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Proceedings of the State Bar Association, at Its Annual Meeting, Held at Minot, North Dakota, September 5 and 6, 1928

North Dakota State Bar Association

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PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT ITS
ANNUAL MEETING, HELD AT MINOT, NORTH
DAKOTA, SEPTEMBER 5 AND 6, 1928

Hon. Aubrey Lawrence, Presiding.

The meeting opened with singing of "America" by the Association, accompanied on the piano by Attorney "Cap" Aaker of Minot.

Rev. George H. Swift of the Episcopal Church of Minot pronounced the invocation, as follows:

INVOCATION

O God of wisdom and justice, we ask Thy blessing upon this meeting of the Bar Association of North Dakota. We thank Thee for the blessing of law, order and justice. May all those to whom is entrusted the meting out of justice in this State and Nation be guided in their work by the Supreme Judge of all men. May they have the courage always to stand for the right, even when public opinion clamors for a different decision.

Direct the proceedings of this meeting in Thy love and favor and as it has begun in recognition of Thee, may it continue and end in glorifying Thy holy name. Amen.

ADDRESS OF WELCOME

HONORABLE JAMES JOHNSON

President Ward County Bar Association

Mr. President, and Members of the Bar Association of this State of North Dakota: Some time ago when your Executive Committee selected our town for your annual meeting this year, the "boys" were so pleased about it that we called a meeting and had a swell dinner and we then selected certain committees, of which John Lewis was the general chairman, to see that things were fixed up so you could have a good time here, and everything seemed to go pretty smooth until a short time ago when I was notified that I was to appear here before you and tell you how pleased we are to have you with us, or, in other words, the Judge said, "Make an address of welcome."

Well, I told him, he surely made a poor selection, and he said that was the general verdict of the committee, but he said, "You are getting so old, you aren't much good for anything else, you haven't much to do and they won't pay much attention to what you say anyhow."

Well, I thanked him for the honor and privilege, and for his good advice, because I do consider it an honor and privilege, and a great privilege, to be permitted to appear before an Association whose members have done more than any other body of men to spread the testimony of North Dakota, and I do not refer to the time either when we became one of the sister group.

I refer to the time beyond that when we first became part of the Dakota Territory. At that time, you probably remember, and if

you do not, I am going to tell you, there were hardly any citizens in what is known now as the State of North Dakota.

There were just a few military posts. There was, so to speak, no settlement here until 1869 or 1870, when the bridge was built between Minnesota and North Dakota, down at Fargo, and the Northern Pacific came across the Red River of the North; but not until the winter of 1875 and '76 did the train run between Fargo and Bismarck, and the settlement was pretty slow in coming in here after the N. P. had gotten across.

Of course, there are always a few sturdy pioneers that come to the front and help blaze trails and break the roads, but what can be said about them, the same can be said about the attorneys who came and hung out their shingles in those little villages, the border and the frontier, because they came here with the same purpose as the fellow who came with the covered wagon, namely, to better themselves financially, if you please, and then to grow up with the country.

Now you might say, who are those attorneys that would do that. I will name a few of them for you.

Down in Fargo, there was Spaulding and Colonel Ball, who moved up from Detroit Lakes to Fargo in the seventies. Hillard and Major Bach and Spaulding became members of the Constitutional Convention and took a leading part there. Hillard closed his office and went with the boys over to the Philippines.

Major Bach probably did more than any one man during the seventies and early eighties in helping the boys of the Civil War to get their pensions fixed up. He had a special privilege in Congress. He had the freedom of the floor down at Washington.

Then we have Purcell, McCumber and Wolfe. Wolfe became District Judge. McCumber went to the United States Senate, and Purcell was one of the leading members of the Constitutional Convention and led the fight when they were trying to eliminate the Judges of the District Court.

You can say now in looking upon their deeds, it wasn't very much of a fight, but there were more arguments down there over that section of the Constitution than any other one. Twice or three times it passed before they could put the clincher on it, but always somebody got a rehearing and finally it passed the way we got it now.

At Lisbon, there was no railroad and they didn't start up there until in '78. Shortly after that Pat Rorick, Frank Allen and Turner and R. M. Stevens put up their shingles there. Rorick has been District Attorney up there, Allen, District Judge, and Stevens was one of the members of the Constitutional Convention.

At Jamestown, we had Camp, Johnson Nichols and Brother Gross. Brother Gross was the last United States Judge in the territorial days. Camp was a member of the Constitutional Convention and did good and great work there.

Johnson Nichols was one of those far-reaching fellows and in the fall of '82 he sent a fellow by the name of Sam Nichols 150 miles

into the northwestern part of the territory to drive a stake into the ground and nail a board upon it, upon which was written, "Scriptown, for particulars inquire at the office of Johnson Nichols, Jamestown."

In Bismarck, we had Holmbeck, Register, Williams, Winchester, and of course, there were others. I am just naming a few of them.

Winchester was Judge there for a number of years. Holmbeck was called down to Duluth and became legal adviser of a great mining corporation. Williams was one of the first legislators of the Territory of North Dakota. He was also a valuable member of the Constitutional Convention over at Mandan.

Brother Lang was the attorney over there in those days and had the honor of prosecuting Marquis De Mores, who in '84 happened to kill a fellow out in the Little Missouri Valley, but, before that took place, they say the cow rustlers had threatened the Marquis first, but the Marquis was too quick on the draw and the other fellow dropped. He was tried in '85 at Bismarck, got a change of venue from Morton County over to Burleigh County, and it only took the jury about twenty minutes to declare him not guilty. The Marquis was one of those fellows that built what we call the slaughterhouse over on the hill above the Little Missouri, or a packing plant, and he and Roosevelt were there at the same time and they incurred the enmity of those horse thieves and cattle rustlers.

Well, coming back, we find Judge Ames at Mayville and at Hillsboro were Judge Shelby and Judge Carmody. Carmody became Supreme Court Judge and Shelby United States District Attorney.

At Grand Forks, we have Tracy Bangs, and Carruthers and Cochrane. Carruthers, if I remember correctly, died while he held the office of County Judge. Cochrane became United States Judge and Tracy Bangs United States District Attorney. I consider Tracy Bangs the outstanding man of the Bar of North Dakota for the past thirty years.

Going up a little north of there, we find Brother Kneeshaw, who has held the bench longer than any other man in the State of North Dakota, and it would be a pleasure to me to live long enough to see him administer justice as long as he has already.

At Grafton we find Fraine. At Forest River there is Mr. Peterson and at Lakota, we find Frich and our M. N. Johnson. Frich was a prosecuting attorney for a great many years in Nelson County. Johnson was a member of the Constitutional Convention. He was elected to Congress, the United States Senate, and during the argument of the "sixteen-to-one" period, he made a speech in the House of Representatives that the United States would maintain specie payment, if a dollar had to be as big as a cartwheel. By that he earned the name they called him for a while, "Cartwheel" Johnson, but when they had the real argument upon the McKenzie affair, when the members were limited to five and ten minute speeches, that man Johnson, who came from North Dakota, was allowed an unlimited time to finish his arguments, they were so interested in him. After that you never heard any more about "Cartwheel" Johnson.

Then, going up to Devils Lake, there we had Judge McGee, Morgan and Jim O'Brien. McGee went down to Minneapolis and was United States Judge. Morgan, you all know, was District Judge and served on the Supreme Bench until he passed the River Jordan. Jim O'Brien was one of the leading members of the Constitutional Convention.

Going north of that place, up into the Turtle Mountains, about that time, I came across a young fellow by the name of John Burke. It was a hot day up there and I told him I hadn't had any water to drink, and asked him for some. He said, "We don't use that up here, but we got some mountain-dew," so I had a drink of that. He says, "That is genuine," and I says, "I don't know whether it is but let me have another one," and I do honestly believe that if I had been up there I might have been Governor and probably a United States Treasurer, and then come back and sat on the Supreme Bench here at home. That is what a fellow can do when he gets the right material into him.

We go down to Bottineau and there we have Noble. He was elected to the Constitutional Convention and he took quite a part in it. There was also Judge Goss, who later became a Supreme Court Judge, and Judge Burr. Judge Burr for a long time served as District Judge and then he got on the Supreme Bench, and if I have got my say about it, boys, he will stay there, and his colleagues with him should do the same.

It is pretty hard to remember all of these fellows. I have forgotten one in particular. There was Batholomew, who was in La Moure, who was our first Supreme Court Judge.

And Vic Corliss at Grand Forks, he was another one of the first judges, and a good looking man from Jamestown, I can't think of his name.

There are others, but I am just calling you young fellows' attention to the standard of those old fellows, and it is up to you to keep up that standard.

I have had quite a number of fellows come to me and give me advice about this talk I was supposed to give. Brother Lambert came into my office when he learned I was to give this address, and when he leans against the Bar of Justice, he takes up about as much room as any of us. He says, "Jim, you musn't forget to get the key and deliver it to them, because they are supposed to have that while here in town, not that I care so much about it, but you ought to get the key."

So I went over to Halvor L. Halvorson's office—he is the city attorney, and he is the custodian of the key, and asked him for it. He says, "Well, I am awfully sorry, of course you can have the key, but there hasn't been a thing to use it for since the Sons of Norway had their convention here."

Well, my time is about up, and the local barristers here, together with the Bar Association of the Fifth Judicial District, the Kiwanians, the Lions, the Rotarians, and the Commercial Club, together with every citizen in Minot, joins me in bidding you, Mr. President, and

everybody that is here, welcome to our city, and we will do our best to make this a pleasant stay for you while you are in our city.

If there is anything that is missing, it is because we have made a mistake in judgment, that is all. It is our prayer and our wish that when your labors are done here, that you may have a safe return to your homes.

THE PRESIDENT: The response to the address of welcome will be delivered by Mr. Lanier of Jamestown.

P. W. LANIER: Mr. President and Members of the North Dakota Bar, and Mr. Johnson, who has so wonderfully welcomed us to the city, and to the citizens of your wonderful little city of Minot:

Indeed it is a pleasure, I assure you, for every North Dakotan to come to Minot at any time, and particularly is it a pleasure to come under the auspicious conditions and circumstances as those that now prevail.

I am always glad personally to get to Minot, but on my visit here on this particular trip, I was especially glad to set my feet upon the boundaries and confines of Minot territory. I made my first trip in an airplane from Bismarck to Minot, and when that boat stopped, believe me, I was glad to step out and get the feel of the ground under my feet once more. I was the only passenger on that ship—it was a four-passenger boat. I was sitting way in the back and the driver was up there all to himself, and there were more peculiar noises that I could not ask about on that trip than anything that ever happened to me.

Just why I have been selected for this delightful privilege and pleasure, I do not know. Perhaps I might explain it by telling a little story:

Down in Tennessee, my native state, Brother Taylor was Governor. He had the reputation of being "the pardoning governor." He could not resist the tears of the widows, sisters and relatives of the inmates of that big institution. There was a fellow sent up for stealing a ham, and when he had served thirty days, the widow of this old negro came around to see the Governor, and she said, "Governor Taylor, he has been in jail a long time, and I want Sam out."

The Governor said: "Well, Auntie, was Sam guilty, do you think?"

She says, "Yes, sir, Mr. Governor, he was guilty all right."

"Well, now, Auntie," the Governor said, "outside of stealing ham, what kind of a negro is he anyway?"

"Well, Mr. Governor," she said, "I wants to tell what the facts is. I don't want to mislead you, but he is the most trifling nigger in this whole country."

"Well, then, why do you want me to pardon him?" asked the Governor.

She thought a minute, and then said, "Well Governor, the facts of the case is the ham is all gone."

Mr. President, it seems to me that you could have gotten some one to give this responding message, and do it right.

We lawyers, visiting you people of Minot as we do, feel like we come as the greatest profession of all, save and except, perhaps, the ministry, and understand I put in perhaps, because I think there is a likeness between the work of the two in many respects.

We come to mix and to mingle here, and for thought and consideration, and action, upon those things which have a peculiar call upon us as students of the law and civil government, and I would like to state to Mr. Johnson, as the representative of the Minot citizens, that I hope during the meetings of this Bar Association, that the Minot people will come out and attend our programs and get an inspiration from the work that is going to be put on here.

The lawyers have played the most important parts in the foundation and the maintenance of all civilized governments, and most extraordinary of all, has been the part played by them in the Government of the United States from inception to date.

Our responsibility is very great indeed, and it is greater today than ever before. We have a country, just think of it, men, only one hundred and fifty years of age, in years a mere infant, while in power a veritable giant. We have grown in that brief period of time to a place of great power, and a position among the nations of the earth from which we can gaze out over the heads of all other countries, and we have grown to this place of position and power upon those fundamentals in our Constitution guaranteeing life, liberty and the pursuit of happiness, freedom of press, freedom of speech, and freedom of religion, and during all of the time that we have stood upon these fundamentals, the bar of the court has been the greatest stalwart protector of that governmental document.

In recent years, I will say within twenty-five years, there have been more threats and more attacks made upon those fundamentals than any other period of our country's history, and I believe that no one knows the truth of this statement better than a convention of lawyers, so I say to the people of Minot, the lawyers realize here now, today, their responsibility to you and to the state and to the nation.

Freedom of speech, freedom of press, free discussion, those things that have meant so much for our country, have at all times been supported and upheld by our American Bar, so I say to you at this time, and particularly to the citizens of the Minot territory, we feel our responsibility. We feel it, indeed, and we trust that in our deliberations we may think straight, act wisely, and for the best interests of all the people.

We know that the practical every day ordinary lawyers mean much to their community. We know that as lawyers we have the task of moulding sentiment soundly. With the recognition of this duty that is upon us, with this meeting now beginning, let us see that public opinion in the forming of which we have to play a part goes out, let it have free course, let it open the eyes of the blind, let it open the ears of the deaf, and let it proclaim what we as lawyers think of the human principles of liberty guaranteed by our constitution upon

which we have written a turbulent sea of many oppositions into a harbor of safety and a land of plenty and prosperity.

I think it would be only fitting, Mr. President, at this time to refer to a legend that existed among a tribe of Indians in Mississippi. They believed that when one of their number died, that if the friends of that one would catch a flying singing bird and bind around it messages of love, and take it to the grave of the departed, and there loosen it, that it would wing its way out into the Great Beyond, across that opalescent sea, and on to the happy hunting ground, and there make delivery of these messages.

At this time, friends, let us catch the birds that are singing songs of love, in our hearts and memories, and wrap around them, as it were, assurances of our lasting determination to stand behind that fundamental doctrine that has made this country so great. Let us loosen the birds and believe they will wing their way into the Great Beyond through the Pearly Gates into the City of Gold, there to make delivery to Washington, Jefferson, Lincoln, Wilson, Roosevelt, of these assurances: That the American Bar is now standing and will continue to stand for those things for which they lived and fought and died.

MR. PRESIDENT: At this time I wish to appoint Fred Cuthbert, Tracy Bangs and C. L. Young on a committee to confer with Mr. Cahill of Callaghan & Company on a new digest for North Dakota.

The next order of business is the Report of the Secretary and Treasurer.

(See Appendix for Report.)

MR. BENSON: May I move that the Report of the Secretary be accepted and entered into the proceedings instead of read, although we would like to have the Secretary make comments and call our attention to any particular places that he desires confirmation and discussion.

(Motion duly seconded and unanimously carried.)

A motion was duly made, seconded and carried adopting the Report of the Executive Committee.

(See Appendix for Report.)

Music was furnished by Paul Malone singing several solos, accompanied on the piano by his brother, Carl Wilson.

MR. PRESIDENT: According to the plan adopted and which we all feel to be a conservation of time, many of the reports are published. The first report is on "Citizenship and Americanization," by O. B. Herigstad. In this report is contained a recommendation. I presume the proper order of business will be to consider that recommendation at this time.

MR. HERIGSTAD: There is contained in this report a recommendation that the conducting of an Essay Contest be made an annual affair. In spite of the fact this contest was put on at a late date this year, I consider it quite a success owing to the very generous assistance of the members throughout the country and I believe the very splendid

work ought to be continued. I believe the main objective of our Bar Association is to endeavor to raise the standard of American citizenship in our state, and I can think of no better way of doing it than by instilling in our youth of today these principles, and I believe it will have far-reaching influence. I recommend in this report that this be made an annual affair; that the appropriation for prizes be increased, and that the contest be put on as early in the year as possible. I move the adoption of this report.

(Motion duly seconded and unanimously carried.)

The President then read a letter from Helen Pravda, the young lady who won the first prize in the contest.

MR. MCINTYRE: At this time I want to move a vote of thanks to Mr. Herigstad and his committee for the fine piece of work they did. It required a lot of work. We tried it a year ago and the committee fell flat. We did not get things under way, and I appreciate the work Mr. Herigstad and the committee have done.

MR. KALDOR: Second the motion. Carried unanimously by a rising vote.

Miss Helen Pravda was then introduced by Mr. Herigstad, after which she read the winning essay on the Constitution.

(See Appendix for Essay.)

Hon. Frederick F. Faville was introduced by the President and responded as follows:

MR. FAVILLE: It is needless to say I am deeply touched by the warmth of this greeting. I hope to meet you all this afternoon. I am reminded of the story of the man who attended the church service, being somewhat of a stranger. The pastor announced that he would like to have the Board remain after the service. After the service everyone left, except this man, who remained in his seat. The preacher came back and said, "You are a stranger here?" "Yes, sir." "Is there anything I can do for you?" the preacher inquired. "No, but you told all the bored to remain and I never was so damned bored in all my life." Now that is why I am here. My challenge to you is rather interesting, to come out this afternoon, in the face of that, and see how badly you will be bored.

MR. KNAUF: At this time, I move a vote of thanks be extended by the Bar Association to the young lady who has so splendidly presented the winning essay on the Constitution, and that a rising vote be given in her honor.

Motion was seconded by Mr. Johnson and unanimously carried.

MR. KNAUF: For the sake of inspiration among other students in North Dakota during the coming year when this contest will be carried on, I move you, sir, that the Secretary and the Chairman of the Americanization Committee be instructed and empowered to have this splendid essay published in all of the newspapers in the State of North Dakota for Constitution Week, beginning September 17th.

Motion seconded by Mr. Taylor.

MR. WENZEL: That is rather a broad motion. I do not know just how many papers there are but I presume if it is going to be printed and paid for, it would be quite an item.

MR. BAGLEY: I would move as an amendment to the previous motion that a copy of the Prize Winning Essay be sent to each of the papers in the State. Motion seconded.

Motion as amended duly put and unanimously carried.

(This direction was complied with by the Secretary before the close of the meeting.)

MR. PRESIDENT: The next order of business is the report of the Committee on "Legal Education and Admission to the Bar."

MR. GOSS: Inasmuch as this is a matter that has been before this Bar Association annually for several years past, and as it has already received like consideration from the American Bar Association annually, and this report constructively embodies the recommendations of the National Bar Association, I move that the reading of the report be dispensed with, and that the report as printed be adopted.

MR. JOHNSON: Second the motion. Carried.

(See Appendix for Report.)

MR. PRESIDENT: We next have "Jurisprudence and Law Reform." Mr. Horace Bagley, Chairman. May I ask if you desire to take any action on this report?

JUDGE BAGLEY: I might say that the recommendation with regard to the enforcement of state and federal judgments and particularly that part recommending that upon filing authenticated copy of his appointment, the guardian or administrator or executor be recognized in this state, is the most important recommendation from the professional standpoint. I presume that the recommendation as made here is not concurred in, at least, by Mr. Traynor of Devils Lake, of the Committee. I have had no objections from any of the other members of the committee with respect to the other recommendations.

I want to express my thanks particularly to Judge Wolfe for assistance in preparing this report. The recommendations are largely those made to me by Judge Wolfe and Judge Pugh.

PRESIDENT LAWRENCE: Where you use the term "suggest," is that deemed as a recommendation?

JUDGE BAGLEY: My idea was that these recommendations are not possible of being put into immediate effect. They were largely suggestions to lead the members of the Association to give their thoughts to the subjects mentioned in order that progressively we might achieve these hoped for reforms. I do not think that any of the recommendations are of any immediate urgency. However, I call attention to the recommendation with regard to the so-called heirship statute. It is my experience that the heirship proceedings, so-called, are being abused by a good many practitioners in this state, that is, they are recommending to their clients that by securing a decree

of heirship they can accomplish the same purpose as by the probate of the estate. From time immemorial, there have been courts that take the jurisdiction of the thing itself and not of the person, and I am very much afraid that many of these decrees of heirship are not accomplishing the purpose which they are intended to accomplish. Recently there was an abstract submitted to me. The title to the land was based upon a decree of heirship. The decree of heirship named the widow and several minors as being heirs-at-law. I said to the attorney who had secured the decree of heirship, "Even if I pass this decree as giving good title, at least, you will have to give me a deed from the widow, have a guardian appointed for the minors, and carry out the probate proceedings to have the guardian convey their share." He said "Oh, no, you know the man died leaving a will which gave everything to the widow. All you will need to do is get a deed from her." That condition, where a young lawyer is in defense of title, is somewhat serious. I think at the next session of the Legislature, something should be done to either abolish the heirship proceedings, or at least to clarify them so we will know exactly the circumstances which that statute is intended to cover and does cover.

MR. CAMPBELL: I am wondering if the committee does not feel recommendations on the Education of the Bar would sufficiently cover that phase of the matter.

MR. PRESIDENT: It appears to me we have several very important recommendations on this report. If you gentlemen are not ready to consider them at this time, this report might be taken up some other time.

MR. BAGLEY: May I move that the report be adopted and the recommendations be referred to the Legislative Committee? Seconded and carried.

(See Appendix for Report.)

MR. PRESIDENT: We now have the report on "Cooperation with the Press."

MR. WENZEL: There is no report on file and I was informed by some third or fourth step methods that there would be no report filed.

MR. PRESIDENT: We will then proceed to "Comparative Law," Judge Burr, Chairman.

MR. WENZEL: That is printed in the August issue of Bar Briefs and I understand no recommendations are made in that report, Mr. President. However, there is a letter from Judge Burr, wherein he says this:

September 3, 1928.

Dear Sir,

I am enclosing the original of the report of the Committee on Comparative Law. Regret I cannot be at this meeting. Some of the members of the committee will be there. May I ask you to state to the Association that some

of the members believe this Committee is unnecessary as the work could be done as well by the Committee on Legislation.

Yours very truly,
A. G. BURR.

(See Appendix for Report.)

MR. LAMBERT: I move that the report be filed and adopted.

Motion duly seconded and carried.

MR. PRESIDENT: We next have the report on "Local Organizations," Clyde Duffy, Chairman.

MR. WENZEL: That is in the same situation as the report on the "Cooperation with the Press." My information is not quite third or fourth hand this time. It comes direct from Mr. Fred Cuthbert.

MR. CUTHBERT: I might suggest, if the court please, the work on that committee has been very hard for the past year. A year or so ago there were four or five good organizations going, but I am sorry to say there has been little done this last year. We have built up in our district, the Lake Region Bar Association, a very superior organization, even to the state organization. Outside of that I am afraid the condition has gone backwards. I am afraid there have not been any new districts organized. I hope that during the coming year, after having watched the progress and benefits derived from live district organizations, that the whole state may be organized. May I say this as former chairman of the committee?

MR. PRESIDENT: If we could have district associations of that kind, our work would certainly be very much furthered.

MR. Vice President Lewis, will you please take the chair at this time?

MR. LEWIS: The next on the program is the President's Address. It is always a great pleasure to listen to the President's Address. This year we are looking forward to a special pleasure in hearing a man who has always been a leader among us, with high ideals, high standards in every way, our own Aubrey Lawrence:

(See Appendix for President's Address.)

MR. LEWIS: It would be presumptuous of me to attempt to make any comments on the inspiring address just given. It will be printed in the proceedings of the meeting as a matter of course.

Motion was made, seconded and carried to adjourn the morning session.

AFTERNOON SESSION

Music by Miss White accompanied on the piano by Mrs. Zarones.

JOHN BURKE: Ladies and gentlemen of the North Dakota Bar Association: For forty years I have worn the clothes of North Dakota in practically every state in the union, but still my friends seems to think that my heart is way down in Iowa, and that when ever I meet anyone from Iowa, that we immediately start to organize a mutual admiration society, and so now it doesn't make any difference

to me whether it is a man from Iowa or from Missouri, or from any other state in this great union of ours, I would be just the same to him, because, as Aubrey Lawrence says, "I want to be decent." That is all, and we do not always organize mutual admiration societies either. When I first came west, I was called to Fergus Falls to assist upon the defense in a murder case, and I came in on the morning of the trial, and modestly took my place alongside the local counsel for the defense. On the other side of the counsel table, the prosecuting attorney came in and sat down, and presently the Attorney General, who was Moses Clapp at that time, afterwards United States Senator, and sat down near the end of the table where I was sitting. There was quite a number of attorneys for the defendant, and the defendant was crowded back quite a ways. I want to make that clear and plain to each of you, that the defendant was crowded back quite a way from where we were sitting, and I noticed that every once in a while Clapp would turn around and look at me. Finally his curiosity got the better of him, and he said: "Where did you come from to this state?" "Why, I came from Iowa," I said. He glanced at me for a moment, and said, "That is a remarkable coincidence, you are the third man from Iowa that I have prosecuted for murder in this county." Well, now, Judge Faville and I have organized a little mutual admiration party, because in conversation with him, I find that he is an old friend of a very dear brother of mine, and they knew each other way back in the early days down in Iowa, and I don't want you to take this reference to the little episode over here in Minnesota in connection with anything that I might say about Judge Faville, and the fact that I came over here yesterday in the custody of the Warden of the Penitentiary, I do not think that ought to be considered at all by Judge Faville on this case. It has been a great pleasure to me to meet Judge Faville on account of mutual acquaintances, and I think that we owe him a debt of gratitude for coming up here on this occasion to speak, and while it is true that every time an attorney cites an Iowa case to our court, the other judges look over to me and smile, while that is true, I notice that when the Bar Association wants somebody to come up here to make a real speech, they send down to Iowa to get him, and so I am pleased to introduce to you, not the third man from Iowa, but Judge Faville of the Supreme Court of Iowa.

(See Appendix for Address.)

MR. LEWIS: I move that a rising vote of thanks be extended to Judge Faville for his very splendid and inspiring address, and that he be made an honorary member of the North Dakota Bar Association.

MR. NESTOS: Second the motion. Unanimously carried.

MR. PRESIDENT: The first order of business which was left over by instructions at the meeting last year is the Report of the Criminal Law Committee, headed by Attorney General George F. Shafer.

MR. CUTHBERT: I move that the report be accepted and filed and in so far as the recommendations are concerned that they be referred to the Legislative Committee. This motion was seconded.

MR. MCINTYRE: Does that carry with it the endorsement by the Association of the recommendations, or is it the same question raised as this morning?

MR. PRESIDENT: It is not an endorsement so far as the Association is concerned.

SECRETARY WENZEL: Mr. President, it seems to me very unfortunate that this report should be handled in this manner at this time. You will recall very distinctly that the matter was brought to the attention of this Association a year ago, hurriedly, because of the lack of time, necessarily so, and because of that fact and that alone, a motion was made directing the Executive Committee to place this on the calendar for three o'clock on the opening day of this meeting. I am very sorry that the Attorney General, the man at the head of this committee, is not here, but I had a talk with Mr. Shafer just a few days ago. He told me he spent a day or so in Grand Forks in consultation with other members, and particularly with Tracy R. Bangs, who was one of the main leaders in opposition to the adoption of the report last year, and the understanding I got from the conversation with Attorney General Shafer was that Mr. Bangs was thoroughly convinced of the advisability of adopting the recommendations made by this committee a year ago. Not only that, but he would take it upon his shoulders to be in attendance at the annual meeting and advocate the adoption of this report and the recommendations in it. I want to get that to you because for some unaccountable reason Mr. Bangs is not here at this time. I understood he was to be here but he is not here and the matter comes before you now without the presence of the chairman of the committee or of the man who had intimated to the chairman that he would be here to advocate its adoption. I think it should be known to you so that you would not pass over it.

MR. CUTHBERT: As far as the report is concerned, I was one of those strenuously objecting to the adoption of the report last year. Much that was contained in the report and which I objected to, and which I felt was not for the best interests of the state, has been left out. While in my criminal practice, for the most part, I am on the defense, I have never allowed that to influence me in any way in my citizenship. I feel that so far as I am personally concerned, there is nothing recommended in the report that I should not endorse, even including capital punishment. I do not believe that all homicides are murders. I do believe that capital punishment is the greatest deterrent that we have against willful murder. I am absolutely in favor as a citizen of North Dakota, though I should hate to have any of my clients hung. Now I do not know whether it would be well to put it off or not. Personally, engagements require me to go home on No. 1 in the morning. I understand that Mr. Torson of Rugby, who was very much opposed to capital punishment, will be here to deliver an address, but he can't reach here before tomorrow. I do not know how this Bar feels individually, but my idea was, and I suppose that is what the chairman would like to know, that the Legislative Committee, if they function as they should function, will present this matter with the arguments and that sort of thing to the Legislature, and when all is said and done, I doubt whether an endorsement by this Bar Association cuts any figure with the Legislature at all, except possibly to be an extra stone around the neck of the men who try to put anything across endorsed by the Association. If it is the sense of this meeting that this should be accepted, I would amend my motion that the report be accepted.

MR. MCINTYRE: Mr. President, my thought was just this, that if we are going to simply accept and file reports of our committees, we might as well do away with committees. If we are simply going to sit and pat the committee on the back and say, "We will take your report and file it and refer it to somebody else, it looks to me as though we might as well wipe out committees who come here and meet, appoint a Legislative Committee, and turn over things to them to decide. In other words, just simply delegate the powers of the Association to the Legislative Committee. That is the thing of which I disapprove. I am not speaking of the merits or demerits of capital punishment. I do not know whether I am in favor of, or against it. There are certain things in the report I am in favor of, things I think this Association should not hesitate to go on record to approve, particularly the recommendations of the Attorney General and committee as to the improvement of means for apprehending persons either accused of crime, or suspected of having committed a crime. I am persuaded, gentlemen, that we have lost sight of one of the important factors in the enforcement of our criminal law, namely, the adequate apprehension of criminals. In these days, the development of good roads, the development of the automobile, and now the flying machine, it is putting us in the place where our means of arresting and apprehending criminals is lagging far behind the ingenuity of the criminal in escaping and it seems to me the law is weak, our law providing for these officers and for the apprehension of criminals. That certainly would not interfere with my friend Cuthbert defending a criminal. He ought to favor it, or any law, that would make more certain the apprehension of criminals. It would add materially to the fees of those known as criminal lawyers. I am not saying anything against the criminal law. We all ought to be in favor of it, in other words, of any law which would make more certain the apprehension of criminals, and that is one of the things which was emphasized in the Attorney General's report. I agree with Fred Cuthbert that any recommendations which the Bar Association might make is not necessarily a help to the securing of an enactment of a statute, but let us not be afraid to go on record, and state what we favor. Let us not delegate that to the Legislative Committee.

MR. CUTHBERT: Might I just say one more word and then I will promise not to speak again on the subject. I want to assure my friend, Brother McIntyre, that at least for twenty-five years I have been in public and in private pointing out that our present system was a blotch on civilization, our system of apprehending criminals, or attempting to apprehend criminals. It has resulted not in apprehending and prosecuting the criminals, but only too often in the apprehension and prosecution of a fellow who possibly might have committed the crime. There is no civilized country that has such an inane and insane system of attempting to apprehend criminals and detect and prove crime as the forty-eight states of the United States of America. What do we start out with? We go out here in the country, we elect a man sheriff. The detection and apprehension of criminals is one of the most subtle, one of the deepest, one of the most scholastic professions there is, yet we elect a man because he can spit tobacco juice a little farther and shake hands a little better than his neighbors. Under the Constitution, just when he gets so he can tell a preacher from a bootlegger, most of them can't, at the end of four years, under the Constitution, he is

automatically put out of office. His jurisdiction is limited to his county. A bank is held up in Benson County and if he runs across the bridge, he is in Ramsey County. The sheriff telephones over to the sheriff of Ramsey County and he is possibly out serving some civil summons. By the time the sheriff of Ramsey County gets back, he is in Nelson County. If we had a system of civil service, a state constabulary, cooperating and coordinating with one head, and then adopt laws which would lead to reciprocity between states in apprehending criminals, then we would be doing something instead of monkeying around, if you will excuse the parlance, as we are, not attempting to reach at the fundamentals. There isn't a thing in here about this abomination that we have, that exists and continues to exist, a good deal like our system that we still maintain of justice of the peace, where there is no justice. And I see that our Judicial Council is attempting to abolish an appeal from a Justice of the Peace, which means, as everyone knows, "Judgment for the Plaintiff," and has ever since we have been in Justice Court. I do feel just this way about these things, and though it is a fact that I occasionally defend a criminal, possibly more than my friend does, on the other hand, I prosecute a few of them, too. I have been State's Attorney, and now as a matter of going on record, I am going to change my motion and ask that this Association endorse the recommendations as far as they go. I would like then to have some one get up with a good deal of courage and move a resolution that the Legislative Committee propose a bill or constitutional amendment, and endorse it. We have got to start somewhere, for the betterment of the present evil of attempting to elect sheriffs to apprehend criminals. A sheriff never caught a criminal in his life. Oh, maybe once in a while, but very seldom.

MR. McKENNA: I would like to second the amended motion as made by Mr. Cuthbert. I feel sure that the members of this Bar Association realize that this report of Attorney General Shafer has been the subject of extensive study on his part and as a result of the study and his experience as Attorney General, and as State's Attorney combined, that these recommendations he has made here are a result of his study and experience. This report has been submitted to some of the best criminal lawyers in the state for their examination, and now when these men say they are satisfied with the report as it is, if the moral support of the State Bar Association is worth anything to the Legislature, and to the Legislative Committee and Attorney General and perhaps our future Governor of this state, we ought to give that approval now.

MR. GOSS: I take pleasure in supporting the suggestions just made. Our system of criminal law has come to us step by step to what it is at the present time, with the good features and the defects. I can't really agree with Brother Cuthbert in his criticism of the sheriffs. So far as our local sheriff is concerned here, we have a reasonable degree of substantial enforcement in the sheriff's office. For instance, in the last year we have had a murder committed here and splendid work was done, and the man apprehended and put in the penitentiary within a week. Our local man is entitled to a great deal of commendation for what was done there. The same is true, I believe, with our police system. They are not experts. There is no need of conflicting that condition in the minds of the people with any report

of the Attorney General and it seems to me that it is about time for this Bar Association to go unequivocally, and as unanimously as you can get any body of men, and support this thing that has been before us so long here, and which is recommended by some of the best enforcement officers, state's attorneys, and our attorney generals that we have ever had in this state, and I take pleasure in seconding the motion.

MR. PRESIDENT: I think the Chair may, with propriety, without joining in the discussion, make an explanation. When it was considered best to print the reports of the committee, I do not suppose it was intended that would end the life of the committee or terminate the subject. The purpose of the printing of the report was to give you beforehand information on the report itself, and of the business of the Association, which was to be under discussion, for either adoption or rejection of the report.

MR. CAMPBELL: I would like to move to amend the motion, that the same be accepted and filed, but that the adoption of the third recommendation with reference to restoring capital punishment be postponed until tomorrow. Now, in connection with this report, personally I see in the other recommendations nothing that we have any reason to object to whatsoever. I am heartily in favor of Mr. Cuthbert's suggestion. I do not think he intended to criticize any individual or individuals in his suggestions, that our methods of apprehending criminals reflected on them. We cannot expect so much from those we elect for a short term, picking them from here and there without experience or particular study or qualifications, to go into a matter that requires the skill which detection of criminals requires, and I do not think he intended that as a criticism of anyone. I am sure he did not. I am heartily in favor of his ideas that this matter of detection of criminals should be turned over to skilled men and they should be removed from the realm of politics entirely. I see no reason why we should not try the State Board of Criminal Identification and Investigation, although it appeals to me again that it is possibly another political board or commission or office to be created. I do not know that it is any better than the state sheriff's office suggested some time ago, but maybe it would work. I can't see why it wouldn't. It might improve conditions, and I am in favor of trying it out. I would like to see a movement started, as Mr. Cuthbert suggested, getting a skilled bunch cooperating and coordinating in the detection and apprehension of criminals. I feel we need it. Maybe this movement which is incorporated in the fifth recommendation of the report will eventually lead us to that. I want to make that amendment, of postponing the capital punishment feature because I understand the author of that bill, Mr. Torson of Rugby, expects to be here tomorrow. He has studied it very thoroughly and will perhaps be in a position to give us some very good ideas.

A MEMBER: I want to offer one suggestion along the same line. Just recently a splendid one-volume work has been printed on the history and workings of Scotland Yard, and I am convinced that Scotland Yard produces the best system of detective agencies, the best system of detecting crime of any system known in the whole world, and at all times they have a system under which a man is made a constable only after he has put in a required number of months of

study. He must be a man of a particularly high grade of education and must be qualified physically and mentally and in every way better than if he were to apply for admission into the American Army. They have a system under which they almost grab a criminal before the crime is cold, and in that way they have put over a system in England, which is so far ahead of what we have in America, that they lay it all to the English Court. It is not the American Court we condemn, but as stated here from the platform, it is nine times out of ten the common people themselves because they fail to have the men who can detect the crime or get the criminal, and if this Bar Association will do no more with this report than to appoint a committee to study out and lay a plan for this state, and other states in this union in the matter of education of men and fitting them out to fill the offices of constable and sheriffs, and of crime detection over this state and over this nation, we would have done well.

MR. BRAATELIEN: This seems to be one of the hardest buildings in which I have been in for a long time to hear anything, and therefore may we ask each one to try to make himself as distinct as possible. Remember we are not in the Temple of Salt Lake City when you are speaking in this building. The acoustic properties are bad. Minot may be a wonderful builder but the framer of this building never knew the first principle of the acoustic problem.

MR. ZUGER: I am in favor of the adoption of the report of this committee just as it is. I endorse the remarks made by Judge Goss and Judge McKenna.

MR. PRESIDENT: Mr. Cuthbert, do you accept the amendment of Mr. Campbell that your motion will stand for the adoption of the report with the exception of the third recommendation on Page Twelve, with reference to capital punishment?

MR. CUTHBERT: That will be acceptable, if he will agree with me that, as I won't be here, I may vote in favor of capital punishment when it comes up tomorrow.

PRESIDENT LAWRENCE: Has the amended motion been seconded? Does the second agree with this amendment?

MR. LAMBERT: Second the motion.

MR. PRESIDENT: It has been moved and seconded that the report on "Criminal Law" be accepted, with the exception of the third recommendation on Page 12, with reference to restoring capital punishment, which recommendation will be postponed until tomorrow when it may be discussed.

Motion carried.

MR. ADAMS: I shall not be here tomorrow. I want to be with Fred voting for capital punishment.

A MEMBER: It seems to me those not to be here should be allowed to vote on this. I move we make it a special order of business for ten o'clock tomorrow morning.

Motion duly seconded and carried.

MR. MCINTYRE: If it is not out of order, I would like at this time to move that the incoming administration be instructed to appoint a committee to study and to report to the next annual meeting of the Association some plan looking toward the establishment of a state police or constabulary. I am just as much in favor of it as my friend Cuthbert has been for years, particularly since reading the wonderful record that the state police of Pennsylvania have made. It seems to me that it is the only way we can compete with the automobile and airplane thug. Our local officers can compete, they can match wits with the local criminals, but they can't, no matter how skillful or how bright they may be, compete with the skill of the thug and criminal that is brought up in the schools of crime in the large city, and we have to look out for them. They are the men who rob our banks, kill the men in charge, and commit the more serious crimes. Of course, there are others, but they are rather the exception. The criminal, the man we have to compete with, is in Minneapolis somewhere, where he is getting under cover. Our local officer cannot compete with the wits of that individual except on rare occasions, so I take it that if we do nothing more constructive than to attempt to formulate a plan which should be given considerable study before it is submitted to the Bar Association for its consideration, we will be doing something worthwhile, so therefore I make the motion.

A MEMBER: I rise to a point of order. I absolutely agree with what has been said, but I do not agree with the manner of doing this. It seems to me this committee has done splendid work, and instead of having a committee appointed to take care of it the next time, that this matter be referred to the committee on Criminal Law.

MR. MCINTYRE: I have no objection to this being incorporated in the original motion. I will amend my motion to be submitted to such committee as may be determined.

MR. LAMBERT: Second the motion.

Motion unanimously carried.

MR. PRESIDENT: The next order of business is the report on "Ethics of Bench and Bar." There is no real necessity for them to report. I might add that ethics has been adopted and no changes have seemed necessary so no report appears upon ethics.

MR. CUTHBERT: I arise to accept the motion made by Mr. Campbell and also to inquire if some arrangement cannot be made to count our votes on this question that comes up tomorrow. I move you that those of us who are here today and will be unable to be here tomorrow, be permitted to have our vote counted as of tomorrow. I am sorry that I have to leave.

MR. PRESIDENT: I am sure there will be no objection, Mr. Cuthbert, on the part of any member to have the vote taken on a matter as important as this. If not, I think I shall announce, I believe it would be the sense of the meeting that everyone not capable of being here tomorrow may have the privilege of placing absent voters ballots to be recorded in the vote tomorrow.

MR. CUTHBERT: I desire to vote "yes."

(See Appendix for Report.)

MR. PRESIDENT: We will now hear from the Committee on Internal Affairs.

MR. CUTHBERT: For some time prior to dictating a report, I have had it in mind that the Committee on Internal Affairs is a Committee that is largely a useless committee. I do not mean by that there is not a necessity for this committee. There is a necessity for such a committee, but with its present powers and lack of power, I shall say it is almost useless. The Internal Affairs Committee of the State Bar Association is for handling and dealing with complaints regarding different members. At the time that my predecessor turned over to me the files there were but two cases pending. The work last year fortunately was comparatively light. I regret to say that it has not been so light during the present year. I think I have had, without tabulating them (my files are at the hotel) twenty-odd complaints, and received one more which appears to be of a rather serious nature, since I have arrived at Minot. Most of these complaints are somewhat trivial, yet not any of the complaints are entirely without foundation. Now the Internal Affairs Committee does what? We get the complaint and, of course, the Chairman is supposed to do the work. I first write and I get the facts. I then address a letter reciting the complaint in full to the attorney and in seventy-five per cent of the cases I have not even had the courtesy of a reply from the attorney. I rewrite it. I check my calendar for two weeks ahead and write again.

In one case I inherited from Mr. Traynor, a note had been sent to an attorney for collection. He had not receipted for it. Mr. Traynor wrote some ten or twelve letters. He also had an attorney interview him and the attorney interviewing him got no satisfaction. I think I wrote to this attorney, during the course of six or seven months, some six or seven letters. I then wrote to the other committee members, giving them a history of the case, with a recommendation that it be turned over to the Bar Board with our recommendation that he be cited for disbarment. I then wrote him again that the committee unanimously had endorsed my position. I then for the first time got an apology and an explanation, in something over two years. But what I am leading up to is this. The committee is absolutely helpless. When we get all through, we are unable to do anything. We have no power to reprimand, no power of investigation. We do all our work and when we get through, all we can do is then to turn it over to the Bar Board, and the Bar Board files their recommendation with the Supreme Court, and then the Supreme Court starts all over again. It seems to me absolutely asinine. When we were incorporated as a Bar Association, we were incorporated on the theory of making progress toward a higher standard of membership. That is one of the prime things considered, and I know, because with Mr. John Greene I was one of those who initiated the idea of getting an incorporated body. I recommended it in my presidential address, if you recall. You can get it by going back to the files. It seems to me that the Bar itself should have the power of correcting the evils which arise within itself. The public condemns the Bar as a whole for what some individual does. They say that lawyers are crooked and that lawyers protect the other lawyers, and all that sort of thing, and yet the Legislators, so far at least, have not given us any power whereby we

can protect ourselves from the members who are unethical, in some cases criminal. This committee should either be abolished entirely or have the complaints made direct to the Supreme Court and let the Supreme Court appoint the referee. This is a hard remedy in that they may get their names in the public records in accusations which even are trivial, and do not reflect on the character of the accused, but if this committee has no more power than it has, I think it should be abolished and go right back and let the complaints be filed with the Supreme Court. Otherwise I think we should have the Legislature empower the Bar Association to appoint its appropriate committee with full power of investigation, and with full power of hearing, having a hearing and trials, and determining, with nothing left for the Supreme Court to do but to strike from the rolls and suspend or reprimand as the case may be. I do not know whether the members of this Association have given this matter any thought but we like to remember that we do not have all the virtues there are in the world, and that as a matter of fair play, that they have within themselves their own disciplinary powers. It seems to me we could handle these matters much more efficaciously, if this committee were a committee that was not merely a nominal committee with no powers whatever. I have not covered this in my report, but I desire at this time to suggest, or to offer as a motion, that a committee be appointed to draft appropriate legislation to be presented with an endeavor to get the same passed by the Legislature empowering the State Bar Association, through its own committee, to take charge and discipline its own members.

MR. ZUGER: Second the motion.

MR. PRESIDENT: I presume, Mr. Cuthbert, that would include with it the adoption of this report, that the report of the committee on internal affairs be accepted and approved, and that a committee be appointed by the incoming administration to consider the matter as suggested as to the preparation of the legislative bill.

MR. LAMBERT: That doesn't just exactly appeal to me. It seems to me whatever Mr. Cuthbert said, he could have obviated all that trouble and writing by writing two or three times and then making the recommendation. It doesn't seem to me that it is proper to put in the hands of clients, disgruntled, senseless clients, a chance to put a charge on record against an attorney without any basis whatever as has frequently been done, and which would certainly be done, if they could do it by just putting it on record, and it would besmirch the record of a man who had heretofore been beyond reproach. I think the committee has been just a little too lenient. It doesn't seem to me when it comes to disbaring, that the members of the Bar could have charge of that. I think it is just a case of where most of us have been on committees or held office and have come to the conclusion that we are not appreciated enough and we get sick of the whole thing and want to lay down. Fred has done very well but he should have made that recommendation earlier. I think it is a mistake for us to try to pass a recommendation to try to put the jobs of justice in our hands, and above all that everyone who wants to file a charge and place it of record against an attorney without any basis for it whatever, may do so, directly with the Supreme Court.

MR. MACKOFF: I have been a member of this committee for the past two years. After the Chairman gets through acting, all that the committee can do is simply refer the matter to the Bar Board and start over again. It seems to me that Mr. Lambert's talk was not directly in point with Mr. Cuthbert's motion. His motion is not to place the matter directly with the Bar Board, but it is to give this committee some authority, give the Association some authority. I believe the Association and the Committee should have some authority instead of just investigating and then turning over to the Bar Board, and having them start all over again, and that Mr. Cuthbert's recommendation on behalf of the committee is just what we want, the Association to have some authority after we find they do not answer, or that the charges are warranted, that the committee can go ahead with the preliminary work that has been done, and proceed further and accomplish something, and so I wish to endorse the oral report, Mr. Chairman, of the committee, as made.

MR. BANGERT: I am in favor of the motion made by Mr. Cuthbert. That wouldn't give any greater publicity to charges that way than the procedure we now have. It simply would give the Board or Committee the right to suspend from practice or revoke the license, if the attorney is found guilty of the charges filed. I understand the medical profession has some such a right, or their committee has, and that in that organization if charges are filed against a doctor or physician, that they have a hearing or trial, and then have a right to revoke or suspend that practitioner's license, and it would seem to me, we should have the same right. I am in favor of Mr. Cuthbert's motion.

A MEMBER: I am not so sure that it might work out on the plan suggested for the reason that if you are going to delegate that power to the committee, you are really making the committee a court of record, the committee that files charges and makes a record of their findings.

MR. MACKOFF: I suggested that in the medical profession they file charges in the organization. I am not in a position to dispute that. If you are going to make the committee, or rather give that committee authority to suspend for any length of time, you are really making that committee one with certain powers that will necessarily have to be reported. It will be a court of record, so to speak, because if the committee should suspend a member, that member would, no doubt, have a right to appeal that decision to some other body, and unless there is a record with the committee in the first place from which he can appeal, he will be without means really of taking his grievance to a higher body. It will necessarily then have to be a committee that will have to record these charges, and as the gentleman, Mr. Lambert, suggests, it would have to record these charges and make them a matter of record. It may be that this problem can be worked out by first requiring the charges filed to be left off the record, or something of the sort, because it would not be fair at all for any member to have a record made against his integrity by a groundless charge, and if you are going to give the committee authority, you would necessarily have to make that charge a matter of record. That is the thing that should be avoided. Perhaps Mr Cuthbert's idea can be carried out by

giving the committee further authority. It should be borne in mind that it should not be given a record of the charge unless it has gone to the point where there is sufficient ground for it to do so, and furthermore, I have not given the matter enough thought. There may be a question as to whether such right can be delegated to the committee.

MR. CUTHBERT: I want to say in reply to Mr. Lambert apparently he is not following the drift, or has not listened to what I said. The very thing that he speaks about is exactly what would be done. If a charge is preferred with the Supreme Court, it becomes a matter of public record. If this committee were created, assuming that they did take testimony and have proceedings, it would be a part of the files of the committee, and would not be a public record. It is just as much a public record now. The files of this committee are kept from year to year, as it would be if this committee were empowered to make an examination. I assume that the legislature should properly provide that there would be an appeal to the Supreme Court, if they saw fit to take it. At least, I would favor legislation of that kind and certainly the Licensing Board, has delegated the power to the medical profession to suspend their members from practice, so why shouldn't we?

A MEMBER: I would suggest in connection with this matter we possibly better determine whether we have the right to admit or reject. I don't think the Board has the right to admit the parties and I doubt very much if they would have the right to suspend the parties. We do not want to forget we are officers of the court, and not of this body.

MR. LAMBERT: It seems to me if the committee is to have authority to investigate these matters, and to take testimony upon the proposition, and then pass its sentence, so to speak, or judgment, that it would necessarily be a matter of record right there. I can't see wherein the committee would be justified in publishing certain records and suppressing others, if the committee is given authority to do certain things, it would appeal to me their authority would have to be in conformity with the law. They would have to take testimony in order to find out what the facts are. I haven't given the matter much thought. I wasn't in the state and didn't see the report until just now, but it simply appears to me it is giving this committee the powers of a court of record, and it would be unfair to make these charges matters of record, which would necessarily have to be, if you are going to take testimony and give them that authority.

MR. CAMPBELL: I think we are getting off the point here. I do not think the motion in any form determines what the method of procedure is going to be, or what powers are to be granted or given. I understood it was merely to put the matter in the hands of the committee to consider and determine the whole matter

MR. CUTHBERT: And to prepare legislation.

MR. CAMPBELL: As I understand it now, Mr. Cuthbert's committee which has reported here, is the committee that originally receives complaints. It investigates them, and instead of going ahead and really acting upon it, or having power to act, the matter is then referred

to the Grievance Committee of the Bar Association, or rather the State Bar Board, which goes out and does the same procedure over again, with possibly another year of delay. Is that the question?

MR. CUTHBERT: That is the sense of it.

MR. GOSS: As I understand Mr. Cuthbert, it seems to me he is right on it. First, the committee makes an investigation, and then makes its recommendations to the State Bar Board, and then the Bar Board acts and things are really in the process of trial, or will be, if the complaint is filed by that Board, isn't that correct? This other is merely investigation which takes time, a duplication of work, and a duplication of expenses. It seems to me that the Chairman of this committee, who has had the experience in the matter, and the other members here ought to understand this matter enough so that we should be willing to take their recommendation.

MR. WENZEL: I was just wondering if this whole situation could not be clarified by some such procedure as this: A motion on the part of the Bar Association duly seconded and carried, instructing the Internal Affairs Committee to the effect that if an attorney, against whom some sort of charges are preferred, does not reply to the request or letter, or whatever it may be, of the committee within a reasonable time, that committee shall be authorized to prefer charges before the Bar Board, and to act as a prosecuting official before the Bar Board. The Supreme Court has the power to admit men to practice law and I question very seriously whether or not you are going to pass any legislation, for some time at least, taking the power from the Supreme Court, and giving the Bar Association power to dismiss or otherwise deal with attorneys.

MR. LAWRENCE: I think the Chair may state, that the Chair does not understand Mr. Cuthbert's motion to provide for any particular legislation or disbarment or suspension or anything else. They have no authority to institute proceedings. They are in the main an investigating committee. They should have powers other than they now have. As I understand it, the motion is that this matter be referred to the incoming administration to appoint a committee to draft appropriate legislation to be presented to the Legislature empowering this Association, through its own committee, to discipline its own members.

MR. NUESSELE: Isn't all that provided for under the statute, as it now exists? We have the Bar Board. It is really a Board appointed by this Association, because it is appointed from nominees of this Association. That Bar Board has full power of investigation. When complaints are made, and they are frequently made, no record of them is made. The Supreme Court is jealous of the reputation and good name of the members of this Bar Association. It does not cause a record to be made of any complaints made to it. It first considers the matter, and if the court deems that there may be some merit to the complaint, it is referred to the Bar Board, which then has the power to investigate and take testimony with reference to such charges, and it then, in turn, makes its recommendations to the Supreme Court, together with its findings. Then after due consideration of the record, the Supreme Court again refers the matter to the Bar Board,

and if it deems prosecution advisable, it directs the Bar Board to proceed. The Bar Board is composed of members of this Association appointed on the recommendation of this Association. The cost of the proceedings is paid out of the fund provided by the members of this Association, and the matter is disposed of in that way. I agree with Mr. Cuthbert that there is not very much for this committee to do as the matter now stands, but it seems to me that with the system that is now in force, it is not necessary to take any steps unless it is deemed that the present system, that is the Bar Board with its respective powers, is not the proper system.

MR. CUTHBERT: Getting down to fundamentals, I think Judge Nuessle puts the question in a nutshell. As a matter of fact, the Supreme Court is not the proper place, it should not be the prosecutor and investigator, and at the same time, sitting in final judgment. The Bar itself should control its own members just the same as they do in any other civilized country. As a matter of fact, the Bar Board does not make these investigations, no matter what the law says. Under the old Grievance Committee, upon which I served for two years, we issued our subpoenas and called in witnesses for examination and made investigations. We have no such power as that now. The Bar Board primarily is an Examining Board. The Judge says that they are appointed out of this Association. I understood they always are not. I believe the record would show that the Supreme Court sometimes uses its own discretion after this Bar has recommended members, if I am not mistaken in the record; but the Judge correctly stated the law, regardless of the facts, but assuming that was true, that the Bar Board did have those powers, you are still confronted with the proposition that the Bar Board, as a Board, is an official body, and has to go out as a separate and distinct entity, whereas I should say it should be a part of the control of this Association, as an association, to control the conduct of its own members. Personally I do not give that much which way it goes. I am just giving you my ideas from having served on this committee, but I think if the Bar is going to be held responsible for its members, it should be given power to discipline its own members, and not the Supreme Court. The Supreme Court, it must be borne in mind, are not lawyers.

MR. NUESSLE: It is proper to admit the last impeachment, but the question arises in my mind if this is not the situation: Under our theory, our government, which is different from most of the others, the judicial department is a separate independent department, and I very much doubt if the Legislature can take from the Court the power to admit or to reject. It seems to me that if you are going to have a system whereby this Association is to say who shall be lawyers and who not, you are getting somewhat beyond the present conception of the situation. This Association may possibly say who is to be its members, and who not, but it seems to me you can hardly say this Association shall be the power to say who shall have the right to practice in the courts and who not, and whatever may have been the practice with reference to the nominations of this Association, the practice with reference to disbarment and other matters is not for the court to pre-judge. As I understand Mr. Cuthbert's idea, it is that this Association shall be the judge, the jury, and the prosecuting agency in matters of this sort, and that the court shall have nothing

to do with the matter until after the matter has been disposed of by the Association, and then an appeal is taken to the court. If there is no appeal, the Association's action is final. As the matter stands now, when complaints are made, the committee first considers whether or not there are grounds for complaint, it is referred to the Bar Board, and the Bar Board does the investigating. It is paid for investigating. After its investigation, if there is ground for prosecution, it proceeds to take evidence and make its recommendations. I think, however, that this is more or less a controversy, but is without any great merit, and it would not do any harm to have the committee investigate and make reports, and then if anybody objects, they can state their objection after the report is made.

MR. LAMBERT: Pardon me for getting up a second time. Now the suggestions made by our Secretary seem to me to be very fine and excellent. I think we have that same authority at the present time. This committee Mr. Cuthbert has been on could make that immediate report if they wanted to after the first letter, and it seems to me that would be the proper thing to do. If you write a lawyer and he doesn't answer within ten days, and maybe write one more which would be the limit, then refer it to the Bar Board in the regular way. I presume there are none of us who have not had some experience along this line. I happened to have a client, for whom I was doing some work, and I thought everything was coming along very nicely. But one day he and his wife came into my office, and said, "We want \$500.00 or we are going to show you we will get it. We aren't going to sue you either." Well I didn't know just what they were going to do, but one day I got a letter from Fred Traynor. I wrote him the next day and told him about it. He answered and said that it appeared to him it was a civil matter between my client and myself, whether I owed him \$500 or not, and that he could sue on the account and attempt to recover. That didn't go on record, but quite a record could have been made of it. That can be done right straight along. Just as soon as the client finds out it can be put on record, and he says here is a fellow charged with a crime, and you get five or six of those, your reputation would be ruined. Another thing, I think it is very nice for the committee to make a little investigation. They don't have to wait six months, just take ten days, and then if they do not answer, make the recommendation then and go on in the regular way to clean out a few fellows who are not ethical, but give the rest of them a chance, who are willing to tell the truth right away. It seems to me a very nice way to handle it.

The motion was duly seconded and carried.

(See Appendix for Report.)

PRESIDENT LAWRENCE: Is there a report from the Committee on Law Enforcement?

MR. SINNES: I had forgotten I was chairman of this committee, so on August 1st I received a letter from the Secretary, just as I was leaving on my vacation, but as I didn't want to have my vacation spoiled by "butting in" to law enforcement, I went away and had a good time. When I got back again, I had forgotten that these things had to be printed, although the Secretary had told me so, so I proceeded

to write a short report, but that report has no recommendations and reports having recommendations, under the present plans, seem to be the only ones receiving any consideration. I will simply ask the Association to file the report with the Secretary.

(See Appendix for Report.)

MR. LAWRENCE: Mr. Hanchett, who was to report on the Semi-Centennial Meeting of the American Bar Association, is not here, so we can perhaps have a few words from him tomorrow.

Motion was made, seconded and carried that the meeting adjourn.

Thursday, September 6, 1928

MORNING SESSION

INVOCATION

FATHER HOGAN: Almighty God, Ruler of Destinies, and of men, and of the entire world. We call upon Thee this morning to lend Thy blessing to every session of this convention; to send down Thy blessings and help upon every endeavor taken up therein. Thou hast blessed this nation with fine and independent institutions, with surpassing gifts of nature, and with stalwart sons and daughters. Thou has blest it with a freedom and principles of democracy. We ask Thee during these sessions that we may be privileged by Thy help to observe the strictest justice and to keep untarnished our loyalty to Thee, to each other, and to our country, and we ask Thee this morning, with a sincere heart, and in all the spirit of humility, to hear the prayer which Christ gave to us himself: (The Lord's Prayer.)

RESOLUTIONS COMMITTEE

E. E. Fletcher, Langdon; Thomas G. Johnson, Killdeer, and Romaine Downey of Devils Lake were appointed on the Resolutions Committee.

PRESIDENT LAWRENCE: Mr. Braatlien has requested that he be allowed ten minutes of the time of the convention.

MR. BRAATELIEN: Fellow members of the Bar: The matter concerning which I am to speak this morning, perhaps, apparently, if it were not for the nature of the thing, should be off the record. However, I should carry out the wish of a former member of the Bar of North Dakota, who expressed the desire in a letter that it be done in justice to some members of this Bar. You gentlemen no doubt read part of the address given by Judge Christianson at the memorial service for our late Governor and at that time, Judge Christianson quoted from a book and a poem, "Ships That Pass in the Night." For the purpose of illustrating how transient is life, and if memory serves me right, you will turn back to one of the early North Dakota reports, and you will find that Tracy Bangs, in paying homage to the memory of John Cochrane, on that occasion quoted from the same poem, but that quotation so used by these eminent members of our profession in this state, calls to mind ships of another character, and those ships remind me of the thing that these members of the Bar did for a now deceased former member of the Bar of North Dakota. Some two or three years ago the Atlantic Ocean was visited by one

of the severest storms in its history. You will all remember reading about "The President Roosevelt," the boat you remember that stood by an Italian tramp steamer for two months and three days in an effort to save its crew and, owing to a lull in the storm, they were able to do so. That ship, if you please, gentlemen, was not one of the ships that pass in the night, but it was a ship that stood by another ship in distress, and these members of the North Dakota profession, of whom I am going to speak, are among the living, and had the same characteristics as that ship that stood by another one in distress. The Captain of the "President Roosevelt," in making his report, and it is a very interesting report, it is short and brief and tells nothing of the hazards which the crew of the President Roosevelt did in order to save the crew of the sinking Italian tramp steamer. He said, "We lost two men, but we saved nineteen."

Fred Larson, a graduate of the University of North Dakota, I believe about 1904, a former member of the Bar of North Dakota, was taken sick and went southwest in order to better fight tuberculosis. He practiced law at Phoenix, Arizona, for some time. He returned here, but was again taken sick with tuberculosis, and he went to California to live, thinking the climate would benefit him. He wrote me at this stage of the game. I don't know anything about his pecuniary position in life, but the boys of the Bar of North Dakota, classmates of his, took up a collection the last four years just before Christmas, and stood by him in his last fight. He died last December, but every Christmas for the last four years, he has received from the boys, some of them, handsome presents, not flowers, mind you, but the last time I think nearly a thousand dollars. Gentlemen, this act on the part of the boys, members of this profession, was so highly appreciated by him that he wrote me and said, "If you ever attend the Bar Association meeting of North Dakota, tell the boys how I appreciated it." Owing to the modesty on the part of the boys who were most instrumental in doing this, not a great deal is known about it, but I might suggest the name of Victor Wardrobe as the author of the thought. However, it would be unfair to close this without mentioning that there are present here members of our profession who were just as instrumental in this help being extended as was Victor Wardrobe. Fred Traynor, Helen Hamilton and Judge Grimson were the other members of our Bar instrumental in this work and I want to say that this work on the part of these members and others who helped their brother attorney was certainly appreciated, and it is certainly nice to know that there are members of our Bar who stand by those who are in distress. If you followed the address yesterday afternoon, you will remember, that this is right in line with the thought expressed by the eminent justice of the State of Iowa. It is customary, too much so, to throw bricks at the living and bouquets at the dead, but it cannot be said of the members of the class of 1904 and subsequent classes of the University of North Dakota. I want to, on behalf of the now dead member of our Bar, express his appreciation of this work, and I want to thank the President for the time allotted.

MR. PRESIDENT: We express our appreciation to you, Mr. Braatlien, for the message you have brought to us so beautifully. Yesterday afternoon a report of the Committee on Law Enforcement

was ready but not filed nor read. Torger Sinnes is the chairman of that committee and I would like to call upon him to give that report this morning.

(See Appendix for Report.)

Motion was duly made, seconded and carried that the report be adopted and filed.

MR. BOTHNE: I just want to ask for a few minutes. I do not think that any member of this Association can accuse me of ever having taken up any time from matters coming before this session at this time or any other time, but when I heard this report read, why, it awoke certain feelings, which I would like to express now. I, for one, believe in obedience to law. I believe in the enforcement of the law. I believe it is the sworn duty of every lawyer to obey the law, and to seek to enforce the law, but I have heard so much within the last five or six years about law violations, about the wave of crime going over this country, that I am almost sick, and I tell you when I heard this report, it was like a refreshing breeze coming down. When we go to the Kiwanis meetings, there is talk about violations of law, and the wave of crime going over the country. When we attend the banquets of the Rotarians, there is the same talk. We go into the Church and there from the pulpit we hear the same thing. We pick up the daily newspapers and magazines, and there is the same talk and discussion about the lawlessness of the people of the United States. We have talked and heard and read so much about this, there is that psychology, we actually believe it ourselves, that we are the most lawless people on earth. Even over in Europe, they pick your Uncle Sam as a lawless, fearless, money-grabbing Shylock. It is our own fault. I tell you, gentlemen, I will not at this time concede, and I hope to God the time will never come, that we concede we are inferior in any way to other people or other countries. We have been for a good many years simply adding up our liabilities. We have been looking at the liability column so long, we cannot see our assets at all. I tell you we have more goodness, more character, more benevolence, more human kindness in this country than any other country of the world. Why don't we once in a while talk about those things and preach about those things? I think it would have a good psychological effect. I, for one, although a great majority do not agree with me, believe that there is less law violation today than there ever was before considering all things. We have today automobiles, airplanes, telephones, and telegraphs and radios. Whenever a crime is committed in California, instantly it is known in the State of Maine. The daily newspapers are looking for sensational news. Whenever a little crime is committed, they have it in big print on the front page. That is why I claim we have better law enforcement today than there ever was. I can remember a time about twenty-five years ago in Minnesota, I lived in a town of about eight hundred people. It was a typical town at that time—it had five saloons. It was the law of Minnesota at that time, that saloons should be closed at eleven o'clock. It was the law of the State the saloons should be closed all day Sunday, and yet there wasn't a saloon in that town but what kept the doors open all night and every day of the week, including Sunday, in violation of law. There was nothing said about it, done about it, and no prosecu-

tions. I remember one night about eleven or twelve o'clock, I walked by one of the saloons, and hearing considerable noise in the back end of the saloon, I walked in to investigate what it was. The back end of the saloon was partitioned off and when I came back, I saw about thirty quite prominent men in town sitting around the room laughing, and in the center of that room, I am sorry to say, was a table and on that table was a woman dancing, and she didn't have any clothes on, no more than the day she was born. There was nothing said about it, nothing done about it, no prosecutions. About two or three years ago, there was a woman that took a bath in a tub of wine, and it was heralded in every newspaper in the United States, so I say I believe there were just as many crimes committed in those days, in fact more than now. We never heard anything about it. There were murders committed in lumber and mining camps and we didn't hear about it. They say the young people are going to the dogs. The girls of today may wear low necks, short dresses, bobbed hair, but I believe there is just as much virtue in the young girls today, and more so, than there ever was. I don't believe the young boys are going to the dogs. Once in a while they take a drink. They always did, and always will as long as human nature is constituted the way it is. Let us look at these things and reason it out, and let us not all the time think and talk about our bad qualities. Let us look at our virtues and goodness and thank God that we live in the good old U. S. A.

MR. YOUNGBLOOD: I believe it might be possible for me to give some ideas, because I have lived a long time, before some of the speakers referring to these conditions. I was prosecuting attorney thirty-five years ago, and I am prosecuting attorney today. I have walked down the streets of Chicago within the last year, and I have walked down the streets of Rome and Naples, Berlin and London, and I see there is some difference, and I will give you my honest views. Thirty-five years ago the laws in my country were better enforced than they are today. That may be the fault of the public, or it may be my fault. Thirty-five years ago, the saloon or the blind pig, as we call it, in Fessenden and Harvey, were the centers of crime. Today there is no center of crime. Today crime is all over. Today the worst crime is in the country. We have our beer parties every Saturday night; in fact all the year around, in every community. These are the conditions of my county at the present time. I used to go to parties and sleigh rides, as my worthy friend has referred to, where we had saloons that ran on Sunday night, etc., but I know one thing that if any of my friends smelled of intoxicating liquors, they were nicely excused from any of the crowds and they were supposed to be a reasonably nice crowd. I am told by my children today, and I believe they walk in about the average society, that there is no sleigh ride party, that there is no party of any kind, but what the boys and girls have their flasks, and that two-thirds of the girls partake of it, and that a fairly good proportion of the girls are "lit up" before they go home. This I have from my own children, and they tell me that the worst of these are the children of the prohibitioners, and the preachers. I don't know whose fault all this is. A great portion I take myself. They tell me I am not enough alive any more. I will be out of office soon, and a new one will see what he can do in the matter. We have a corner in the county of which I live in which it is impossible to get any convictions for liquor law violations. They tell me it is none of

my business, and I found that it was impossible to get any convictions from that part of the county. I found in that part of the county there are two king bootleggers. All the rest of them are only subs. The subs you can get, but the kings you can't get—you have to turn them loose. When you have them in court, and the cream of society, bankers, big merchants and others of the town are for them, what are you going to do? They say, "Why are you such a fool to bother us down there, when we can run ourselves." And the jury would come back in fifteen minutes and say "Not guilty," after we had four good, forward, straight-thinking business men say, "I bought a can of alcohol," and "I bought a can of alcohol," etc., and yet it took that jury just fifteen minutes to say not guilty. I might say that we have taken up a great many who have pleaded guilty but they are the lesser fish, but the big ones, I admit, I have done absolutely nothing in regard to them. Now as to the foreigners being the criminals, I deny it. In my county, it is all foreign. Of course, I describe it that way. Among these bootleggers, on one hand there is an American and the other one is a foreigner, and they are about alike except, I am told, the foreigner is a little slicker and a little harder to get. The other day I was riding with a judge, a friend of mine, in Northern Minnesota, and he told me they had closed seventeen joints in this iron range country, and among other things, I finally asked him who they were, whether foreigners, or Americans. The population there is mostly Finlanders, Swedes, etc. I said, "What are they, Finlanders?" He said, "No, they are Americans." I know one foreigner that went to fight that these United States might live, and he was wounded on the same day I was born, and that permitted him to come home, and he took me up and I believe he instilled some patriotism within my breast. That was my father. That was a foreigner. Who fired on Fort Sumter? Were they foreigners or Americans? Now then, compared with law enforcement of England, and law enforcement of America, England is older, but the older we get the worse we get. The law enforcement of New England today is not what it was forty years ago. We are not getting anywhere there. It is true that certain foreigners are more rebellious than Americans or other foreigners. That is true. That is their idiosyncrasy. For instance, with Polanders who have always been a trouble-maker, where he lived, but in those nations like England, Germany, and even Russia, I found them exceedingly law-abiding nations when I was there. I found the cities absolutely safe any hour of the night. . . .

MR. PRESIDENT (interrupting): It is fine that such gentlemen as Mr. Youngblood and Mr. Bothne have so much interest in things which we all have at heart, to give us their views, but I think that we had better go on with our regular order of business that must be taken care of. We have one matter that was made a special order for ten o'clock. That is the recommendation contained in Paragraph Three of the third recommendation of the Criminal Law Committee, which you have undoubtedly read on page twelve of the Bar Briefs. The committee report was adopted yesterday afternoon, with the exception of the recommendation which was made a special order for this time.

(Mr. Lawrence read the third recommendation and asked for a discussion.)

MR. CAMPBELL: I moved the postponement yesterday because I understood Mr. L. N. Torson of Rugby, who originally sponsored the bill which provided for dispensing with capital punishment in this state, wanted to be heard. I want to say this, my mind is open. Sometimes I wonder if the destiny of mankind is not best served by requiring that he live, learn and obtain experience, and not served by putting him away. Again I question whether I am correct in that, and whether or not for such a criminal as commits first degree murder, the very fact of disposing of him on the part of society does not serve that destiny.

MR. TORSON: I cannot say that I am well prepared at this time to uphold the present law, that law which abolished capital punishment, but I take this opportunity to correct an impression that is generally about, that I am the author of the bill. Senator Wartner of Harvey is the man who drafted the bill. It is true that I introduced it originally, and it met so much opposition the way I introduced it, that the then Warden Talcott secured the services of Mr. Wartner to re-draft it. I think it should have been called the Wartner Bill instead of the Torson Bill. Now, while on this subject, we must realize why we inflict any punishment. One of the reasons for inflicting punishment is the apparent effect it will have upon society. We also inflict punishment for the purpose of reforming the criminal, if that is possible. There may be another reason, but this question arises—does society need this punishment, or does it not need it? The first question, whether or not the death penalty is a deterrent more so than imprisonment for life is a debatable question. If you want to get well informed on that question, secure the July number of the *World's Work*, and read the article by the Warden of the Penitentiary. There are some things in there that will make us all hesitate before we pledge ourselves to work for restoration of capital punishment in North Dakota, or any other place. He speaks about the influence, or rather the impressions, that came to him when he first was appointed and realized upon him fell the duty of fixing the day and the hour and even the moment when human life should be taken. He said that he had always been in favor of capital punishment, but when that responsibility fell upon him, he at once commenced an investigation, and this is part of what he found: He says in that article that it can not be shown that a single wealthy man has been executed in the State of New York. That in itself seems to me a terrible impeachment against capital punishment, that it shall only be doled out to those who are unable to protect their rights throughout the various courts. Then again he has come to this conclusion, that whenever an execution has been held from communities where probably murders never have been committed before, or at least not for years, there were one or two counties where no murders had been committed, when the man was executed, immediately other murders were committed in that community. I am giving you the warden's statements, and he is such a man, I think we have a right to rely upon them. Then again it is possible that the death penalty is not as great a deterrent, or as severe punishment as to be imprisoned in the cell, sitting day after day, looking out upon the bright sunlight and beautiful world, and realizing that they shall never be any part of it. I think if we would seriously consider that, we would say that imprisonment for life will have as

great an effect in keeping people from committing murder as any other, but after all a man who commits murder, does not think about the results. It is either done in a moment of passion or otherwise, but there is another reason for it, that I am so bitterly opposed to capital punishment. I was born and raised in the State of Wisconsin but I have not been in it for a great many years. No state can show any better record for law-abiding citizenship than the State of Wisconsin, but when we begin to realize the frailty of human nature, then we must stop and think before we take life. Let me ask you, gentlemen, this one question—has society the right to take away anything that it cannot restore? It is organized society that gives to men the opportunities of enjoying liberty. Hence we have a perfect right to deprive a man of his liberty, but ordinary society does not give human life, and so I maintain that they have no right to take human life. As I said before, I will not take up too much of your time. It would take a half day to discuss this subject, but I am going to be very brief. As lawyers, we know the uncertainty of verdicts from juries. I do not believe there is a single lawyer who has not, if he has ever practiced in the criminal law—I have not had a very extensive one—but I have had considerable for a small-town lawyer. There is not one of us but what knows the verdicts of guilty have been returned when they were in fact not guilty. I assisted in the defense within the last year—I was not the leading counsel—the first jury disagreed, the second jury found him guilty. It was a bastardy case, and I feel morally certain that that boy is not the father of that child, or that he had anything to do with that woman. It was impossible to produce evidence, but what happened is: That woman went out among those fellows that she had probably been mixed up with and selected the one she wanted to live with. I wonder if we realize how much perjury is going on in our courts today. There is a great deal of it. Now let us think of another case for a moment. You all remember the Captain of France, who was found guilty of a crime that might have meant death, but what happened? He was sent to Devils Island and a few years afterwards, his innocence was absolutely established and he returned to France and did wonderful service in the World War. I was reading in the "Bismarck Capital" about a man who served eighteen years in England under a verdict of guilty of murder, and was released, and the Government did there what they do not do here. It was proven he was not guilty and he was paid some \$13,000 compensation for the eighteen years he had been in jail. Supposing he had been executed? Why, if we want to look up the records, you will find a number of cases, many of them where circumstantial evidence pointed to a man and the facts have come out that he is not guilty. Undoubtedly many a man has been put to death who was not guilty. We all realize it is not so many years ago since there were many crimes punishable by death, but it has gradually come down until now it is only one or two. Haven't we traveled sufficiently in civilization to get rid of that barbarous method of punishment by taking their lives? Let me refer you to another case that has been discussed so frequently, the Sacco-Vanzetti case where men were put to death. I haven't any question but what the jury should have found the men guilty, but do you realize that there are many in the United States and all over Europe who believe that verdict of guilty was wrong on account of prejudices and excited

passions of the people at the time. Why, there are millions on the other side who believe that the verdict was unjust. Now, when there is such a divided opinion, have we any right then to take life? It seems we have not. It seems to me that we should not. I trust and hope positively that it will not pass. It doesn't seem to me that we have any right to cut off a man's days of grace, the time that he may live. It doesn't seem to me that we have any right to do that. I hope that North Dakota will not join that same bunch that used as their watchword, "Crucify, Crucify." I trust that North Dakota will go forward in its progressive legislation and go forward and find ways and means of capturing criminals. That is one of the great things. Secondly, that we have such a system of courts that no man, whether he is under bonds or in jail can escape trial more than sixty days. I wrote a short article for "The Herald" a short time ago wherein I suggested this, that every court have a jury term every sixty days; that if there is any man bound over whether in jail or out on bail, he must be brought to trial. Of course, if there is some valid reason for continuance, it should be granted, but no man should be permitted any longer than sixty days before being brought to trial. I think it would have a wonderful effect. When a man is not brought to trial on account of one thing and another and trials are somewhat prolonged for a year or two after arrest, it loses its effect. Gentlemen, let me ask you before you use your influence that North Dakota should take a step backwards, that you re-study the matter and see what effect capital punishment has had in those states where it is in vogue, and it is in force. Forty states over the union have no capital punishment. I think it is eight states that have capital punishment, and those forty states are the most law abiding states in the union.

MR. BRAATELIEN: I want to express a thought—I have no personal opinion on this, but when I was in High School in Minnesota, the Minneapolis schools had a contest in debates. It was my pleasure at that time to debate this subject on one side, and twice on the other, and while I came to no conclusion, I have certain opinions I want to express to you gentlemen. In the first place, I have not looked at the law book in North Dakota for two and a half years about this subject, but I believe I am right when I say capital punishment has not been abolished in North Dakota. If an inmate of the penitentiary commits a murder, he is liable to capital punishment, so then in the first instance, we have not abolished capital punishment. In the second instance, gentlemen, the Mosaic Law calls for capital punishment. Under what circumstances? On direct evidence, and direct evidence alone. Circumstantial evidence was not permitted under the Mosaic Law, and that is the basis for our capital punishment law, but after the judges that dominated Moses and his immediate successors in office had passed away, they inserted in the capital punishment law the permission on circumstantial evidence, and then came trouble; that is, Nero and his converts convicted, hung, crucified on anything, and Mr. Torsion gave the gist of the objection to the capital punishment law when he said "on circumstantial evidence." I had occasion to be at Bismarck during the last session, and I believe it is practically useless for the Bar Association to recommend anything upon this law. They discussed this question pro and con, and it was my opinion,

worthless as it may be, that it is useless for us to take any stand and go before the Legislature upon this law, and therefore I think we should make no recommendation perhaps in favor of the capital punishment law. It would be better that you did not recommend it because every man has his personal opinion of it. It is different when a layman asks for your opinion upon such matters of procedure upon which they have no knowledge. They have their own opinion on this question so, therefore, I believe that the inclusion in the report of the capital punishment feature is of no value. That is the thought that came to me being around the capitol last session, as a member of the Third House, however, without compensation, on behalf of the Red Cross Tuberculosis Society of North Dakota, but the gist of the objection to the capital punishment law has been the insertion into the law of the execution of persons found guilty on circumstantial evidence, and that alone. As far as having any value in passing this recommendation to the Legislature, it is my humble opinion it is absolutely nothing. It is different, if it were a question of opinion, but a man goes home and talks it over with his wife and family, and they have their own opinion. I do not believe that the Bar Association should go into the matter of this kind. It may act as a deterrent when it comes to the matter of respect the lay people should have for this organization.

MR. TORSON: Something occurred yesterday. I was at Bismarck attending the State Central Committee meeting. There was an audience of probably thirty or forty and the matter came up that the Bar Association was going to take up this question today. A gentleman who was well informed, and who seemed to voice the opinion of all of them, said, "Let them repeal that law and we will have a referendum signed with 30,000 voters within a week." That was the opinion that was generally expressed there.

MR. WARTNER: Inasmuch as my good friend Torson brought my name prominently before this gathering of attorneys, I thought possibly it might be well for me to express my opinion on this law. I also was raised in that good old State of Wisconsin. I was born there, and, of course, as Mr. Torson said, we never had capital punishment as long as I can remember, and so when I happened to be at Bismarck in the winter of 1915 and when Mr. Torson presented this bill to abolish capital punishment, I was considerably interested. Some of you, I think, are quite supporters of Senator Talcott, who was also in the Senate of 1913 with me. He is one of the most delightful gentlemen that ever lived in the State of North Dakota, and he became warden of the penitentiary by appointment in 1915 and was a member of the Senate, as I said. He was warden at that time and he came to me and he said: "Wartner, that bill Mr. Torson has introduced is going to raise hell out at the penitentiary." That is the way he worded it. I know at that time that the bill would have been passed in the shape Mr. Torson had it, if it had not been for the active interest and opposition of Mr. Talcott, who was at that time Warden. I said, "Frank, I will fix that." So I redrafted that bill and placed in that bill, as you all know, this proposition: Talcott wanted something there, if capital punishment was abolished, and there was no chance as Mr. Torson had drawn it, it didn't provide for any chance for a man who was convicted of murder to be ever pardoned or

paroled, and so a thought came to me that we might fix some change so as to leave the criminal some hope, and so I came upon this conclusion, that we would let the criminal have this hope of a pardon, that after he had served the time of his life expectancy, which is fixed at the time of his conviction for murder, that at the expiration of that time he could apply for a pardon, but before that time, he could not apply for a pardon, so that is the bill we have. It still included this proposition which is the law today, as Mr. Braatelen has just quoted, that if a person who is convicted of murder in this state and is incarcerated in our penitentiary, and then commits murder while under sentence, that he may then be again tried for murder and if convicted of the second murder, he may be hung, or whatever punishment may be meted out, but as you all know, since the adoption of this law abolishing capital punishment, no man has been hung or electrocuted and that has been thirteen years. I believe that nothing can be gained by repealing and re-establishing the capital punishment law. I think you will find that there are statistics of criminologists on one side which claim that there is more crime committed in states where they do have capital punishment than there is in states that do not have it, and vice versa. You can find those same criminologists who will say there is less crime in the states where there is no capital punishment, but as Mr. Torson has stated, I do not believe that the state at this stage of our civilization and during this Christian era should adopt capital punishment. I believe that capital punishment is a relic of the old Mosaic Law where they had the idea of an eye for an eye and a tooth for a tooth, and that eighteen hundred years ago when the Christian era opened with Christ, we had an idea, a definite idea, that it was more of a measure for the reformation of the criminal, and I believe that it is better to have our law as it is today than to abolish it. I do not think that we would gain anything. I do not think that the history of North Dakota in the past thirteen years, if it is compared with the history of thirteen years back of that time, will show more murders have been committed the last thirteen years, than were committed in the thirteen years preceding the last thirteen years. There is another proposition. I do not believe that the man who ordinarily commits murder thinks of the punishment, and that might be taken into consideration with every crime that men commit. They do not expect to get caught—that is the idea. A murder sometimes is committed on the spur of the moment when he is about to be caught. That is especially true where men rob banks, or men rob upon the highway. The time they commit murder is when they are cornered, and it does not make any difference, Mr. President, whether we have capital punishment or whether we do not have capital punishment, this man will shoot when he is cornered, because he thinks by shooting, that he is going to get away, that is the idea. We can take the criminal laws of the State of New York. Did it deter the Younger brothers or the James brothers to come into the city and rob and kill people? They knew there was capital punishment in the State of Minnesota at that time, yet they robbed the bank and committed murder. They are doing the same today. It seems to me, gentlemen of the Bar Association, and Mr. President, that we will gain nothing by putting off this recommendation. I do not agree with the statement made by Mr. Braatelen that the recommendation of the Bar Association does not carry weight. I believe that the recommend-

ation of this Bar Association does carry weight with the people of the State of North Dakota. I would hate to belong to a profession such as ours, if I did not think, when something is brought before the people and a request made, that it did not have some force back of it. If that force is sufficient and unanimous enough to make it felt by people of this state, I believe the eight hundred lawyers we have in this state, whom we represent here, I believe that when we make a recommendation, that a great many of our legislators, our representatives, our senators, our Governor, will listen to those recommendations and will weigh them carefully in their deliberations, so I believe that if we recommend today that capital punishment be either abolished, that capital punishment be reinstated, that this law be repealed and capital punishment placed there instead, that it will have considerable weight.

MR. BRAATELIEN: I agree with Mr. Wartner to the effect that a recommendation of this Association has weight, but I said from my observation made while around the Capitol, that the recommendation on this particular subject is of questionable character and whether it carries weight or not, that I came to the conclusion, it had no weight. I stated my conclusion. I did not want to make it general.

JUDGE KNEESHAW: I fully concur in the opinion expressed by Mr. Torson and the last speaker on this question of capital punishment. When I first went on the Bench some twenty-eight years ago, one of the first things I had was a murder case. At that time capital punishment was in force and I had to sentence that man to be hung by the neck until he was dead. That man went to the penitentiary and in two weeks he was crazy and sent to the insane asylum, and I thanked God he wasn't hung. I can see some excuse for a man being lynched. While I don't uphold the lynching law, there is some excuse for it because it is done in the heat of passion, but I can see no excuse for a judicial murder when you confine a man in jail for six months, and then cruelly take him out of jail in the presence of a humane people, and hang him up by the neck until he is dead, and I therefore at this time would move the matter of the recommendation of this committee on the question of capital punishment be laid on the table.

Motion seconded by Mr. Braatlien.

JAMES JOHNSON: I do not calculate to debate it myself because I am unable to do it, but it seems to me that it is peculiar when such a lot of men as we see here, there isn't a single one of them that will take the defense of the widow and orphans left behind. They say society has no right to take human life. Has a fellow who goes to work and cracks a bank any more right than society? There is a worthy angle. Isn't there some man here who has some interest in that matter and will express the views of the persons who suffer from the murderer?

TRACY BANGS: I am Vice Chairman of the Committee that made the report and had expected to make a very brief explanation of the reason for the report, but I take it that the motion to lay it on the table shuts that matter off.

JUDGE KNEESHAW: I will withdraw my motion for the purpose of allowing Mr. Bangs to make any remarks he sees fit.

TRACY BANGS: Mr. Chairman and Gentlemen: I want to say in the beginning, that I regret that Mr. Shafer is not here to explain this matter himself, because I haven't given this matter any careful study. I didn't come here with the idea that I was going to argue in favor of capital punishment or against capital punishment. When the matter came up at the meeting of our committee, which was attended by Mr. Shafer, Mr. Kehoe and myself, Mr. Kehoe said that he was opposed to capital punishment, constitutionally opposed. I said that I hadn't given the matter very much thought. I never had expected to get shot, and I never expected to shoot anybody, so I had not considered it very seriously myself. You can't be hung for being just half shot. We talked the matter over and this was the situation, as I remember it: Mr. Shafer has given the matter some consideration and his conclusion was that in the states where capital punishment prevailed, there was less of murder proportionately with the population of the state, the density of the population, than in the states where it did not prevail. I am not prepared to give you any figures on that subject at all, but since being here this morning and listening to the opposition to capital punishment, a few points have come to me that I would like to present to you. Now to begin with, Senator Wartner tells us of the reason why capital punishment was left in the law as applied to the inmates of the penitentiary committing murder. It was to protect those in authority in the penitentiary against the desperate criminals who were in the penitentiary, and to impress upon the minds of those men the fear of capital punishment, and thus protect the officers of the penitentiary. Now there is no other answer to the suggestion as made by Mr. Frank Talcott and to the explanation that was made to you by Senator Wartner this morning. The reason capital punishment was left for inmates of the penitentiary was because of the fact that they could be hung, would be a deterrent and prevent them from committing crimes amounting to murder against the officers of the penitentiary. If it will act as a deterrent against men who are in the penitentiary, then why wouldn't it act as a deterrent with respect to men out of the penitentiary? If it is a protection to officers of the penitentiary, why isn't it a protection to the rest of us traveling upon the highways of North Dakota? There was another suggestion made by my friend, Mr. Torson. He says it is not necessary. He goes on the theory that it is a mere punishment. It is not a punishment. Capital punishment is not inflicted merely as a punishment. It is a defense. Under our law, if you are assaulted today, and your life is in danger, you have the right to take the life of the assailant. Why? To protect yourself, and yet you say that whenever any body politic, whenever all the people of the community are assaulted by desperate criminals, that we have no right to protect ourselves by doing that thing as a community that they are authorized to do as individuals. Now isn't that nonsense, that one of us may take a life in order to protect himself, but as a whole we cannot take a life to protect ourselves, and those that are dependent upon us? Excuse the expression. I did not mean to say that, Mr. Torson. I am not a very good hand to argue things. I have had but little experience in it. Now then, I am not wedded to capital punishment at all. I am not an enthusiast for capital punishment. I have seen so little of it. I have not given the matter consideration until Attorney General Shafer came up to my office a few days ago. I have thought of it more this morning

as I have sat here listening to these gentlemen who were opposed to capital punishment, than I have before in many years, and as I have sat here and thought of it, there has come to me the same idea that came to my old friend, Jim Johnson, and I am always glad when Jim and I agree, because we are two old timers together. We are old-fashioned, and our minds go back to homely truths. We haven't any progressive ideas that so many of our present friends have. As Jim says, "I wonder if all of the people who were opposed to capital punishment ever stopped to think of the man who is underground, or the women and children who were left"—left oftentimes because of a deliberate murder committed by hardened criminals, who have come into the state where there is no capital punishment, because the head of his gang in Chicago, in Cleveland, in Detroit, wherever they are, knows the law of all these states, and knows where to send his men, so, if they are not shot by those defending themselves, that he will be able to get them back in time through the highway of the Pardon Board, even though they may be convicted. These people know these laws. I can take you to Chicago and I can take you to the headquarters of some of these gangs, and they know the laws of all the States of the Union better than I do with respect to the enforcement, with respect to penalties that can be imposed. They are able to pick out, and do pick out, for the purpose of sending their men into places where they have the best protection. We are always infected every fall. This state is infected with gangs of hard-boiled criminals every fall. It is a difficult state to get away from, we always thought, until a few weeks ago, but the punishment here is light. They feel that eventually they will get out. No one is going to be hung, and so it is a fairly safe state in which to send their men. Now, gentlemen, this is not a matter for us to shirk. It is a matter for us to put up to the Legislature. We can say that we are in favor of it or that we do not favor it, but personally I believe that it is fair for this State to try now a few years of capital punishment. It can only be inflicted upon the order of the jury and notwithstanding some of the complaints of the jury system, I desire to say to you, that for nearly fifty years I have been practicing law in North Dakota, and have been trying jury cases, and I have found that the jurors are right more often than the courts. You can trust the juries to get a genuine straight human side of the case. Sometimes when a jury verdict seems to be against the evidence, if you will look into it, you will find if it is a little bit against the evidence, it is in accord with the actual facts. They are not bound by the hard and fast rules that the court is bound by. They look at the matter from the standpoint of human beings. That is the reason the jury system was first inaugurated to get away from the hard and fast rule that bound the court in the admission of facts, and the jury system has been the bulwark of human liberty, and I believe we can trust to our juries in these matters, and that no jury is going to condemn a man to be hung unless the facts are such that it is a certainty beyond peradventure that he deserves hanging. When a man deliberately takes the life of a human being; when a man is so hardened in crime that he deliberately snuffs out the life of a man and leaves a widow and children behind; when he takes the life God has given, if you please, then there is only one protection to society and that is to say to that man, "You have shown that there is nothing can reform you. You

are simply a menace and a danger and we must put you out of the way. We must send you to be judged by the same God that judges the victim you sent on his way." And I believe we should send this up to the Legislature with our endorsement.

MR. BRAATELIEN: May I have a few minutes as I have a suggestion to offer? If it is the opinion of the majority of this meeting to endorse the recommendation to restore capital punishment in North Dakota, that we make the recommendation that it shall be the penalty for first degree murder committed as a part of a robbery, as the result of a robbery, and that our advantage for enacting that into the law would be a whole lot better than having a broad, far-sweeping recommendation as found here. That would satisfy the Bankers Association of North Dakota, who I understand are in favor of such a law and it would do away with some of the objections offered here. If first degree murder is committed as a part of a robbery, that the penalty be capital punishment, but that murders committed in the heat of passion be excluded and I believe, Judge Kneeshaw, your crime was of that character, I believe we can go before the Legislature and get that into the law, but Mr. Bangs' objection, that is what we deal with, outsiders who come in here and commit murder, and that is where we want the law. I think some of you framers of law can word this better than I can.

MR. OWENS: With reference to this suggestion, it indicates to me that if we place such an endorsement by the lawyers of North Dakota, we are protecting property stronger than human life. Murder is a murder to me. In the last two years thirty miles west of my office a young man nineteen years old committed murder, and as a result there were orphans left, and within a short time from that period, thirty miles east of my office, a young man committed murder and left a widow and four babies. One of them is now serving time in our North Dakota penitentiary. The other under the laws of Montana has paid the penalty and gone before his Judge. I believe that under circumstances where there is direct proof of the commission of taking human life without justification, that we should say that perpetrators should pay the penalty, and I believe that the Association, if it is taking any stand at all on this question, should stand directly back of the recommendations of the committee, and of our prosecuting attorney general. On the suggestion made by my friend Braateliën and others who support it, there are cases that the conviction should be had by a verdict of the jury. I am convinced that is a valuable addition to that law. I do not believe in capital punishment in all cases of taking lives, particularly when the conviction is based upon circumstantial evidence and I seriously doubt if our North Dakota juries would impose such a penalty. I do not see the justice of inserting in the capital punishment law a punishment for murder while taking property. It is no more justified than at any other time of taking human life. I cannot see the justice of such a recommendation, and I should be opposed to inserting such an amendment.

MR. BANGS: When Mr. Braateliën spoke, it was running in my mind excepting from it capital punishment in cases where murder was committed in the heat of passion, or something of that kind, but my

friend here has called my attention to murders committed in attempted rape and some other cases of that kind. After listening to Brother Owens, I think he is absolutely right.

MR. CASEY: Seeing this matter is before the Bar Association, I think we should all express our opinion for or against it. Very briefly, I will say for many years I was against capital punishment, but I have come to believe that the criminal does not wait to take some philosophic view of what he is about to do. He has in mind that there is capital punishment, and to my mind that is a deterrent. I think we have gone on here and we have been testing the other system, and I believed for many years that capital punishment was not proper, was not right, but I am convinced now in my own mind, we ought to return to capital punishment in the case of deliberate murder in the first degree.

MR. BENSON: Six years ago the little town of Westhope in Bottineau County, this State, put on a night watchman by the name of Carl Peterson. Mr. Peterson was a good Christian man, had a wife and family, went about his duties honestly, and tried to perform them well, and while he was in the discharge of his duty one night, protecting that little village, he was brutally murdered by a bunch of thugs that broke into that town. I believe, members of the Bar, and Mr. President, that a man who does that kind of thing, that a man who stoops to that kind of a crime, is not worthy of having his life perpetuated, and that the State of North Dakota, in which that crime was committed, has an absolute right to take the life of that man and say to the world that it is not as a State going to perpetuate that kind of a man. I am therefore in favor of capital punishment in murders of first degree, not necessarily where there is circumstantial evidence. I do not believe that we should recommend that it should apply in those cases. I do not believe that the jurors of North Dakota would inflict capital punishment where there was circumstantial evidence. I think we owe it to the State to try out capital punishment again. I think we owe it to the widows and orphans that have been made such by these thugs and robbers, that have gone through the State. I think we owe that protection to try out capital punishment in North Dakota again.

MR. NORTON: I have heard a great many say as to the matter of whether capital punishment would be a deterrent in crime, that the criminal is more afraid of life imprisonment than of capital punishment, and that the ordinary criminal would prefer capital punishment to serving a sentence of imprisonment for life. I have defended a number of murder trials and prosecuted a number of murder trials and I just want to state to the members here my own personal experience. I have never found a criminal who, in the last analysis, expressed a preference for capital punishment over life imprisonment. I think that is bunk, that kind of talk. My experience in practice has been that capital punishment to the criminal, a man who commits a crime is a much greater deterrent than life imprisonment, and it seems to me that we have had in the past thirteen years atrocious crimes committed in this state by hired men on the farm, where they have wiped out entire families and done it in a most careful and planned deliberation, and that those men under the law have forfeited

their lives to the State, and there ought to be legislation on our statute books to meet such situations. We may have one of those cases come up tomorrow that just curdles our blood, and there isn't under our statute now any way to mete out a just punishment to this murderer. As far as having influence on the legislative assembly, I take a very decided and different view on the matter than my friend, Mr. Braatelen. I think a recommendation from this Association will have great weight, the very greatest weight, to the members of the Legislative Assembly, as it should have. Men of this Association are the men who are most closely in touch with the effect of the law, and I believe the people of the State have confidence in the members of the Bar, and when a man of experience and character of Mr. Bangs speaks on this subject, it means a great deal to the laity.

MR. PRESIDENT: The question before this Association, as I understand it, is the passage or adoption of a report or recommendation. I understand Judge Kneeshaw's motion was withdrawn.

JUDGE KNEESHAW: I will withdraw my motion and allow them to vote on the question, and all be heard on the question. Personally, as far as I am concerned, I am opposed to it. I feel that hanging is too darn good for these fellows that commit murder, but I am opposed to capital punishment on principle. I do not believe we have any right to take life. It ought to be taken probably, and I would give a man a pardon when he is held up, if he would only kill the fellow that held him up, if he could. I feel that they should be hung or something should be done, but I do not think it is right that we should do it.

MR. HANCHETT: This section of the recommendation of the committee now under consideration, as I read it, does not purport to set for the Legislature the form of law that will be enacted. If I thought that the law to be enacted was to read capital punishment in all cases of conviction of murder in the first degree, I would certainly be opposed to it. We may assume that when the bill is drafted, it will be something along the same line that was in existence which will permit the jury to fix the punishment, and that unless the jury did fix the penalty, there would be no capital punishment. In state cases, we can trust the jury not to fix such an extreme penalty unless the evidence was clear and unless it was a case where the law required it, so that by favoring this section of the report, we do not go on record, as I understand it, as favoring capital punishment in all cases for the conviction of murder in the first degree, but only in favor of a law which may be drafted hereafter providing that capital punishment may be inflicted upon the verdict of the jury only.

MR. BANGS: I have not read the report since it was written, but that was the sense of the committee.

MR. PRESIDENT: The situation now is, gentlemen, there is no motion before the house. Judge Kneeshaw's motion was withdrawn in answer to Mr. Owen's question. There is simply before you consideration of this section of the report.

MR. BANGS: I move the adoption of this section of the report.

Motion was duly seconded and carried.

(See Appendix for Report.)

MR. PRESIDENT: Next order of business is the consideration of the report on "Powers Terms, and Salaries of Judges," which contains three recommendations, as you will have noticed. I understand there is a minority report.

MR. WENZEL: There was handed to me this morning a report signed by Judge Knauf, but on checking it over with the original report, I find it varies only in one item, that is on the question of the present law regarding the direction of judgments, or the direction of verdicts.

MR. PRESIDENT: If I am not mistaken, it was covered by one of the reports adopted yesterday.

MR. OWENS: Due to the fact that this Association has stood for this recommendation during the last three sessions, I know of no reason why they should not now. Therefore, I move the adoption of the report including the recommendation.

Motion seconded.

JUDGE KNAUF: Under the present construction placed by the Supreme Court upon the law as to directed verdicts, that we have now, the most perfect law for the ordinary practitioner that is given to us in any State of the Union, and better, that is given to us in the Federal Court, for this reason: The statute as it stands today provides that the Judge may not instruct a verdict in the District Court where there is objection made to the motion for a directed verdict, and the person making the objections points out to the Court wherein the testimony upon the issues as presented by the pleadings presents issues which must go to the jury, so as it stands today, I object to the motion for a directed verdict, and unless I point out to the Court trying the case wherein the testimony and the pleadings, the issues under the pleadings, warrant a verdict contrary to the motion, then it is the duty of the Judge to uphold the motion, and direct the verdict, and the court has gone so far as to hold, you will find it in 215 Northwestern at page 159 and page 161, two cases in which the lower court instructed for a verdict, although the party objecting failed to point out wherein the issues and the testimony warranted a different verdict. The court, passing upon the matter, says that even though the motion was improperly allowed, that it was error without harm, or harmless error, because of the fact that there was no testimony and no issues under which the verdict could have been different than that which was directed by the court, and so as it stands today, the law is most perfect, and I would dislike very much to see it changed, because every lawyer who objects to that motion must today point out to the district court wherein the evidence warrants a different verdict than the motion calls for, and that must be upon the issues set forth in the pleadings. Every one of us, or nearly every one of us, have had some experience. I have been unfortunate enough to have directed verdicts in the lower courts which cost my clients eight or nine hundred dollars, and then come back and try the same case over at an immense cost again, while the verdict, if it had gone to the jury, would have been in our favor, and would have been sustained by the Supreme Court, and thus we were put back, and in many instances, I have

known of attorneys who could not carry the case to the Supreme Court because they themselves, and their client, were too poor to put the case over.

MR. LEWIS: I do not wish to take your time, but as Chairman of the Committee, I wish to make a few remarks. I have not read the statute recently, and it would take far too long to read it and go into it thoroughly, but I personally cannot agree with Judge Knauf that that is the meaning of our statute, that the court shall refuse to direct a verdict only when there is no evidence. I believe that the other members of the committee share my opinion. However that may be, if our present statute is what Judge Knauf says, doesn't it practically mean the court should not direct a verdict, wouldn't it be as Judge Bagley suggests in his report on Jurisprudence and Law Reform, wouldn't it be much more sensible to repeal the present statute?

MR. PRESIDENT: You have heard the motion for the adoption of the report with recommendations, which has been seconded.

Motion duly carried.

(See Appendix for Report.)

The next order of business is the report on the "Public Utilities" by Halvor Halvorson as Chairman.

MR. HALVORSON: If the court please, this committee and its functions remind me of the story of the census taker who came to a farmhouse, and after the lady of the house had given him the necessary facts, he inquired the political affiliations of the different members of the household. The housewife said, "Why, I can give you that. I am a Democrat, my husband is a Republican, the baby is 'Wet,' and the Cow is Dry, and the Dog is a Socialist." He thought a moment and then said, "Well, I can follow you on all of that, but as to the dog, why do you call him a Socialist?" "He sits outside and howls all the time," she replied. That is just about the way the committee functions. They all had some ideas and some grievances against the public utilities, but when we tried to formulate a report, we found there was only one thing we agreed on, and that was the Constitution and that the law of this State intended that the control of public utilities should be in the local community, city, village or municipality, and that the legislation in this State led to the idea that there would be more safety in the problem by placing that power with the State Board. We have had those two situations advancing side by side, creating a situation that is not lawyer-like. If the Railroad Commission is to have control of utilities, then the Constitution should be amended by changing Section 139, so as to give power both as to granting a franchise, and to fix the rates without recommendation which should have the power. It should be made definite whether the city, village or municipality not only grants a franchise, but dictates the terms under which they are granted. In reference to the fee proposition, we put that in the report because some of the members thought it was unfair to have the general public bear the expenses of the hearings, etc. Why should the farmers out here, who have no interest in these utilities, have to bear the expense? Why not have the public service corporation pay the expenses and,

in turn and under the practice of the Railroad Commission in fixing rates, charge them back against the consumers of the service, and so place the cost on the people who get the benefit from it? It, however, is not a matter of very great or deep importance, and it seems to me that there are other questions before this convention today of such importance that there is nothing here to take up much time. The Committee really has made no recommendation, simply called attention to those two things because some of the members of the committee thought it better to have those hearings charged to the public service corporation.

MR. STUTSMAN: I am inclined to think Mr. Halvorson has misinterpreted the meaning of our Constitution with reference to the questions mentioned. It is merely meant for the protection of the city in the use of streets and alleys. Our public utility law as it stands today makes no attempt to dictate to any city anything regarding the use of its streets and alleys. All that the public utility law contracts to provide for is for franchises to these different utilities which function, and that have procured from the city the right of the use of the streets and alleys, so I see nothing whatever inconsistent between the attitude of the Constitution, and the attitude of the state legislation upon the question of public utilities. As Mr. Halvorson says, it is a matter of no great weight at this time, purely academic. We have had in this State the regulation of utilities by the local municipalities, that is to say up to the time of the passage of the utility act in 1918, and some previous acts, which were complete in character, where all of these questions of rates were dependent upon franchise agreements between municipalities and utilities. As a result of the increase of utilities and the complexity of the question arising over the use of the services that were rendered, it became apparent that the cities, their city councils, were not adequate to handle these questions, and as time went on the chain of high line service, the spreading over a large section of the state of the service of one utility, rendered it impracticable for one utility to make separate franchise agreements with a large number of towns, so it was almost by universal consent that the utility service was placed under the utility act and that the Railway Commission would be in power to have charge of all public utilities, and it is to such a point now, it would be actually impractical to go back to the old system, for as time goes on, we all know it is only a question of time until our State will be covered by high line service that will supply all of our needs, not only electricity, but even gas. Even today, there is a system of mains being laid from Montana to Fargo and all lines along the Northern Pacific will be furnished with natural gas from Montana. Now will it be practical to place in power of any city the determination of the rates to be charged in each city, and in that way have different rates? With reference to the matter of hearings, is it any different to have a hearing before the Railway Commission than a hearing before the court? We might just as well suggest that the litigants pay the expenses before the court. Because we might have a hearing involving the sufficiency of the rate for utility, should the people of Minot be forced to pay all the expenses of that hearing. It is a hearing on a public function just the same as a hearing of any court. The Railway Commission is the Court. It is a ministerial body, it is true, but the work that is done by the Railway Commission is of a lot greater

importance, it involves greater sums of money than all the courts of the State of North Dakota together. You gentlemen not interested in these utility questions have no conception of the magnitude, or of the enormous sums of money involved in the work by the Railway Commission, and the pro rated expenses of these hearings or the percentage of expenses located over the different branches of service is infinitesimal.

MR. HALVORSON: As far as the constitutional provision is concerned, in a way Mr. Stutsman is correct, but the Constitution places the power in the local community to grant franchises.

MR. STUTSMAN: You are mistaken on that.

MR. HALVORSON: In the local community. Section 139 reads: (Section 139 read.) That is my point, if that is necessary then, as we know has happened in this State, these local communities have granted franchises to people. If the power is going to be in the Railway Commission, why not put it there? That is the point we want to raise. The village grants a franchise to put in electric lights, or a public utility, and if the Railway Commission doesn't give them a certificate of necessity, they can't operate, so that is the inconsistency there.

MR. BANGS: I think it is hardly an inconsistency. It is an additional protection to people so that the local feeling may not bring in perhaps two utilities where only one is necessary, and that sometimes happens, but before the local community can authorize it, there must also be secured from the Board of Railway Commissioners a certificate of necessity. They look at it from actual service rather than actual feeling.

MR. OWENS: It is evident to me from the report that the committee overlooked two very important points which covers property in the State of North Dakota with reference to utilities. One point is the method of taxation of high line systems and the other is the matter of franchise on right-of-ways through rural districts, which was not touched upon by the report. Under the present laws that we have, and of course, I recognize that the majority of the attorneys probably have not come in contact with it, does not give or it is not specific with reference to right-of-ways and franchise outside of municipalities, and it is interesting to know that a large portion, or a goodly portion of the distribution of electricity is now being taken up by farmers and small consumers in rural districts, and it necessitates some central authority to control. While we do not have a law granting that power or authority now, it is largely assumed by the Railway and Warehouse Commission because of the fact that they are not certain whether they have a law or not. They have not been very stringent in enforcing it although by the mutual consent of consumers and utilities, they have assumed such authority. Again with reference to the taxation. The taxation of power companies under the present statute and Constitution as I understand it in my experience, still rests with the local authorities, while telephones and railroads and electric lines have been specifically granted a place by the statute under the jurisdiction of the state board, so it seems to me that it would be an interesting and valuable asset to this Association, if the committee

would take up these questions and possibly one or two others, which I am not going to take up your time, and call to your attention, which I think it was first started by Judge Goss when Chairman of that Committee, and who made some valuable research and gave some valuable information in his report. It seems to me this report should in a way be adopted although I disagree with the committee in reference to the fee proposition in the State. I believe that the recommendation of the committee with reference to the fee basis should not be adopted in this State for the reason we should have a board sitting as a tribunal between the state and people and exercising the function brought before it. Therefore, I suggest that we do not adopt the recommendation of the fee system on hearings on public utilities.

MR. PRESIDENT: Is that in the form of a motion, Mr. Owens?

MR. OWENS: I will sponsor that as a motion, Mr. President, that the report be amended by striking from it the recommendation with reference to the fee system.

MR. PRESIDENT: Does that include the adoption of the report with the exception of the fee basis?

MR. STUTSMAN: If we adopt the report on this motion these recommendations are adopted with the report.

MR. PRESIDENT: I do not take it we have any specific recommendations. It is more by way of recommendation that these matters be considered.

MR. WARTNER: I move you that we accept this report without the recommendation.

MR. STUTSMAN: Second the motion.

MR. OWENS: I will withdraw my motion so that we may permit that motion to stand as the original motion.

Motion duly put and unanimously carried

(See Appendix for Report.)

MR. PRESIDENT: It is now near the noon hour and I believe it would not be wise to continue with our other two reports unless there is some objection to it by the committee chairman.

MR. CAMPBELL: In view of something in connection with the Uniform Law Report that I want, I would like to present my little portion of it now, if I may at this time. Later I want to hear from Hon. C. L. Young.

THE PRESIDENT: Very well, Mr Campbell.

(See Appendix for Report.)

AFTERNOON SESSION

MR. LEWIS: When Mr. Lawrence told me that Judge Cockrell was going to be here, the name had a very familiar sound, and I went at once to my catalog and looked him up and found that it was too true, that he was a classmate of mine whom I had not seen since we graduated thirty-three years ago at Harvard. I knew him only slightly

at Harvard and I do not believe that he remembered me at all, but I remember him, and I remember as one of the outstanding characteristics his fervency. He was a very earnest man thirty-three years ago and he needs to be an earnest man for the work he is doing now. He is President of the U. S. Federation of Justice which is making a study of the successes of justice all through this country. Now I could take a lot of time to talk to you about Judge Cockrell and about his work, but I remember one time when I was in charge of a meeting, and I selected a chairman who knew a little something about the speaker to make the introduction. He spoke one and a fourth hours in doing so. So, in view of that, I am just going to introduce to you my friend, Judge Cockrell of Missouri, who will address you.

(See Appendix for Address.)

MR. LEWIS: I should like to move that the Association give a rising vote of thanks for that most interesting address, and that he be named as an honorary member of this Bar Association.

Motion seconded and unanimously carried.

MR. WENZEL: I have the privilege and honor, Judge Cockrell, of extending to you an official honorary membership in the North Dakota State Bar Association.

MR. PRESIDENT: We have a special committee which perhaps it might be better to call upon for a report at this time, so you gentlemen can be heard. Mr. Bangs is chairman of a special committee on the Digest.

MR. BANGS: Mr. Chairman, and gentlemen of the Convention: I came in town this morning and found that the President and Mr. Cuthbert, who is Chairman of the Committee, that was appointed on the Digest, had kindly sat up waiting the arrival of my train, so that we might discuss the question of the Digest. We discussed it pro and con, mainly pro and we came to the conclusion that the entire Bar of North Dakota was without much digestive apparatus, and that there really was some need of one. We have talked with some other members of the Bar since this morning in regard to the use of the North Dakota reports, and it seems to be practically the unanimous judgment of the members of the Bar of this State, that we have no manner by which we can determine what is contained within the covers of the North Dakota reports. Some use the Hill Digest. Of course, we have to wade through a great deal of stuff to find out, and then it is not always digested according to what is in the index of the decision, but rather what is contained in the civil act. We have Hill's Digest. I think I have it, in fact I know I have it because I stumbled over it the other day. I have all of the volumes that were issued of Hill's Digest but I am altogether too busy to try and find anything in Hill's Digest. It takes too much time. Now it seems to me from talking with different members of this organization, that is about the experience that every practicing attorney has had. When I was a very small boy running around my father's office, I used to hear something about Callaghan's. I used to hear him sometimes

swearing about the bills he had to pay Callaghan & Company, and if a man, back in the days when I was a boy, swore about bills he had to pay to law publishing houses, what do you suppose he would do if he were living today. Callaghan & Company is one of the oldest concerns in the country, and one of the best established, one of the most reliable law book publishing houses with which I am acquainted. Mr. Cahill of Callaghan & Company conferred with us yesterday and today, and I am going to ask him to speak. He doesn't know that he is going to talk to you, gentlemen, but he is—in a few minutes. I was going to tell him that it would be necessary for him to make the report of the committee because Cupler and I came in on the early morning train, and they poured this committee work into me so rapidly that I could not completely digest it, although I knew it was something about a Digest, so I said, "Now Mr. Cahill is here. He can tell us something just about what Callaghan & Company propose to do." I know what they propose to do but he can tell you better than I can. I know we need this digest system. It will save us a great deal of time. I know we have tucked away in the cover of the North Dakota reports a lot of law, really good law, more than some of you are willing to admit. I think there is a lot of it—you may disagree with me—if it was properly digested, so you could get the real point that is involved in the case, and the decision the court has made, you would have a higher opinion of our court than you have, and which you ought to have. If we can do anything to bring this most desirable situation about, we ought to be willing to pay to bring that about. I am going to ask Mr. Cahill if he will not explain to you gentlemen what Callaghan & Company will do and propose to do with respect to compiling a digest for us.

MR. CAHILL: Although a member of the legal profession, I am a member of the part of the profession which does not make a living by talking. We will get out a digest just as your committee wants it, whatever they want, and we will put it into whatever form they want the work done. We will do whatever they say. In other words, we want your committee to feel they have the same authority, the same power in respect to the preparation of the digest as our Board of Directors would have. I was over at the State Bar Association of Wisconsin about four years ago, where a similar condition existed. They had a poor digest on the market, and they had another one prepared which was no better than the first, so we made them a proposition of publishing a new digest for them. We checked over the work and finally made them a new digest. Now briefly, we propose to have this new digest prepared by W. E. Mason. Mr. Mason was with the West Publishing Company for twenty-seven years, and for the last four years has been with us. He prepared the Wisconsin Digest under the direction of a Committee of the State Bar Association of Wisconsin. I think, without question, he is the outstanding digester of the day, and I am sure that he will prepare a good digest with the cooperation of the committee, which will tell us what we must do. The first thing we were told was needed, was to prepare a digest after reading the opinions and reading

the syllabus. I am told a great many points are covered in the opinions of the court, which do not appear in the syllabus. Of course, the digest does not go into that so that all of the matter in the opinions will be carefully read and the points appearing in the opinions that are not covered by the syllabus, will be fully set out. I can't give you any information as to the number of volumes because Mr. Mason is working on that now, trying to make an estimate. It is a very difficult and dangerous thing to estimate the number of books, but there is one thing, there will be no more volumes published than is necessary. We will leave the style of type to your committee, and we will submit the scheme and the analysis of the typographical department to your committee. In other words, you have a committee, so make them work, and they will have plenty to do. Our department contemplates keeping a digest to date by means of a quarterly supplement, which will be cumulated every two years. This biennial supplement in turn will be cumulated every ten years so that at the end of every ten years a permanent volume of supplements will be obtainable and at the end of thirty years, there will be only three volumes of supplements. That is the plan followed in Wisconsin and Iowa now. Following that arrangement, once you get familiar with it, you won't have to re-familiarize yourself in a few years by the publication of a new edition. As to the price, we do not ask a profit on this. All that we ask is the cost of manufacture, our selling cost be paid. As to the profit, we will get it, if we get out a good digest and render you good service, we feel the advertising value will far exceed any material gain resulting from the digest. We know that from past experience. I am sorry I cannot be more specific. If there are any questions you desire to ask, I shall be glad to answer them.

PRESIDENT LAWRENCE: The suggestion apparently, or rather the feeling has come about that this committee is to act throughout. I have had no authority to give any such powers to this committee. I leave the matter with you, gentlemen, to leave the appointment of the committee with the new administration, which will work with that committee. It is your pleasure to act, gentlemen, on the matter of the digest as explained to you, whether you shall continue this committee or have a new committee appointed.

MR. KNAUF: I would move you that the present committee be continued with power to act, and with power to name or select other attorneys to assist in the work that they have to do in creating the new digest.

MR. LAMBERT: Second the motion.

MR. BANGS: I would just like to make a suggestion. There is no one that uses the digest more than the members of the Supreme Court of the State and assuming that your motion might go through, I am going to ask you that you just add to that Committee Judge Birdzell.

MR. KNAUF: I would be glad to do that. I had the thought in mind that the Committee would name such members of the Bar and Court as they would like to.

MR. PRESIDENT: The motion before the house is that the present Digest Committee as appointed namely, Mr. Cuthbert, Mr. Bangs and Mr. C. L. Young, with the addition of Judge Birdzell, be continued as a Digest Committee with power to act, and that they select such other assistants from the Bar or Bench as they see fit.

MR. KNAUF: There is a tremendous work for this committee and it may be possible that when the committee is organized, they will wish to divide their work up and let some of the rest of us help out on some portion of it. I think every member of the Bar should be willing to give of his time to the aid and assistance of the Committee, and for that reason I gave that power to call on any other member of the Bar for aid and assistance.

MR. STUTSMAN: There is one matter that appeals to me in the matter of the digest. If it is true that Mr. Cuthbert is in favor of the scheme used by the Hill Digest, I think that is a matter we should thresh out here. I am thoroughly convinced Hill's Digest is not properly classified. I may be prejudiced because I worked for four years with the West Publishing Company and worked with Mr. Mason and Judge Cooley. We three worked together twenty-seven years ago and I have every confidence in Mr. Mason's ability, but if he is going to classify the digest according to some suggestions made by us, of course, he will pay no attention to his training. I am utterly opposed to any digest based upon Hill's Digest.

MR. YOUNG: There is a misunderstanding here. Mr. Cuthbert is unalterably opposed to Hill's Digest.

Motion duly put and carried.

MR. PRESIDENT: We will next have the report of the American Law Institute by Judge McKenna.

JUDGE MCKENNA: President, Members of the Bar Association: The written report has been filed in this case but I am sure you do not want me to read it to you. Perhaps I can briefly state the matters contained in there.

The great work of the American Law Institute has been in progress now for a period of five years. You will recall it is an attempt to prepare a re-instatement of the principles of the common law of England and the United States to the end that we may unify, simplify and clarify the difficulties of the forty-eight states, and of our federal courts.

The first thing I think would be of interest to you is that departing from the system of the American Law Institute to hold all their meetings at Washington, D. C., the Executive Committee called a meeting in Chicago last year and extended invitations to the State

Bar Associations and the Supreme Courts of the western and central states, hoping in that way to draft in men to take interest in that work who would not feel they could go to Washington, D. C.

I am proud to say I was selected by the Executive Committee of the State Bar Association to attend that meeting, and yet I was sorry in a way. I had hoped some one else who had heretofore not taken any particular interest would be appointed, so he could catch up his enthusiasm.

The meeting was held in the beautiful Lincoln Hall of the Northwestern University in Chicago. We sat there in the students' chairs and really it was a distinguished class; in front of me was Leonard S. Harding of the U. S. Circuit Court of Appeals, Chief Justice Byron Cole and several others.

The object of that meeting was to go over the restatements that had been prepared up to that time. In charge of the various subjects were Samuel H. Williston on Contracts; Floyd R. Meecham on "Interpretation of Manifestations of Consent"; Joseph H. Beale of Harvard on "Contracts and Wrongs."

These were analyzed carefully and completely, and you must remember they had been analyzed for a period of five years, paragraph by paragraph, sentence by sentence, and word by word. It was wonderfully interesting to see the amount of thought and study that had been put upon the individual sections by the various men. Sixteen states were represented at that meeting. We were three days in session and at the end of that session the Cook County Bar Association tendered us a wonderful banquet. I think there were from 700 to 1,000 lawyers and judges present at that banquet.

The President of the Institute presided, George W. Wickersham, introducing the various speakers.

They say that Cook County has one of the most harmonious Bar Associations in the world. I was talking to one of the members about it and he told me how it happened to come into existence. It seems a great number of years ago the politicians dictated who the district judges should be and practically all of the Supreme Courts of that state. The leaders nominated several men who were extremely obnoxious to the Bar of Cook County so they called a meeting and sent delegates down to see the political leaders but they just laughed and said, "We are going to say who the judges should be in this state. These men we have selected are going to be the next judges. Just go home and forget about it." They went back and secured a fund of \$300,000 and beat the bosses of the political gang and now the Bar Association of Cook County says who shall be the members of the Bench. They are selected irrespective of politics, religion, or anything else but their ability for the position. I wish I could tell you some of the things they planned, some of the wonderful stories they told.

We had perhaps the most important meeting of the American Institute at Washington this year for the reason at that meeting the first formal draft of any portion of the work was accepted and passed upon by the members of the Institute. Some 500 members represented every state in the union and every court practically in the United States was at that meeting. One hundred seventy-seven sections of the Law of Contracts have been finally adopted as the final work of the Institute and will be sent out at a cost of \$1.25 each. You can secure them from the Secretary of the Institute, 3400 Chestnut Street, Philadelphia. I think every member of the Bar and every Judge and member of the Supreme Bench should have that work.

Another thing that occurred, Dr. William Draper Lewis submitted the first tentative draft of his work on the first portion of the Law of Business Associations, covering forty-one sections, dealing with corporations for profit and the creation of shares.

A great deal of work has been done by the various reporters which was not in form to present to the Institute this year. Prof. F. H. Bohlen has done considerable work on the Law of Negligence in Torts. Harry A. Bigelow has a large portion of the work of Property well under way. Austin W. Scott has completed a large share of the work in Trusts and expects to complete it in two years.

The one thing I think you would be especially interested in is the preparation of the Model Code of Criminal Procedure. You will recall that the Rockefeller Foundation contributed \$57,000 to prepare a model Code of Criminal Procedure.

It was not the intent, you will recall, of the American Law Institute to have any portion of the work codifying the law. It was to go out before the Bar of the United States on its own merits with the hope it would be ultimately adopted as the law of the land. In the case of the model Code of Criminal Procedure, that was to go to the Legislative bodies and be adopted by all of the Legislatures of the States as the proper methods of handling criminal proceedings in the United States.

Now the Model Code of Criminal Procedure was presented to the Institute with some 200 sections dealing with arrest, preliminary examination, bail, methods of prosecutions, indictment and information. The notes and commentaries and everything in connection with it comprises quite a formidable volume of some 500 pages. That has not been adopted yet as the final work of the Institute. That is only the first draft. I know you men will be interested in securing that volume but I haven't the information as to just what it will cost. At this time about half of the work has been done.

If you men have that work in your office and can suggest any criticism or any ideas to the men in charge of that work, or to the Institute itself, now is the time to do so because they want to receive it. The work of the Institute is being rapidly done now. You will recall when I first talked to you upon the subject, that it was hardly expected that anything would be done, any part of the work would be done, inside of eight to ten years. It is the hope of the committee now that by 1931 at the latest, a number of topics undertaken so far will be completed.

I think, as I have stated to you before, it is one of the greatest things that the American Bar has ever undertaken. We still have the hope that this work will go out to every Bar Association in the land and finally will be quoted by the Courts, District and Supreme, in memoranda and final opinions as the very last word upon the particular topic which has been briefed. I thank you.

(See Appendix for Report.)

MR. CAMPBELL: I have made the recommendation that one of the commissioners of the State be appointed to attend the meeting of the Uniform Law Committee of this Association, and that the Chairman of such Commission be the Chairman of the Committee of the Bar Association, and I want to demonstrate to this Association that my non-attendance, my inability to attend, rendered me unable to bring to some of you something you should know, and I have therefore asked Mr. Young to speak to you.

MR. YOUNG: I did not know that I would be expected to make a report but it might be well to give just a brief statement as to what this is really all about. I will confess I have been attending the Association meetings a good many years, and thought I was fairly well informed as to the activities of the American Bar Association, but I did not, until I attended the conference at Seattle last month, really get a clear conception as to the importance of the work of the Commissioners on Uniform State Laws.

The Conference was organized about thirty-eight years ago at the instance of the Legislature of the State of New York, and the primary purpose of organizing the conference was to consider principally the advisability of having prepared a draft of the Uniform Divorce Law. I think that the uniform divorce law really has been under discussion at every session of the Conference, and this year the committee came in with a draft of such a measure and about a half a day was devoted to a discussion, and the entire time was taken in considering the first section of the article. That was as far as they got. I think the general expression of the committee was it is about as far as they will get on account of the great diversity of opinion of the different parts of the United States on the subject of divorce.

The Commission consists of Commissioners appointed, where there is no legislative authority in the several states, by the Governor. The appointments are made at the request of the officers of the Commission, and it is surprising to see the attendance, because a great many of the states have not officially applied for the appointment of commissioners or for the payment of their expenses, and a great many of these men go there and pay their own expenses.

It was an inspiration to attend that conference through its five-day session and to find the intense zeal with which the commissioners apply themselves to the work of the conference. Prof. Williston is a member of that conference; the new President of the American Bar Association, Mr. Newlin; Mr. Solem a former president, Mr. Long of Kansas a former president, Judge Phillip Ventley, Judge of Arizona, a number of Supreme Court Judges and District Court Judges, United States Senators and Representatives in Congress, seventy-eight or nine

men in attendance, and the various subjects that were under consideration were considered just as they would be in the House of Representatives or Senate. There was no speechmaking. There was a genuine conference spirit and attempt to work out the drafts of laws on the various subjects which it was thought should be considered by a conference and, of course, you know some of the articles which have been recommended in the past, a good many of them are embodied in the statutory law of this state.

This year four final drafts were adopted by the conference; that is, a uniform corporation act, which is now being recommended and after consideration of a number of sessions of the conference covering a period of years. There is a uniform transfer, a Veterans' Guardianship Act, which seems of great importance.

Now I don't know whether Mr. Campbell thought I should address myself to the recommendation embodied in this report. I think probably it would look better if I didn't say anything about it. As a matter of fact commissioners of this state have attended this conference whenever they could. Judge Johnson was a member. Judge Bronson has been a member for ten or eleven years and has attended many of the sessions. Judge Pollock was appointed a little over two years ago and attended two conferences. These men have done just as many of the commissioners have done, they have paid their own expenses. I have talked the matter over with Judge Bronson and he is not so very much concerned about the provision for an appropriation to pay expenses. I am not especially concerned about that. I think it is a just thing. I think it is a fair thing. It is an important work. I believe North Dakota ought to be represented there. Judge Bronson and I discussed the matter of securing legislation authorizing the appointment of commissioners and providing for the payment of their expenses, and with the attitude as it exists in this state at the present time regarding additional appropriations, we thought that the chances were that a measure for appropriating money might possibly be defeated. It certainly will require a considerable amount of diplomatic legislative work to get it through and we thought that there should be no attempt at a legislative program until the Bar can point out to the legislature where that money can be gotten without an additional tax burden.

Now I know \$1,000 is not much but every session there are just literally dozens of bills calling for \$500 or \$1,000 for some purpose, which seems very important to the promoters. At the same time I want to say it is only a just and fair proposition and that ultimately there should be legislative authority for representation on this committee, and that there should be with reference to the payment of expenses, some method by which the expenses can be borne.

MR. PRESIDENT: The report is before you with the recommendation. What would you do with it?

MR. LAMBERT: I move we accept this report and adopt the recommendation. Duly seconded and carried.

(See Appendix for Report.)

MR. PRESIDENT: We next have the report of the Legislative Committee by L. L. Twichell. The report is an exceptionally able one and contains a very clear, complete and comprehensive summary of their work.

I am going to take the liberty of filing this report because in the reading of the proceedings of this convention, you will read the report of the Legislative Committee.

(See Appendix for Report.)

The report of the Semi-Centennial Meeting of the American Bar Association is to be given by John Hanchett:

MR. HANCHETT: Mr. Chairman, Members of the Association: It was indeed my good fortune this year to be able to attend this very important meeting of the Semi-Centennial Session of the American Bar Association at Seattle. I am not a very faithful member of the American Bar Association. I have been a member for fifteen years and attended two meetings, one at Minneapolis two years ago and the meeting at Seattle this year in July. It was indeed a very wonderful meeting.

I have no report prepared and did not expect to make any report and heard nothing about my being called upon to make a report until I arrived in town this morning.

I might mention a few of the important features. One was the address of the Honorable Jim Kennedy, Lord Chief Justice of the Irish Free State on the Irish Constitution. It was a most wonderful, comprehensive, detailed address. He detailed the history of the struggle of Ireland for independence so they could establish a government in Ireland, and detailed many of the particulars concerning the struggle for the last 150 years. Most of us have read it in history but, of course, it was interesting to hear from a man who had been there in recent years in the midst of the struggle. He also explained the present status of Ireland.

Among other things of interest to me, and probably to you, I learned that under the present system Gael is made the national language. All of the procedure in court was in the Gaelic language. I had been of the impression that Gael was a dead language, or practically so, but it seems that is not the case. I do not know how many of the Irish people are able to talk it but doubtless many of them can. I spoke about that to an Irish lawyer in Great Falls on my way home and upon whom I called in a business matter. He said his father could talk it and write it and that he could talk it and write it, and he further informed me it was the second oldest written language in the world.

We also heard Justice Stone, one of the Justices of the Supreme Court of the United States, who gave a very complete and comprehensive history of the Supreme Court of the United States and important cases decided by that court affecting certain public questions the last few years.

Another very interesting matter was a program put on showing the wresting of the Magna Charta from King John, put on by the University of Seattle. It was a wonderful spectacle showing the beginning of the English liberty. They put on the whole performance and had King John rolling on the ground when they were compelling him to sign the Magna Charta. It was so realistic we all felt like brushing up our history a little.

I might state that it was unfortunate indeed that only five members from the North Dakota Bar Association were there present to hear and witness this meeting. When we gathered together at the noon recess there were five of us, and there were five officers to be elected, so everybody voted for himself and we were all nominated and elected. There were six men registered but the sixth man didn't appear. I didn't see him at the meeting or at the North Dakota Council. I don't know what would have happened with the peace and harmony prevailing if this sixth man had shown up. I think I was selected as one of the three members of the local council of North Dakota for the American Bar Association. I haven't yet learned what the duties of that council are. Anyway, I am one of the three local council of North Dakota.

SECRETARY: There were four, Mr. Hanchett. You should have read the August issue of Bar Briefs.

MR. HANCHETT: I stand corrected. If I had known I was to stand up here and appear before you, gentlemen, I would have looked up Bar Briefs. Anyway, you will concede that everyone who was present got enough so that peace and harmony prevailed. I think that is about all I can report at this time, off hand.

PRESIDENT LAWRENCE: Is there a report from the Bar Board?

MR. YOUNG: I might state that since the Bar Board is really not a direct adjunct of the Bar Association, I do not think anyone thought about preparing the report. It has been customary to prepare a statement of the financial operations of the Board and of the number of matters in which it is concerned and the number of admissions and so on during the year. We would like to ask permission to publish that report with the proceedings of the Association because every member ought to have access to those facts. I would like to say that the report for the year runs about the same as other years except that we have had the very disagreeable task of an unusual number of disbarment proceedings. I think there are now pending four proceedings in which arguments are soon to be made, or already have been made before the Supreme Court. It is unfortunate and I hope that next year will disclose a different situation.

MR. PRESIDENT: We appreciate the voluntary character of the report of the committee. If there are no objections to the suggestions and request of Mr. Young, they may be considered complied with. The next report is the one of the Judicial Council by Mr. C. L. Young.

(See Appendix for Report.)

MR. YOUNG: I don't know just how I happened to get a string of reports here that seem to be left to me, but there is really no

particular reason why I should report on the Judicial Council. I am not Chairman or Secretary—I am just one of the members of the Council.

The Council, as you know, was provided for by legislative act in 1927 and was organized, I believe, last December, but most of the time at that meeting was taken up with the matter of organization, adopting by-laws and determining the various matters which, of course, should be taken up. The next meeting was set for April but for some reason, the April meeting was put off and no meeting was held until just the day before the Association began its meeting.

We considered some matters at that session day before yesterday. I might say the council is just beginning its work. Some of the more important matters were not quite ready for report. Next month we will hold our regular meeting. The meeting held day before yesterday was a special meeting. At the next meeting of the Bar Association, there will be some definite progress to report.

In Memoriam
