmers indicate

that it is a valuable client. In 1915 the state of South Dakota had 178 cooperative corporations, of 74,451 members, doing a business of $23,816,000; in that state in 1930 there were 409 such organizations, with 94,000 members and doing a business of approximately $63,000,000; in 1915 Montana had 51 cooperatives with 4,784 members doing a business of $4,823,130 and in 1930 there were 102 such organizations in the state with 20,000 members with a business of over 22 millions; North Dakota in 1915 had organized 313 cooperatives with 22,453 members and a business volume of $47,260,000, and in 1930 we have 534 such organizations with 82,100 members and doing a business of approximately 80 millions of dollars. While these figures are given for your own section of the country yet they reflect the growth of farmer organizations throughout the United States.

It is the hope of the Farm Board that organization of cooperatives will be materially increased with the aid and assistance it is permitted to give under the Act.

The lawyer who has banks, trust companies or utilities for clients should be versed and interested in cooperative organizations, for where agriculture is the basic business of the state every other business is more or less affected by the success or failure of the marketing ability of the farmer. The greater return of proceeds of sales of farm products to the farmer, just that much greater in his purchasing power. Such corporations demand the application of cooperative laws, need the attention of members of the legal profession to assist in interpreting and applying those laws to that line of business. That field of business is a resource to the practice of the lawyer who is informed of the laws and decisions applicable to cooperative corporations, yet I say to you that it is a noticeable fact that few lawyers have given serious attention to this phase of corporation jurisprudence, cooperative statutes and decisions.

We gain from a review and the history of cooperative law that this branch of the corporation laws has been in the making for over fifty years, based on the principle of returning to the incorporators the net earnings of the corporate business in proportion to the patronage of its members; that such a corporation must be controlled in a most democratic manner by allowing the members equal voice in the management of the affairs of the association; that the organization of such corporations be confined to producers of agricultural products. Such is cooperative law, controlling in the business affairs of the farmer which is now recognized as the policy of our nation. The statutes are nearly standard. The courts have uniformly sustained the provisions of those statutes as valid. Such laws to my mind should be uniform. It is within the power and province of the members of the Bar to make them so, once your forces be united in the study of cooperative laws. The organization work of cooperative business is now and will continue with the aid and guidance of the Board created by Congress under the Agricultural Marketing Act, fulfilling the observation President George Washington made when speaking to Congress in 1796 on agricultural promotion, stressing the importance of such boards when he said "They are very cheeap instruments of immense national benefits."

PRESIDENT TRAYNOR: Before we adjourn, first of all let me express in behalf of the Association our thanks to you, Mr. Owens, for that very informative address.

MR. OWENS: I appreciate the thanks of the Association, but please do not elect me an honorary member of this organization. I still claim North Dakota as my home.

PRESIDENT TRAYNOR: I will appoint on the Resolutions Committee Judge Hutchinson, Aloys Wartner and W. H. Stutsman. We will stand adjourned to meet at the State Hospital auditorium this afternoon.

Wednesday, August 19, 1931

AFTERNOON SESSION

MR. TRAYNOR: Gentlemen of the Convention, we are about to reconvene for the afternoon and final session of the business portion of the meeting. As you know, I have an invitation to attend the meeting of the South Dakota Bar Association at Rapid City, which convenes tomorrow morning, and I am invited to speak there at the banquet tomorrow evening. The trip to Rapid City is about 500 miles, and I want to make as much of the trip as I can reasonably make this afternoon, so I have called to the chair, James Cain, a member of the Executive Committee, who will preside during the balance of the meeting. Mr. Cain, will you please come forward and take the chair? Before leaving, may I say to you gentlemen again, that I heartily thank you for the honor that has been mine during the past year; it has indeed been a pleasure. I dislike to leave before the close of the session, but I think you will understand and appreciate the reason for my doing so. I bid you good-bye and thank you indeed.

MR. BANGS: Mr. Chairman, now that you have taken the chair, and before Mr. Traynor leaves, not knowing that he was about to leave for Rapid City, I wish to say, and say without any hesitation, that I voice the sentiments of each and every member of this Association in expressing to President Traynor our appreciation of the faithful and earnest work that he has given to this Association. Particularly, we want to express our appreciation of the fair and excellent manner in which he has presided over the deliberations of this body. I move that this Association, at this time, extend a rising vote of appreciation and thanks, and at the same time an expression of our good will and best wishes for his trip to South Dakota. (Rising vote by all members present).

MR. CAIN: I am sure gentlemen, it will be impossible for me to conduct this meeting the remainder of the day, as it has been conducted by your President, Mr. Traynor, but I will ask you to bear with me and forgive any mistakes I may make during the balance of the program.

I believe Prof. Thormodsgard is next on the program.

PROF. THORMODSGARD: The Committee on American Law Institute is composed of Mr. Vieselman as chairman, Mr. Radcliffe, Mr. Wineman and myself. I have been requested to read this report inasmuch as I attended the meeting at Washington, D. C. last spring, and, to a large extent, completed the report.

AMERICAN LAW INSTITUTE

The Ninth Annual Meeting of The American Law Institute was held in Washington, D. C. on May 7, 8, and 9, 1931.

The objects of the meeting were to consider Agency Tentative Draft No. 6 which was presented by Reporter Warren A. Seavey of the Harvard Law School; Conflict of Laws Final Draft No. 2 which was presented by Reporter Joseph H. Beale of the Harvard Law School; Contracts Tentative Draft No. 9 which was presented by Reporter Samuel Williston, Harvard Law School; Contracts Tentative Draft No. 10 which was presented by Reporter Arthur L. Corbin of Yale University Law School; Property Tentative Draft No. 3 presented by Reporter Richard P. Powell of the Columbia University School of Law; Torts Tentative Draft Nos. 6 and 7 presented by Reporter Francis Bohlen of the University of Pennsylvania Law School; Administration of the Criminal Law Tentative Draft No. 1 presented by Reporters William E. Mikell and Edwin R. Keedy of the University of Pennsylvania Law School and the Trust Tentative Draft No. 2 presented by Reporter Austin W. Scott of the Harvard Law School.

Three full working days were devoted to these drafts. Many of the leading jurists and lawyers in the United States took active part, so that the reporters who are law teachers, secured counsel and advice from judges and practicing attorneys.

Without an exception, the Supreme Court of every state was represented and nearly all the first class law schools were represented by one or more delegates. Over 550 registered lawyers attended the meetings.

The Report of George W. Wickersham, President of The American Law Institute, was of exceptional interest, in that he emphasized the history of The Institute and pointed out the accomplishment of The Institute during the past nine years. The Institute has as its program, the restatement of the entire body of the Common Law, and requires the scholarship, cooperation and time of a large number of reporters and advisers.

Chief Justice Hughes of the United States Supreme Court commented briefly on the procedural reforms in the Federal Courts which have taken place since Hon. Wm. Taft was Chief Justice. He emphasized that the work of The American Law Institute can only be compared with the compilations of Justinian, with this difference that the work of The American Law Institute is that of a voluntary association, while that of Justinian was that of a governmental agency.

William Draper Lewis, Director of The American Law Institute, and Herbert F. Goodrich, adviser on Professional and Public Relations again emphasized the necessity of each state, through the State Bar Association, Judicial Council, and Law Schools within each state, to make local annotations to the Restatements and to determine whether the decisions of the Courts and the statutory laws of the state are in harmony with the Restatements.

In many states the Bar Associations have agreed to contribute from $1000 to $5000 a year for state annotations. As one example—The Missouri Bar Association is paying one instructor $1000 for the

annotation of the one subject of Torts. In many schools the teaching load is reduced so as to give the teachers an opportunity to make this research. To aid them, one or more student assistants are often provided to do the large amount of detail and manual work.

Chief Justice A. M. Christianson of the North Dakota Supreme Court and Professor O. H. Thormodsgard of the School of Law represented the State of North Dakota. The one problem of state annotation will be a serious one for North Dakota. Work has been started in the School of Law on the annotations of the Restatements of Contracts and Conflict of Laws.

When one considers that in other states the Bar Associations have more money, are more prosperous and therefore more active in legal research, and where the law schools have greater facilities, more money and where the instructors have a smaller teaching load, the problem of annotating in North Dakota may need the attention of the state legislature and the Judicial Council.

The Committee recommends that the state legislature should make a special appropriation to the Judicial Council, that the Judicial Council should pay the clerical help and necessary expenses in preparing these annotations. We believe that with the cooperation of the Judicial Council, the School of Law, and the North Dakota Bar Association, this important legal research may be carried forward with credit to the state and to the mutual advantages of the lawyers and judges of this state. This is a serious and big task, and only by prompt action may the state of North Dakota measure up to its duty in contributing to this national legal research by annotating the Restatements of the Common Law with the decisions of the North Dakota Supreme Court and the Compiled Laws of North Dakota.

P. W. VIESELMAN,
Chairman.

MR. CAIN: I want to thank you Prof. Thormodsgard, on behalf of the Association for the excellent report you made.

The next speaker to address the Association is so well known that an attempt to introduce him to a North Dakota audience is wholly unnecessary, Hon. John Burke.

MR. BURKE: Members of the North Dakota Bar Association: I have heard a great many comments on the chairman of this meeting, Judge John Knauf, and I am sure he deserves them all, but if I had known three weeks ago that he was going to put on such a meeting as this, I would have gone into physical training.

Now we started over in the Federal Building, a very appropriate and fine place to meet, and no doubt some day it will be a historical place. Then during the lunch hour he sent the gentlemen over to the Nankin restaurant and the ladies to the Sweet Shop, which was very appropriate again. Then last night he took us out in the country some place to a most pleasant lake, where we were royally entertained until the small hours of the morning, and now we come up to this institution, (State Hospital for Insane). I do not know whether he is responsible for that, or whether President Traynor is.

AMERICAN LAW INSTITUTE

JOHN BURKE, Judge Supreme Court

It has been suggested that I say a little something about the American Law Institute and also the Judicial Council. You know from what you have heard in the very accurate reports that have been made this year what took place, you know what subjects have been considered and the law re-stated. You perhaps don't know, however, that aside from all of the Professors and law students who are compiling and restating the law, there are as members of this Institute thirty-three of the ablest lawyers in the United States, and it is being restated under their supervision and is to be completed within ten years, and separate and aside from this, gentlemen, funds have been appropriated for the restatement of the law. There is also a fund for a special committee, so you see there is no trouble in getting law students to do this work.

Now this institute, which was referred to yesterday by Mr. Boston, and he mentioned that they were stating what the law ought to be. They do not say this is the law, but they say this ought to be the law. While I attended two meetings of the Law Institute, I didn't hear anybody in the Institute saying that this ought to be the law, but I heard a great many of them say, this is the law, and it is a very constructive body; in fact, this is a constructive age.

I want to compliment the Bar Association at this particular meeting for the constructive work that has been proposed and considered here. You may not adopt any of it, it may never become law, but it was an awfully good subject to have before this Association for consideration. Now this work is being done largely by law students and professors of law in the different law schools of the country, and there are a great many things that look awfully right, awfully good on paper; there are a great many things that you can make a convincing argument about to show that they are workable, but when you come to work it out, it is a different proposition.

In these meetings that they have down in Washington, D. C. there are, as the report shows, over five hundred of the ablest lawyers of the country. Chief Justice Christianson, who attended this meeting informed me that at one of these meetings an amendment to the criminal procedure was discussed providing that the prosecution might comment upon the failure of the defendant to go upon the stand, and there was some considerable debate on that before they adopted it and approved it, and that has gone into the statement of the law as it is restated.

Now that calls to my mind another matter, which is a bit of reversion, and which you will pardon me for making, but it calls to mind the paper that was read by Mr. Nilles yesterday wherein he called attention to the fact that the court and their decisions had held in a personal injury case, when the defendant was asked to answer in a certain language that while it was prejudicial, it was perfectly right, while now it seems to me that no one ought to be able to do indirectly something that he cannot do directly, and it seems to me that there was a great deal in the arguments that Mr. Nilles presented to you yesterday morning upon that subject. Cases ought to be tried without bringing in anything that is prejudicial to either the plaintiff or the de-

fendant, so that justice may be evenly balanced, and I thought that was a good suggestion he made, and it seemed to me that that was something a judicial council could take care of.

It seems to me it would be good practice for a district judge, when a jury comes in, men perhaps who have never sat on a jury before, not especially qualified, not especially instructed in their duties as jurors, it seems to me it would be a very good practice of a district judge on the convening of court, to call the jurors up and give them a nice little talk in relation to their duties as jurors, and that the responsibility of the jury equals the responsibility of the court. It seems to me that would be a very good practice and in that practice in instructing the jurors on their duties, he could easily ask them questions as to whether any of them were interested in insurance companies or any other corporations, and then lawyers would know when to stop. You know I think it is a kind of a reflection on the lawyer to have the Judge take from him the power of questioning the jury, and I guess that we are entitled to some criticism. I think I have abused the privilege to some extent. Some of the judges feel inclined to take it away from the attorneys altogether. We do know there is entirely too much time lost in the selection of a jury, and I suppose I am just as bad an offender as any of them in that respect, and more perhaps than any of them. I would say perhaps I was the worst offender of any, except Tracy Bangs, but I know he would agree with me in this matter. It is too bad if the courts take that power away from the lawyer, and I think the lawyers are to blame for it. We want the privilege of examining the jurors ourselves, and we are not going to abuse that privilege any more. If the plaintiff's attorneys ask questions that are reasonable and right, then the attorneys for the defendant will not have to ask the same questions, and I am satisfied that you members of the Bar can settle that for yourselves.

Now going back to that question of commenting on the fact that the defendant refused to go on the stand. You know the North Dakota Judicial Council is not the only constructive council of the United States. Take the State of Connecticut. They have a great deal more need for this restatement of the law than we have. In Connecticut and in most of the eastern states, it is more necessary for them to have the restatement of the law than for us, for when this restatement of the law is completed, and you take and compare it with the civil code, your criminal code and your code of criminal procedure, you will find they are almost alike; and let me tell you something, I do not believe that this American Law Institute or any other Institute can prepare a better code of civil procedure than we have. We may need some amendments occasionally, it can be improved upon, but take it as a whole, it is a wonderful work. We do not need it, so much, as I say, as these other states do.

In the State of Connecticut, the Judicial Council has recommended the passage of a great many laws since the organization of the Judicial Council in that State.

They say it is almost impossible to enforce the criminal law because of the aeroplane and the automobile, but I do not see why. Commenting on the defendant failing to testify,—for the failure to catch the fellow who has gone in an automobile, but that is the theory

of it, and they go farther and say why of course, you should comment on it. The defendant knows whether he is guilty or not and why should he not go on the stand and testify if he is innocent. Well, maybe they are right about it, maybe he ought to go on the stand and testify; he knows more about it than any one else, but what are you going to do with the presumption of innocence; if you are going to permit the prosecution to comment on the failure of the defendant to testify, then what are you going to do with the presumption of innocence? You are taking that away from him and are you not also indirectly making him testify against himself?

We may reach a stage where it would be a good policy to adopt that procedure, but the adoption of it would be more dangerous than not catching the fellow in the aeroplane, or the fellow in the automobile. We have to get him first, and the facts are, as Mr. Bangs said last night, that the great difficulty in enforcing the laws nowadays, especially in this western country, is in catching the defendant.

There is another recommendation that I call your attention to which shows how far advanced we are and that is, the recommending of a non-partisan judiciary. When I say non-partisan, I do not mean in the sense of the word politically. We have had a non-partisan judiciary since 1909. Take for instance the State of Michigan, the great State of Michigan, there is just one thing they have done and that is to make a careful study of the law and they have made a report upon that subject which would really make a good text book, and that is all they have done. It is a very valuable report, because I think it has all the law upon this subject from the beginning down to the present day.

Now another state that has done a great deal of work with the Judicial Council is California, and here is one of their laws that I am going to call your attention to, and ask you to think about it because I wonder if the people are losing faith in the jury system. One of the amendments was an amendment to the constitution providing that the defendant might waive a jury trial in felonies, and out of 687 cases in the City of Los Angeles, 241 of them waived a jury trial. This was in 1929, that 241 of them waived the jury trial and were tried before a Judge, and in 1930 forty-four per cent waived the jury trial, nearly half of them waived a jury trial and stood trial before the Judge. You know there has been a lot of talk in recent years about a change here. Personally, I am for the jury. I do not believe we are ever going to have any better system of trying facts than to a jury. Of course, there was no time lost in getting a jury, there were no arguments over admission of certain testimony, and justice could be administered in an assured way under that system, and of course, it is according to the law of the land where it is constitutional.

I want to say in conclusion as there is other work to do, that I congratulate you on the work you are attempting to do, and there is one other thought that comes to my mind that Mr. Adams expressed yesterday afternoon. I have wondered since if we should not submit the facts to the jury, and then let them determine the facts in the case and when they do, it would be easy enough to apply the law. Take Mr. Adams' remark home with you and think about it before submitting arguments to a jury.

I was also pleased this morning to hear my old friend Tracy Bangs defend the law school and was very glad to have him take the attitude he did. The thought occurs to me that it might be all right to have some of the Judges of the Supreme Court and of the District Court go to the University law school at some time and deliver a short course, about once a year, on some certain practice. I have no doubt but what that arrangement could be made and it would be a good thing. It ought to be taken up in the right spirit, and if some of the lawyers of Fargo, Grand Forks and other parts of the state would be willing to go there for a few days each year and deliver a course on law practice, it seems to me it would be helpful, no doubt, to the regular teachers in the Institution.

It has been a great pleasure to me to be down here and I have experienced much pleasure on the tour over the hills and beautiful valleys surrounding Jamestown. I thank you.

MR. VIESELMAN: The Carnegie Foundation in support of the Law Institute is preparing this restatement of the Law on a national basis, but the work of annotating for each particular state must be taken care of in the state itself subject to the supervision of the Judges of the Supreme Court. The question of finance was brought out by Prof. Thormodsgard but when it comes to getting the clerical work necessary for preparing the supplement to this, that is so far as the actual publication is concerned, that cost is taken care of by the American Law Institute.

MR. CAIN: I want to call that to the attention of this meeting, so as to secure some appropriation through the Judicial Council,—the Bar Association is not in a position to do anything. The South Dakota Bar appropriated $200, but we realize we are unable to do that, but merely want it to go on record so as to bring it up next year so as to secure some appropriation.

We have been very fortunate at this meeting to have from other states, men learned in the law, to address us on interesting subjects, and we are now to be favored with an address by Mr. Mitchell, President of the Minnesota State Bar Association, and one of the leading lawyers in that State, Mr. Mitchell.

MR. MITCHELL: For several reasons, I owe a debt of gratitude to the North Dakota Bar, and it came about in this way. For three successive sessions, I was unfortunate enough to be the chairman of the Committee on Legislation of our Bar Association, which was then attempting to pass a law similar to your law here, and we were not successful, due to the opposition of an organized and well financed lobby, which the ambulance chasers had put in the field. It occurred to me that it would be of some help to our state to know what the lawyers of your state thought of the law which had been then in operation for several years, so I wrote to a number of lawyers throughout your state, which I picked from a legal directory, and asked them what they thought of your Bar Association and what the Bar thought of it generally. Without exception, every single one of these replies came back favorable to the new bar organization.

Our Bar then prepared a pamphlet on the subject and the title of the pamplet was "It Works In North Dakota". Also in the course of

this campaign Mr. Cupler of Fargo, then President of your Association, came down and addressed a meeting largely attended by lawyers of our state. We were not immediately successful in getting this legislation passed, and we cannot hope to build up our association until we are strong enough to make our laws effective. I do feel the work we did at that time is going to give us the same kind of an organization that you have here, so when this invitation came asking me to come out here and address you, I felt it was an opportunity to give you the benefit of something we have learned about making our association more effective during the past two or three years. It would give me an opportunity of telling you this, and in some way to repay a part of the debt of gratitude which I felt I owed to your Bar.

I have put my message to you in the form of a paper, and I realize in reading a paper I owe you an apology, but I feel I could be more sure of having all of my thought on this subject get across to you if I worked them out a little more carefully than in an oral statement. I may lay myself open to some of the criticism which a preacher levied against his son who had just graduated from a divinity school, and who had occupied his father's pulpit for the first time, and on the way home the father said nothing at all about the sermon, and finally the boy asked him what he thought about his sermon. The old fellow said it was all right except in three respects. He said, "In the first place you read it; in the second place you didn't read it well; and in the third place it wasn't worth reading." The title of my paper is "Legal Clinics."

LEGAL CLINICS

MORRIS B. MITCHELL

For the past two years our State Bar Association in Minnesota has been conducting an experiment in bar organization activity, which thus far has given sufficient promise of success to make us believe that it contains an idea which other bar associations may use to advantage. This afternoon I shall attempt to give you some of the reasons which gave rise to this experiment and to report on the results of our efforts up to this time.

We decided upon this experiment at a time when we were looking around for some means of making our bar association a more vital factor in the life of the average Minnesota lawyer. Our state bar association is not as fortunate as is your North Dakota association in having every lawyer made by statute a member of the organization. We have to work hard to get our members and to keep our membership up to a point where the dues produce sufficient revenue for us to operate efficiently. In general, our membership depends pretty largely upon the things we are able to do for and on behalf of Minnesota lawyers, which will interest them in our association and make them want to be included in its membership.

Upon making a survey of the activities of our bar association, we came to the rather definite conclusion that we were not doing as much as we should for the average Minnesota lawyer, and that our association was not a particularly vital part of his professional life. Our activities were probably not greatly dissimilar to most other bar associations. An idea of the general nature of these activities can probably

best be had by considering the nature of the standing committees provided by our by-laws. These committees, the duties of which are in general indicated by their respective titles, are as follows: Ethics, Jurisprudence and Law Reform, Uniform State Laws, Legal Biography, Legal Education and Admission to the Bar, Legislation, Membership, Public Relations and American Citizenship. With the exception of the committees on Membership, Legal Biography and Public Relations, every one of the committees named is engaged in some work primarily for the benefit of the public, and only indirectly and incidentally for the benefit of lawyers. The Committee on Legal Biography prepares each year a list of the members of the bar who have died during the year. The Committee on Membership is engaged in the thankless task of trying to persuade lawyers to become members of our association. The Public Relations committee has concerned itself largely with preventing the practice of law by laymen and by corporations, and has recently been instrumental in securing a decision by the Minnesota Supreme Court and the passage of a law by the Minnesota legislature defining the practice of law and stating the bounds beyond which those not admitted to practice may not go. This committee has undoubtedly rendered a real service to the individual lawyer in Minnesota. During the past year we have also had three special committees, one of them being charged with the duty of preparing the Minnesota annotations to the American Law Institute's Restatement of the Law of Contracts and of Conflicts of Laws, and the other two special committees being charged with the respective duties of securing the passage of two constitutional amendments, one abolishing the stockholders' liability in Minnesota corporations, and the other increasing the number of our Supreme Court justices from five to seven. I mention these special committees because I think they are a fair example of the special work which our association and other state bar associations do each year in addition to the regular routine work done by the standing committees.

Now the significant thing about the work of these committees, which constitute in its entirety the bulk of the work of the association, is that the work of only one committee, namely, the Public Relations Committee, is designed primarily to help the average lawyer or to vitally affect his professional life. The work which these committees are doing is of unquestionable value, and undoubtedly fulfills a duty which we as lawyers owe to the public. I would certainly be the last one to suggest that any of this work be abandoned or abated in the slightest degree. On the contrary, much of it, such as the work of the Ethics Committee and of the Committee on Jurisprudence and Law Reform, must be intensified and made more effective if the bar is to fulfill its obligation to the state. But nevertheless, if we are candid, we must admit that this work is primarily in the interest of the public, and that, except as lawyers constitute a portion of the public which is benefitted by this work, there is not much in it which accrues to the personal benefit of the average member of the bar. It is undoubtedly work in which he should be and is interested, but it is work which demands a considerable amount of public-spirited idealism, and although the bar always has had and I hope always will have more than the average amount of this quality, nevertheless the average lawyer is, after all, a human being with a landlord to be paid, a law library to maintain, and a family to support. Perhaps we have been expecting too much from him to ask him to enthusiastically support and interest himself in an

association the object of which are almost entirely *pro bono publico,* and which does practically nothing to help him to be a better lawyer and a better provider for those dependent on him.

In casting about for some means by which our association could be of more help to the average lawyer and could touch his every-day life more intimately, we looked with some envy at the medical associations of the county, state and nation, which seemed to be accomplishing this end most successfully. The average doctor takes his medical society seriously, and the doctor who is not a member is somewhat of a pariah in his profession. Upon examination, we came to the conclusion that the two main reasons why the medical societies were so much more effective than bar associations in embracing and interesting the entire profession were, first, because of a superior method of organization, and, second, because through clinics conducted by various medical societies, they were enabling their members to keep abreast of the latest developments in their profession and thereby become better doctors. The method of organization to which I refer is a system which makes the state medical society a federation of all local societies throughout the state, and which makes the national medical society a federation of all state societies. Under this federated system, a doctor who joins a local medical society automatically becomes a member of the state and national societies, so there is no such thing as belonging to a local medical society and not belonging to a state or national society, or belonging to a state or national society and not belonging to the local society. A doctor is either a member of all three societies or he is a member of none. He is either in or out of his professional organization—he cannot be part in and part out as he can in our bar organizations. So in the absence of an all-inclusive statutory bar association, such as you are fortunate enough to have in North Dakota, we in Minnesota took a leaf from the doctor's book and organized our state association so that it constitutes a federation of local judicial district associations throughout the state, and so that a lawyer who joins his local association automatically becomes a member of the state association. So far as a form of organization goes, this plan has proven entirely successful and has greatly increased the efficiency and strength of both our state and local bar associations.

But this was only a change in our form of organization. It did result in bringing our state organization closer home to the average lawyer than it had formerly been, but it didn't change the nature of our activities or enable our association to render the same help to the average lawyer which the medical society renders to the average doctor. So in the hope of bringing about this latter result, we began to examine that other instrumentality of the medical society, the medical clinic, and to consider whether or not it did not contain an idea which could be adapted to the legal profession. We came to the conclusion that it did—a conclusion which has been greatly strengthened by our attempts during the past two years to conduct meetings for lawyers along the lines of medical clinics.

Now there is nothing complicated or mysterious about the holding of a clinic as conducted by the medical societies. It is simply a meeting at which some doctor who has had more experience in some branch of medicine or surgery than has the average doctor, explains to his colleagues some new technique or development in medical or surgical

treatment which he has developed or learned in connection with his specialty and which, when passed on to his colleagues, makes them all more proficient in the practice of their profession. Following the talk by the speaker there is a period for questions and discussion by all present. Sometimes the medical clinic is conducted in the operating room of a hospital where actual demonstrations are given. More often there are lantern slides and photographs to illustrate the subject under discussion. It is mainly through these medical clinics that the average doctor keeps informed as to the latest developments in his profession. Without them his professional technique and knowledge would soon become obsolete. Is it any wonder that the medical societies which conduct these clinics mean so much to the average member of our brother profession? Perhaps some indication of the relative importance of the respective professional associations to their membership is shown by the fact that in Minneapolis a doctor pays $35.00 as his state and county medical society dues, whereas a lawyer pays $8.00 for the same purpose.

As I have stated, we were unable to see any reason why this clinic idea was not just as applicable to the legal profession as to the medical profession. The idea underlying the clinic is to enable all to profit by the experience and research of the individual. Every one of us realizes that when a student graduates from a medical school or a law school his professional education has only begun. It is only through years of experience that he really becomes proficient. In his profession, experience is the real teacher. Usually this training by experience is a painful process for both attorney and client. A small percentage of law school graduates find places in large law offices where they have the benefit of the experience, training and guidance of the older lawyers of the office. The overwhelming majority of the profession, however, practice law in small offices, either alone or in association with one or two other lawyers. They are engaged in general practice and must, through force of circumstances, accept, feel thankful for, and try to handle any kind of legal business which comes their way. Often a new matter will mean exploring a new field in which the particular lawyer, even though he has been practicing for a number of years, is entirely unfamiliar. The lawyer who is diligent and conscientious will eventually find the answer to his problem, but it will usually be after a long and laborious search, and after a great deal of lost motion, much of which could have been eliminated if he had had the benefit of the experience of other lawyers who had previously encountered and mastered a similar problem.

Almost every lawyer in general practice handles more of certain classes of legal business than of others, so that in those particular fields he becomes somewhat of a specialist, and becomes competent to speak with authority on the law and problems of those particular branches of the law. He may have as a principal client a real estate firm, and by reason of examining many titles and drawing many complicated deeds, mortgages and leases for this client, he becomes an expert conveyancer and an authority on real estate law. Or he may probate several large estates so that he acquires an intimate knowledge of the law and procedure involved in the administration of estates of deceased persons. Or he may have become a referee in bankruptcy, or have specialized in tax matters, or have been receiver for several corporations. Or he may

have achieved a reputation as a trial lawyer, so that he knows things about the trial of a law suit which the lawyer who is only occasionally in court knows nothing of. And so, although there may be certain branches of the law in which each of these lawyers is especially competent, each of them will in the course of a year's work, have many problems and much business in other branches of the law in which they have little or no experience. The trial lawyer may have an estate to probate, the lawyer with the real estate client may have the task of putting his client through bankruptcy, the probate lawyer may be required to draw a long term lease, or the tax lawyer may be called upon to try a personal injury suit. Now if these lawyers had attended a series of legal clinics at which each of them had told the others something about the law and procedure of his particular specialty and about the practical problems encountered and the technique of their solution, then each of them would be a better all around lawyer, and when he encountered a problem outside his own particular field, would be much better equipped to solve it. In a word, the effect of these legal clinics is to give the lawyers who attend, the benefit of the experience of other lawyers, and to thus widen their field of knowledge and experience so that each of them becomes a better all around lawyer and more competent to handle the general run of legal business which comes into the office of a general practitioner. The net result is to raise the average standard of efficiency of the bar as a whole, and should result in better satisfied clients and a better feeling toward the bar on the part of laymen in general, which is certain to benefit the whole profession.

With these thoughts as a basis, our state bar association two years ago ventured forth on a program designed to promote the holding of these legal clinics throughout Minnesota. We first appointed a committee to prepare a list of lawyers throughout the state who had achieved a reputation in certain lines and who would be willing to give talks on their particular subjects to any local bar association which wished to hold a legal clinic. This committee was first called the Committee on Professional Technique, but after every one had, as a matter of course, begun to refer to these meetings as "Legal Clinics", we finally changed the name to the Committee on Legal Clinics, by which name it is now known. Local bar associations were slow in getting started in this new field. Lawyers are naturally conservative and slow to take hold of any innovation until it has proven itself worth while. But we did succeed in holding a few of these clinics in various districts, and they were so successful that the news soon spread to other districts. Last year these clinic meetings were held pretty generally throughout the state, and in order to find out just what the lawyers who had attended thought of them, we recently wrote to the presidents of some of the district bar associations which had held these clinics. Let me quote a few extracts from some of the letters I received in reply. Here is one from the Eighth Judicial District Bar Association. After stating that four of these clinics had been held during the past year, the letter states:—

> "The meetings have been more successful than the ordinary get-to-gethers that have been attempted heretofore. In fact it was determined last Saturday evening, that they were so

successful that instead of having some flag-waving orator for the annual meeting as heretofore, that the idea of a clinic would again be carried out."

This letter is from the President of the Tenth Judicial District Bar Association:

"On the 20th of October, 1930, we had our first legal clinic. It was attended by 75% of the members of the Tenth Judicial District Bar Association, and in addition thereto we had five or six visitors from Rochester and three or four visitors from Owatonna. All of them reported a very successful time. The meeting was in charge of Herbert Bierce, Referee in Bankruptcy at Winona, and the topic of his address dealt with the bankruptcy law and problems confronting attorneys dealing in the bankruptcy court. My personal opinion was and is that the lecture was a great success."

This one from the First Judicial District Bar Association:

"We had * * * as our speaker Mr. C. W. Bunn of St. Paul who gave us a talk on the jurisdiction of the federal courts. We all enjoyed the address and felt that it contained much data and information."

This letter from the President of the Twelfth Judicial District Bar Association, referring to a legal clinic held in Montevideo in February:—

"I was ill at the time and unable to attend the meeting, but the reports were that it was a very enthusiastic meeting and very much enjoyed and very well attended and that we should hold at least two of these clinics a year."

A letter from the chairman of the committee in charge of these clinics for the Eleventh Judicial District Bar Association, including Duluth and the Iron Range, states that they held five of these clinic meetings during the year at which the average attendance was about seventy-five. A letter from the president of this association says, referring to these meetings:

"The meetings were very interesting, instructive and well attended."

There was not a single report from any district which had held such a meeting which did not speak with enthusiasm of the success of the meeting.

We feel that we have only scratched the surface of the possibilities involved in these clinics. Our goal is to have at least four of them held each year in the country districts where the lawyers are scattered and it is hard to get together, and at least eight or ten held in each of the three larger cities where it is easier for the lawyers to assemble. The state association will, if requested, arrange to send a speaker to such a meeting if the local association requests us to, but we are trying to impress them with the idea that there are plenty of lawyers in each district who are equally competent to lead such a clinic as any lawyer we might send them.

From the results we have had thus far with these clinics, we believe that we have found a means of making our Bar Association a real factor in the professional life of the average Minnesota lawyer on which he will come to depend more and more as their full possibilities are realized. We think that these clinics will enable us to render a vital service to the individual lawyer, which in turn will greatly strengthen our association through an increase in number and in interest of its members. Let me say, parenthetically, that I do not want to be understood as claiming that we are the first bar association ever to hold meetings of this character. I am aware that one of the bar associations of New York City has for several years held similar meetings for the younger members of the bar, and I have no doubt that there have been individual associations in other parts of the country which have held such meetings. What I do believe we have discovered in Minnesota is that a state bar association may greatly increase its own strength and usefulness by promoting a series of such meetings in local bar associations throughout the state.

I realize that you have no membership problem in North Dakota, due to your statutory organization, but I do believe that if you have not already tried it, your association would render a distinct service to the local associations and to the individual lawyers of North Dakota by promoting such legal clinic meetings throughout your state. And by so doing, I believe your organization would itself reap a rich reward through increased interest on the part of your membership in the work of your association.

Now before I sit down I want to thank every one of you for extending this invitation to me to come out here, and on behalf of myself and our Association, I want to thank you for the enjoyable time I have had and want to meet you all again.

MR. CAIN: On behalf of the Association, I want to thank you, Mr. Mitchell, for your very instructive and interesting address, and want you to know that the North Dakota Bar Association will always be glad to have you or other members of your Association attend our meetings.

MR. JOHN KNAUF: I move that Mr. Mitchell's address be printed in the Bar Briefs, and that Mr. Mitchell be made an honorary member of this Association.

MR. POLLOCK: I second the motion.

MR. CAIN: It has been moved and seconded that we print the address of Mr. Mitchell and that we make him an honorary member of this Association. We will vote upon that question by rising. (Rising vote). Motion is carried.

There are still some unfinished committee reports. The first of these is "Salaries, Terms and Powers of Judges."

MR. WENZEL: There has been no report submitted.

MR. CAIN: It is quite evident that none of the Judges want their salaries raised.

The next report is on Uniform State Laws.

JUDGE BRONSON: Mr. Chairman, the committee has written a report which has been handed to the Secretary so I will not read it. I was afraid we would be submerged in this program so I have only this to state, and that is that your Committee on Uniform State Laws caused to be presented to the Legislature two uniform acts for adoption. Mr. Young was largely responsible for the passage of one, and John Williams for the other. The two acts in question were: First, the uniform Veterans Guardianship Act, introduction and passage being sought for the purpose primarily of getting State Governmental recognition of hospitals where incapacitated war veterans might be cared for; and the second act adopted was the uniform Inheritance Tax Act, providing that when one State taxes an inheritance tax of a certain character, we will exempt them if they will exempt ours. It is with the idea of reducing taxation in a certain respect and making uniform the acts of the different states.

I want to state further concerning the work of the Uniform Law Committee, that the three committeemen from this State, Mr. Young, Judge Ellsworth and myself meet annually. One of the functions of this committee, upon which I am now serving as Chairman, is to enlist the attention of the Bar Associations of the country to a support of the National Conference in the fields of law where the Bar Associations think there is a need of it. It is for this reason we have a committee in this State.

UNIFORM STATE LAWS

Your Committe upon Uniform State Laws begs to submit its annual Report as follows:

During the 1931 legislative session of our State, two Uniform State Acts proposed by the National Conference of Commissioners on Uniform State Laws were introduced through the efforts of your Committee. The Acts are: The Uniform Veterans Guardianship Act and the Uniform Reciprocal Transfer Tax Act. These were the only Uniform Acts proposed for adoption to the Legislature. Both of such Acts were adopted and are now a part of the law of this state.

Until January 1, 1931, the Uniform Reciprocal Transfer Tax Act had been adopted in 15 states and the Uniform Veterans Guardianship Act had been adopted in 29 states.

Until the Acts above mentioned had been adopted by our North Dakota Legislature, there were 14 Uniform State Acts proposed by the National Conference of Commissioners on Uniform State Laws that had previously been adopted in our state.

They are as follows:

Acknowledgements Act*; Act Regulating Traffic on Highways* (1927); Aeronautics Act (1923); Air Licensing Act (1929); Declaratory Judgments Act (1923); Desertion and Non-Support Act (1911); Firearms Act* (1923); Illegitimacy Act* (1923); Motor Vehicle Anti-Theft Act* (1927); Motor Vehicle Registration Act* (1927); Negotiable Instruments Act (1899); Proof of Statutes Act (1913); Sales Act (1917); Warehouse Receipts Act (1917).

Note: The Star indicates adoption with some modifications. The year following the Act denotes the year of adoption.

HARRISON A. BRONSON,
Chairman.

MR. BRONSON: The report made Mr. Chairman, simply covers one phase on the adoption of the two acts mentioned, and I move its adoption.

TRACY BANGS: Second the motion.

MR. CAIN: It has been moved and seconded that the report of the Committee on Uniform State Laws be adopted. All those in favor of same may signify by saying aye; those opposed; the motion is carried.

There is one more report, that of the State Bar Board.

MR. ADAMS: I will read the report.

STATE BAR BOARD

Following the established custom the State Bar Board submits to the State Bar Association a financial report for the fiscal year ending June 30th, 1931, and a brief resume of its other proceedings.

The financial report for the year is as follows:

Balance in Bar Board Fund June 30, 1930, as per records of STATE AUDITOR		$ 4,002.91
Collections between June 30, 1930 and June 30, 1931, as evidenced by Treasurer's Receipts:		
Licenses	$ 5,500.00	
Examination Fees	620.00	$6,220.00
Total		$10,222.91
Disbursements		$ 5,352.23
Balance, June 30, 1931, as per Auditor's record		$ 4,870.68

Distribution of Disbursements

State Bar Association	$ 2,355.00
Salary and Expenses, Secretary	319.51
Per Diems and Expenses, Members of Bar Board	926.08
Expenses in Disbarment proceedings	1,170.82
Postage	84.70
Printing	152.31
Clerk Hire	200.00
Judicial Council	35.34
Miscellaneous	81.21
Total	$ 5,352.23

The balance of cash on hand, $4870.68, is about the same as the average balance for the last five years. In that connection we advise that the Secretary of the board has tabulated a statement of the receipts of this Board for the last five years from which it appears that

the average receipts are $6538.27 and the average annual expenditures $6533.15. The total receipts for the five years have been $32,691.35 and the total expenditures $32,665.85. It is apparent, therefore, that there will be no particular increase in the annual cash balance so long as the average of the last five years is maintained.

In the same connection it may be interesting to note that the average amount paid annually by the Board to the State Bar Association is $2838.00; the average amount paid to the members of the Bar Board, for per diem and expenses, $1196.44; the average amount paid for disbarment proceedings $1475.97; the average paid to the Secretary of the Board for salary and clerk hire $533.00; the average for miscellaneous expense $360.00; and the average amount paid to the Judicial Council $129.85.

Each member of the Board puts in about twenty days a year at a per diem of $10.00 a day, including time spent giving the two annual examinations which takes about half the time of the members.

For the year 1929 almost $4000.00 was spent for disbarment proceedings during which year we had the Dudley Nash, the R. A. Eaton and the John H. Nevin cases, and in 1930 the Board spent less than $500.00 for disbarment proceedings, showing a wide range in expenses over two successive years.

During the past year three members of the bar have been disbarred, R. A. Eaton of Edgeley, Geo. H. Drowley of Fort Yates; and J. J. Garrity of Minot; the board has investigated six other complaints most of which are now pending, together with a large number of small matters which were disposed of without the filing of formal charges.

During the year thirty men were admitted to practice and we desire particularly to call the attention of the members of the Bar Association to these facts: Of these thirty, twenty-nine were graduates of reputable law schools; the other was a man fifty-two years of age with long practical business experience who took the examination for the second time.

Of the twenty-nine graduates of law schools twenty-six had had two or more years of college work ahead of their law school work, thus conforming to the requirements of the new law effective in 1936. There are almost no more office men now asking for admission to our Bar and we believe that the standards are gradually being raised and will result in an even better Bar that we have had heretofore.

There is considerable discussion in the Bar publications relating to over-crowding of the profession and it might seem to those who hear and read this report that there was an over-crowding of the profession in North Dakota. Probably there are more lawyers in the State than there should be but this Board cannot deliberately foreclose the right of a person having the necessary qualifications to be admitted, under our present statutes and practice. The Secretary has compiled a statement of the licenses paid during the last five years from which it ap-

pears that there is a gradual decrease in the number of practicing lawyers in the State, despite the large number of admissions the last few years. In 1927 the number paying license was 600; in 1930 only 563 and this year to July 10th only 526. Probably 20 more will pay before the end of the year. These figures, however, indicate that there has been a decrease of 50 in the number of licensed lawyers in the state during the last five years. Of course, a good many of the men who pass the examinations do not actually practice in North Dakota. The figures compiled by the Secretary show that during the last eleven years 281 lawyers have been admitted to the Bar in North Dakota, an average of 25 a year, but despite that fact the number of practicing lawyers has steadily decreased.

The Board is under obligations to members of the Bar all over the State for their courtesy and co-operation in assisting in the investigation not only of charges against other members of the Bar but of the character and standing of men and women seeking to be admitted either by examination or on motion.

S. D. ADAMS, President.
C. L. YOUNG
C. J. MURPHY

MR. BANGS: I move the report be accepted and printed.

MR. WARTNER: Second the motion.

MR. CAIN: A motion has been made and seconded that the report of Mr. Adams be accepted and printed; are there any remarks? If not, all in favor of this motion may signify by saying aye; those opposed; it is carried.

MR. KNEELAND: Before you take up another report, I have in mind something I just thought about when Judge Bronsons' report was adopted. It might have some bearing upon it, and that is one of the measures he spoke of regarding inheritance tax. That provision, I think Judge Bronson, was included in a bill amending our present inheritance tax under the statute. My impression is that there was a bill passed, as we thought, amending somewhat the inheritance tax law. It was a bill introduced at the request of the Tax Commissioners and the law which was amended by it gives an outline of property subject to the inheritance tax. It defines or outlines property of residents of this state subject to that tax in three divisions. It describes the real estate in this state, the chattels located in this state, and all intangible personal property. Several amendments were made in the House to the Bill, but that particular provision that I refer to was not amended. If you refer to the printed session laws, you will find that the matter of the intangible personal property of North Dakota is not subject to tax. The bill as introduced, as I said, contains that provision in regard to intangible personal property, and it passed the house, but through some mistake that particular line was left out, and in that shape the bill went to the Senate and passed and was signed by the Governor, and the bill passed by the Senate and signed by the Governor was never

passed by the House, and the Bill passed by the House was never passed by the Senate.

MR. CAIN: If that is true, there might not be any new law upon that subject.

There is a report on Fee Schedules submitted by Mr. Cuthbert. Would you care to have it read?

FEE SCHEDULE

As chairman of the committee on fee schedules I have corresponded with the members of the committee, also with the presidents of the various district bar associations, and find that I cannot make a satisfactory report. However, information which I have received leads me to believe that the bar schedule is violated in many instances. The unfortunate and grievous part about it is that it is violated only too often by members of the association whose standing in the profession should prevent any such misconduct. It seems impossible to bring home to the members of the profession two important facts, namely that the maintenance of the fee schedule is an economic necessity, (2) that it is ethically right and that a violation of its provisions constitutes a breach of ethics.

We are, perhaps the only vocation that is entirely devoid of any sense of honor to the fellow members of our profession in the matter of competing charges. I again wish to emphasize that the worst violators as near as I can find, are members of the profession who are outstanding leaders at the bar. I do not believe that this fight for maintentance of a schedule should be abandoned. On the contrary, I feel a good deal like Paul Jones when he said "We have not yet begun to fight." I should dislike to see a condition brought about such as they have in Canada where all charges will be fixed by law. However, unless the profession is willing to act ethically and make charges that are reasonable, I believe that there will be the final solution. It goes without saying that an undercharge is unfair competition. If it is unfair, it is unethical. The worst feature is that the man who does this must overcharge in some other line, which only too often happens, or be guilty, in the cases of poorer members of the bar, of embezzlement, which also frequently happens. I am aware that under the present status, the element of charity and inability to pay must necessarily in some cases enter in. But unfortunately, the most flagrant and wilful violation of this schedule does not come from those cases. They come from members of the bar who in order to control corporate business, such as mortgage foreclosures, are willing to disgrace the profession by making charges that are so incommensurate with the work done as to be a reproach upon the profession, and put what was once a noble and independent profession rather in the class of galley slaves.

I believe that the violators of the schedule would be easily ascertained, if sufficient pressure were brought to bear. I realize that it is difficult to censure those who have for so many years loudly proclaimed from the housetops their loyalty to ethics and yet, at the same

time, are guilty of unfair competition and unfair dealing with their fellow members of the bar. Nevertheless, the difficulty of such a situation should not militate against our action. As I have pointed out, if the matter cannot be remedied by the bar itself, then I feel that we should go to the legislature and make the violation of this feature a violation of ethics and grounds for suspension and disbarment. I believe the Bar should enter into this wholeheartedly and with a determination, let the chips fall where they may.

F. T. CUTHBERT,
Chairman.

MR. BANGS: I move that the report be printed.

MR. BRONSON: Second the motion.

MR. CAIN: All in favor of the motion signify by saying aye; those opposed; motion is carried.

Might we have a motion that the report of the Memorial Committee be printed?

MR. BANGS: I move that the report of the Memorial Committee be accepted and printed.

MR. BANGERT: Second the motion.

MR. CAIN: It has been moved and seconded that the report of the Memorial Committee be printed as a part of the proceedings. All in favor signify by saying aye; those opposed. Motion is carried.

We will next hear the report of the Resolutions Committee, Mr. Wartner, chairman.

RESOLUTIONS

Be It Resolved, that the North Dakota Bar Association in its 33rd annual meeting assembled, desire herewith publicly to express our sincere thanks to the City of Jamestown for the many courtesies extended and for the entertainment furnished to us at this meeting;

Further, we desire to thank the local Bar of Stutsman County for its efforts in making this meeting a success, and we especially recognize the fact that the outstanding success of the meeting is due in no small degree to the untiring efforts of the Hon. John Knauf, who has spared no pains and left no stone unturned to make the way clear for an enjoyable as well as a profitable session, and one which will long be remembered by every member of this Association.

Further, the Association deeply appreciates the unremitting efforts of President Traynor during the past year and in the preparation and conduct of the proceedings of this meeting.

Further, we desire to thank the lady members of the local Bar of Jamestown for their splendid entertainments for the ladies of the visiting members of the Bar.

Further, we desire to express the appreciation by the members of the Association to Dr. J. D. Carr, Superintendent of the State Hospital for the courtesies extended to the Association.

Further, we desire to extend our thanks to Mr. Charles A. Boston, of New York City, President of the National Bar Association, for his instructive and enlightening address on "The Lawyer, Layman and Law"; also to Judge Miser, President of the South Dakota State Bar Association, and to Morris B. Mitchell, President of the Minnesota State Bar Association for their messages of good will from our sister States and to all others who have assisted in making our programs a success.

Further, we desire to thank the young ladies of Jamestown and Bismarck, who so delightfully entertained the members at the open sessions of the Association and at the banquet with their vocal and musical numbers.

W. H. HUTCHINSON,
ALOYS WARTNER,
W. H. STUTSMAN, Committee.

MR. WARTNER: Mr. Chairman, I move the adoption of this report, and move that these resolutions be spread upon the minutes of the proceedings and published in the Bar Briefs.

MR. DAVIES: I second the motion.

MR. CAIN: You have heard the motion of the Chairman of the Committee; what is your wish—all those in favor of same may signify by saying aye; those opposed; the motion is carried.

MR. JOHN KNAUF: At this time I move that a resolution be spread upon the records that we are deeply indebted to Dr. J. D. Carr for the splendid afternoon's entertainment, and the fact that he has shown us some of our former friends, and some of which still are our friends in this Institution; and that we make him an honorary member of the Association, and at this time invite him to give us an address at our next regular annual meeting of this Association.

MR. WARTNER: Second the motion.

MR. CAIN: The motion is made by Mr. Knauf and seconded by Mr. Wartner which you have just heard, so I will not attempt to repeat it, but will ask what is your wish. All in favor of the motion, will vote by rising. It appears to be unanimous and I declare the motion carried.

The next order of business is that of election of officers.

MR. WEHE: I move that we take a recess of ten minutes.

MR. BANGERT: Second the motion.

MR. CAIN: Those in favor of a ten-minute recess say aye; contrary no; the no's appear to have it.

The next business of the Association is the election of officers. Nominations for President for the ensuing year are now in order.

MR. HUTCHINSON: I desire to place in nomination Hon. J. O. Hanchett, who is Vice President of our Association, for President for the coming year.

MR. ELLSWORTH: I wish to second this nomination.

MR. JOHNSTON: I also wish to second that nomination.

MR. BANGS: We all know that the custom of this Association is, that the Secretary be requested to cast the unanimous ballot for the Vice President for the office of President of our Association. I make that motion.

MR. WARTNER: I second that motion.

MR. CAIN: A motion has been made and seconded that the Secretary of the Association be instructed to cast the unanimous ballot for John O. Hanchett for President of the Association for the ensuing year. All in favor of the motion, please rise. (All stand.)

I declare Mr. John O. Hanchett, of Valley City, President for the ensuing year.

For Vice President, A. L. Netcher, of Fessenden, was nominated by Tracy R. Bangs, J. P. Cain, of Dickinson, was proposed by P. D. Norton, and W. H. Hutchinson, of LaMoure, was presented by R. H. Sherman. We dislike very much to eliminate the speechmaking at this point, because we are rather strongly of the opinion that laymen who have an opportunity to read the report would be rather favorably impressed. It is really remarkable how observing members of the profession are, how well those observations are stored away, and how graciously and readily lawyers publicly acknowledge the achievements and good qualities of their professional competitors.

Mr. Cain requested that he be permitted to withdraw his name at this time, whereupon W. H. Stutsman announced that the west would be back next year, endeavoring to elevate (not raise) Cain.

MR. NORTON: I move that the Chairman appoint three tellers to distribute the ballots.

MR. CAIN: I appoint Mr. Burnett, Mr. Adams and Tom Burke to pass the ballots and also act as tellers in counting the votes. (Ballots distributed.)

The result of the ballot was announced by the tellers:

Mr. Netcher..... 26 votes
Mr. Hutchinson..... 29 votes
Mr. Cain..... 6 votes

MR. CAIN: No one has received a majority, so the tellers will distribute ballots for a second vote. (Ballots distributed.)

The result of the second ballot was announced:

Mr. Netcher..... 26 votes
Mr. Hutchinson ..... 33 votes

MR. NETCHER: I move that the election of Judge Hutchinson be declared unanimous.

MR. STUTSMAN: Second the motion.

MR. CAIN: It has been moved and seconded that the election of Judge Hutchinson be made unanimous; all in favor of this motion signify by saying aye; those opposed; the motion is carried.

Nominations are now in order for Secretary.

For Secretary-Treasurer, Charles L. Foster, of Bismarck, was placed in nomination by L. J. Wehe; R. E. Wenzel, of Bismarck was nominated by Chas. G. Bangert, and W. F. Burnett of Fargo, was presented by S. E. Ellsworth.

Mr. Burnett stated that he did not wish to be considered as a candidate at this time.

MR. BANGERT: I move the nominations be closed.

JUDGE HUTCHINSON: Second the motion.

MR. CAIN: All those in favor of the motion that the nominations be closed may signify by saying aye; those opposed; the motion is carried.

I will appoint Mr. Stutsman, Mr. Adams and Mr. Mackoff as tellers to pass around the ballots.

The result of the ballot was:

Charles L. Foster	15
R. E. Wenzel	40
W. F. Burnett	3

Mr. Wenzel having received a majority of all the votes cast, he is declared elected Secretary-Treasurer of the Association.

MR. FOSTER: I move that the election of Mr. Wenzel be declared unanimous.

MR. WARTNER: Second the motion.

MR. CAIN: The motion has been made and seconded that the election of Mr. Wenzel be made unanimous; all those in favor of same may signify by saying aye; those opposed; it is carried.

MR. NILLES: I am not authorized by our Bar to extend this invitation to hold our 1932 meeting at Fargo, as unfortunately during the summer season, we have not had a meeting of our local Bar. However, I have been requested by a number of prominent business men of Fargo to extend to this Association an invitation to hold our annual convention at Fargo in 1932, so I ask before any action is taken in fixing our 1932 meeting place, that the Fargo Bar be given an opportunity to take this matter up with you.

MR. FOSTER: I have been requested to ask that the next annual meeting be held at Bismarck, so I ask that Bismarck be considered for the next annual meeting of this Association.

MR. CAIN: I understand that this matter is taken care of by the Executive Committee, but at the meeting we accept invitations from the various cities, so they have them to make a choice from.

MR. WENZEL: The policy during the past four or five years has been, if possible, to select alternately a town on the Northern Pacific and a town on the Great Northern. There was a number of years when the meetings were distributed over one section of the state, hence this policy was adopted. Of course, if there are no invitations from the northern part of the state, the committee will have none to consider.

MR. MACKOFF: We have not had an opportunity to take this matter up, but in the event we can make proper arrangements, we wish to leave the invitation on the part of Dickinson open.

MR. CAIN: I know of nothing further to come up at this meeting, and immediately after the adjournment, you will be taken for a ride around and through the City of Jamestown. I want to thank you for the courtesy extended to me this afternoon and in bearing with me in the many mistakes I made in endeavoring to conduct this meeting. Is there a motion to adjourn?

(A motion was duly made, seconded and carried that the meeting adjourn.)

In Memoriam