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# President's Address

North Dakota State Bar Association

# PRESIDENT'S ADDRESS

## *A More Efficient Administration of Justice*

The wonderful development of material civilization which daily boasts improved methods and new economies creates a demand for corresponding progress in the administration of all departments of the government. There is no more reason for inefficiency in managing a state than in operating an industry. The judicial system of both state and nation is as worthy of creative enterprise as are the instruments of commerce.

The attainment of justice is an ideal which men have pursued with unending quest. However remote may be the realization of this end it has inspired unceasing effort to improve the substance of the law and the processes through which it is applied. Recent years have been most fruitful in suggestions for change in both basic and procedural law. While there has been much professional discussion of these proposals, their consideration has been more or less fragmentary. It therefore has seemed that at the beginning of our deliberations at this meeting we may with profit survey the existing judicial order and the need, character and possible effect of certain of the plans, proposals and movements for its improvement.

Several factors are involved in the administration of justice. The first to be considered of course is the law which must be administered. To assure their just and certain application fundamental principles must be settled beyond cavil. Though our substantive law, both civil and criminal, has been in the making since the very beginning of Anglo-Saxon jurisprudence, it still is more involved and complex than need be. The number of decisions of courts of last resort has been constantly increasing. There is respectable judicial authority for almost every conceivable view of the law applicable to a given state of facts. The greater the number of litigated cases, the more difficult it has become to reconcile the authorities, the greater the resulting dilemma of practicing attorneys, and the more onerous the duties of the courts.

To meet the demand for relief from this situation, becoming increasingly intolerable, the American Law Institute was organized in 1923, to simplify and clarify the common law, to make it more adaptable to social needs, to promote scientific research

upon legal problems, and to secure a more efficient administration of justice. No other like undertaking since the days of Justinian rivals the restatement in process of preparation. If it can be made so as to give it the voice of authority, it will end much of old conflict and search of authorities. It should simplify the process of applying the law because the law applied itself will have been simplified.

Though the institute did not at the beginning contemplate restating the criminal law, it has been determined that there are so many inconsistencies and uncertainties in it that it too should be included in the project. In view of the provision of the penal code of this state that no act or omission shall be deemed criminal or punishable except as prescribed or authorized by the code, our direct interest in this phase of the work is only that which thoughtful citizens of one state naturally will have in the welfare of sister states. Nevertheless, the clarifying of the law in those states where the common criminal law still is wholly or partially in effect, will have a wholesome influence upon the substance and interpretation of penal codes.

Parallel with this movement is the growing realization that the substantive law must be suited constantly to new needs as they arise. We are moving away from the view that the law is static. Industrial and political and economic conditions are in a state of constant change, and with each shift in conditions come changing conceptions of justice. Doctrines which are the appropriate products of one period to assure justice, in a later period are modified or supplanted to avoid injustice. When promulgated they rest upon public policy and later yield to other doctrines upon the same consideration, for the preponderant opinion as to what is necessary to the well being of the race today will bear quite a different emphasis tomorrow.

One aspect of this development is the steady growth of interest in the law as a science. There is increasing resort to scientific methods to add to the efficiency of the law by analysis of the reasons for the more obvious of its short-comings. The crime commissions and judicial councils recently organized are the most apparent evidence of the tendency. As a whole the profession turns more tolerantly, if not more eagerly, than formerly to discussion of the historical or philosophical aspects of the law. Endowments are sought to permit research concerning the problems of jurisprudence. The new professional attitude is marked by the open mindedness of the scientist which concedes always the possibility of improving what exists, but which admits the new

to supplant the old only when its soundness or fitness so to do is demonstrated.

Though there are positive efforts to improve the basic thing with which the administration of justice has to do, insofar as there are shortcomings in applying the law, they are generally attributed, not to the law itself, but to the media through which it is applied. The odium for failures in administration is heaped upon the law of procedure, and for the most part the legal reforms suggested have been calculated to simplify procedure and to facilitate the disposition of causes. Especial attention to the law of procedure has seemed necessary because it has always been less adaptable to change than the substantive law. A mark of social progress has been the growth of substantive rights and these naturally have been defined in the growing substantive law, but the law of procedure has lagged behind it.

This incongruity between these two branches of law resulted in the agitation so ardently begun by Jeremy Bentham, for a revolution against the general failure of justice. An outgrowth of this movement after long years of agitation was the adoption by New York in 1848 of a code of civil procedure "to simplify and abridge the practice, pleadings and proceedings of the courts" of that state. A large number of other states adopted the same or similar provisions, and others modified their procedure to suit it to modern conditions. When the code idea was adopted it was believed by its supporters that it would assure a simple and punctual administration of justice and would satisfy the public with the judicial system.

Though the original New York code had less than three hundred sections, by 1896 it had been so amended that it contained nearly four thousand sections. We shall not pause here to consider the merits of the code system. It has served a great purpose, and has done much to strengthen public faith in our judicial institutions and cannot be summarily cast aside. Nevertheless, there still is complaint that the progress of litigation through the courts is unduly impeded and that the way of the litigatant is made devious and uncertain by the power of technicality.

Certain as it seems that the present situation can be materially improved, there is at hand no ready-made scheme which insures improvement. The agitation which led in this country to the proposal of the code system, after much discussion, experiment, observation and legislation, led in England to the adoption in 1873 and 1875 of the judicature acts, which swept away the system of

common law pleading there more completely than the codes swept it away here. These acts confer upon the supreme court the power to make rules of court for the regulation of pleading, practice and procedure in the several courts. The rules of judicial procedure are framed by the courts and not for them. In support of such a system it is urged that the prescribing of procedure requires expert knowledge and can be more intelligently done by judges than by a legislative committee composed in large part of laymen; that defects of procedure can be more readily cured under rules of court than under a procedural code, and that the tendency of such codes, as their history shows, is to fossilize as the common law procedure fossilized, unless the courts themselves are authorized to adapt them to new conditions. Whether rules of court under conditions here would prove to be all that is claimed for them, no one knows. We do know that the power to prescribe the procedure in equity cases in the federal courts is being successfully exercised by the supreme court and that there is strong sentiment for placing in the court the same power with respect to cases at law. Concededly, there are arguments in favor of granting such power with reference to practice in the federal courts which do not apply with equal force to practice in the state courts. The power also has been conferred upon the supreme courts of Washington and Ohio and of other states, and no doubt will soon be given a trial. Visitors to England are loud in their praise of the directness and speed and effectiveness with which the courts there function, and much of the credit for their efficiency is attributed to the judicature acts. But again it must be noted that the conditions and atmosphere existing there differ radically from those existing here.

In considering any proposed reform we must bear in mind that a system peculiarly adapted to conditions prevailing in one country or state will not necessarily succeed equally well under conditions existing in another country or state; that the most admirable of exotics often fail in strange environment, and that whatever defects may exist in our codes of procedure, their meaning has been made definite by judicial determination, while rules of court would open new fields of litigation. On the other hand, the profession should recognize any shortcomings of the system under which we live and practice and look with tolerance upon the proposal of changes fruitful elsewhere of efficiency and commendation. We can well afford to refute our professional reputation of blind adherence to precedent and hostility to innovation. We shall not want to align ourselves with those of our earlier brethren who

first received the code idea as a "barbarian invasion" and were contemptuously dubbed "sons of Zeruiah."

While the idea of substituting rules of court for codes has received tremendous impetus and bids fair in the end to prevail, there is much which may be done to make the existing system more effective. Proposals at least worthy of investigation are a summary judgment act to meet the habitual interposition of answers solely for delay; the trial of cases to the court without a jury unless a jury trial is demanded; the placing of causes upon the calendar without notice of trial; the examination of jurors by the court; the reduction of the time for appeal; verdicts by a majority of the jurors; more frequent final disposition of cases by the appellate courts and other provisions with which there has been experience elsewhere.

The apparent breaking down of criminal justice in some sections of the country has centered attention upon criminal procedure. Provisions for keeping statistics of crime in the several states are so inadequate that it is impossible to determine definitely to what extent the criminal law is failing. There is much diversity as between jurisdictions in the definitions of a number of the principal crimes. Despite these facts we are reasonably sure that there is more crime in this country in proportion to population than there is in England or Canada, that a much larger proportion of those who commit crimes are not apprehended in this country as compared with the other two countries, and that a larger proportion of those prosecuted for crime here escape conviction and punishment than in those countries. Whether this be true or not there can be no doubt that too many of those who commit crimes are not apprehended and if apprehended are not informed against or indicted, that too many of those indicted are not tried, and that of those tried too few are convicted. While the crime situation which has been discussed so much elsewhere seemingly has not changed for the worse in this state, we nevertheless are concerned with the general problem, and no one would claim that there may not be improvement here.

The condition of which complaint is made is attributed, according to the inclinations of observers, to divers causes, ranging from the hip flask to the waning of religious faith, from childhood complexes to the Bedouin existence of the modern American, and from the foreign element in our population to glandular defects. However, investigations by students and committees and commissions without exception have resulted in stress upon defects in criminal procedure and in the suggestion of numerous changes in it. Among these are the following: that the infor-

mation or indictment be reduced to its simplest form; that its amendment be permitted to obviate the delay incidental to technical error; that admission to bail be made more difficult; that the number of peremptory challenges for the state and the defendant be made the same; that the issue of insanity be raised in the plea of the accused; that this issue be determined by experts selected by the court; that the right to change of venue from both the judge and the county in misdemeanor cases be taken away; that the rights of the state with reference to change of venue be the same as those of the defendant; that comment upon the failure of the defendant to testify be permitted; that the trial court function as a judge rather than a moderator, and express his opinion regarding the weight of evidence and the credibility of witnesses; that the waiver of jury trials in felony cases be permitted; that the state's right to appeal be enlarged; and that the time for appeal he reduced and the hearing thereon promptly held.

To one trained in existing criminal jurisprudence, some of these suggestions seem like hazardous innovations which would strike at the rights of one accused of crime which are held so sacred. It should be observed, however, that intelligent judgment upon such proposals must take into account the historical background of the existing substantive and procedural criminal law. When the criminal procedure, which still for the most part obtains in our several states, was shaped nearly two hundred offenses were punishable by death. The trial methods of English prosecutors and judges in the seventeenth and early part of the eighteenth centuries, and the use of the criminal law as an agency of religious persecution, were so vividly remembered that the primary problem in the formative days of our national and state governments was the protection of persons accused of crime against oppression. In consequence stringent provisions were adopted to protect the accused against unfair trials. The cumbersome machinery of the common law was provided to safeguard the liberty of the individual, the trial courts were shorn of powers possessed in England, and unusual powers were conferred upon juries. Judicial justice had not yet been developed, and there was need of protection against the oppression of royal governors and judges. Now the old tendency to oppress has passed away. In the substantive law the interests of society are receiving quite as much emphasis as the rights of the individual, yet this change has not been reflected by corresponding changes in criminal procedure.

But we need not pause to appraise any suggested change either in civil or criminal practice. We should not agree in any speculative appraisal were it undertaken. What is needed is a scientific and judicial analysis of alleged defects in our forms of prac-

tice both civil and criminal, consideration of their historical reason for existence, thorough investigation of the experience in other jurisdictions with any proposed changes, and a suiting of the remedies to the needs existing. The haphazard amendment of statutes and instruction by laymen and pseudo-lawyers of the courts as to how they shall perform their duties, has proved fruitless of everything except confusion and the addition of impediments to the prompt and efficacious administration of justice. To deal with the problem, judicial councils have been created in some jurisdictions. The organization of such councils is rapidly passing the stage of experiment. The effect of the regulations recommended by the conference of senior circuit judges, which constitutes the federal council, upon the dispatch of business in the federal courts, has been most wholesome. The first report of the Massachusetts council is so searching and judicial as to inspire confidence in the new departure. Like bodies in other states no doubt will prove as effective and painstaking in their work.

The shaping of the law and the means of its administration is a function of the expert. We have too long left it in the hands of the novice. When there is within the profession a readiness to deal with the law as the profoundest of the sciences and a sincere desire to have it administered and applied to human affairs with the greatest conceivable efficiency, we may expect a deeper regard for the legal expert and his recommendations. But if the profession concerns itself chiefly with a use of the law and its processes as a means of making a livelihood and with an adherence to precedent because it is that and because it involves less effort than the application of legal principles in the light of advancing knowledge, we need not expect much faith in the calling nor departure from the all too prevalent thought that since the law affects all citizens, any of them are qualified to help make it or to pass judgment upon proposals for its change.

The supreme and district court judges of the state in a recent meeting acted as a temporary judicial council and considered means of improving the service of the courts, but this group is not so constituted that it can make continuous critical study of judicial administration. There is need of a body of judicial efficiency experts who can give precedence to the consideration of our own procedural problems, study the effectiveness of the administration of courts in this state, and determine the respects in which it requires improvement and the means suited to the peculiar situation existing by which the needed improvement probably may be most successfully wrought.

Such investigating bodies as the Missouri Association for Criminal Justice, the Chicago Crime Commission, the Cleveland

Association for Criminal Justice, and other like bodies have made and are making valuable contributions not only to the study of causes of crime, but to plans for their removal. If such organizations consisting so largely of nonprofessional members and engaged in so difficult and serious an undertaking can function so effectively, how much more may we expect an improved administration of the law under the guidance of experts especially delegated to study the defects in the processes by which it is required to be applied.

So long as results are not what they are desired to be, it is natural to lay blame, and perhaps to attach unwarranted importance, to practices now in vogue, but in passing it seems pertinent to suggest that often the ends of justice would be more adequately served if the procedure we already have and the processes we daily use were more effectively invoked by those responsible for their administration. Consideration of this phase of the general subject, however, belongs under the discussion of the third factor, the judiciary.

To so large an extent does success or failure in the administration of justice depend upon the judiciary that the public readily ascribes many apparent shortcomings to the courts. Much criticism to which they are subjected is unwarranted, but obviously there are respects in which their functioning can be improved. In the old common law courts the trial judge was a judge in fact whose opinion upon the evidence was deemed as important and essential a factor in arriving at a verdict, as was the opinion of the jury. He was one of the triers of fact. The general stripping of the trial judge in this country of such power is an interesting chapter in our judicial history, a knowledge of which is needed perhaps to pass judgment upon the proposal that we reinvest him with his former power.

Judicial power by the constitution of this state is vested in the supreme, district and inferior courts. It is not granted to them. The district court is a trial court. If the constitution in securing to the people of the state the right of trial by jury contemplates a common law jury, as the supreme court has held, the trial judge, in the absence of contrary provisions naturally should be a court with the prerogatives of a common law judge. We are satisfied to leave with such a judge the authority to find facts in equity cases or in cases in which jury trials are waived. If he is wise and just enough to find the facts on one side of his court, it must be safe in theory at least to entrust him with the power to comment on the facts on the other side. Instead, by virtue of the statutory curbing of his power, he refrains from doing the very

things which his experience and knowledge should particularly qualify him to do.

Then there is an executive side to judicial administration which is commonly overlooked. In spite of limitations upon the judicial function the trial judge very often might do more to dispatch business and to discourage the dilatory tactics which so frequently postpone the disposition of causes and bring reproach both to the bench and the bar. No matter how nearly perfect the procedure prescribed it will be powerless to remedy defects unless effectively used. Slipshod methods are just as disastrous in transacting judicial business as they are in the domain of commerce.

Then too, the quality of the justice administered depends somewhat upon the capacity, integrity and judicial attitude of those holding judicial office. Adequate salaries, reasonably certain tenure of office, and removel of the office from the temptations of politics, are conducive to the development of general fitness for the position. No doubt the success of the British and our own federal courts may be traced as much to the stability and authority and dignity of the judicial office in these jurisdictions as to any differences in the procedure. If this be true the increase of judicial terms and salaries and the bringing about of other conditions which will contribute to judicial poise are essentials to a greater administrative efficiency in the courts.

While the increasing trial of civil cases at law without the aid of the jury is proving economical and satisfactory, and may be expected to gain favor, and the experience of the states of Maryland and Connecticut and of the city of Milwaukee, where criminal cases, including felonies, are tried to a single judge or a group of judges, has the earnest commendation of lawyers and citizens familiar with it, a survey of this character cannot disregard the jury as an indispensable part of the trial court system. An institution so thoroughly ingrafted in our jurisprudence as the trial jury will long be cherished as a safeguard of individual and property rights. But in the interests of a better administration of the law it may well be questioned if there should not be qualification of some character except citizenship for jury service, or if there should not be provision for the exercise of more rigid scrutiny in making selections for it so as to choose those best qualified for the duty by training and experience. The criticism of the jury system would be minimized if our usual resourcefulness were applied to making it function more effectively.

For the present the appellate courts seem to be spared the bitter criticism which at times has been directed at them. In fact there has been gradual but notable departure by them from emphasis

upon the technicalities so obnoxious to the public. In most jurisdictions now the courts are sufficiently progressive to take cognizance of such changes in need and thought as dictate variance from the letter of precedents. The present day inclination is indicated in the following language from a recent case: "The time has come when mere refinement of pleadings should not be invoked as a subterfuge for the escape of manifest violators of the criminal law. An indictment should not be quashed because it does not happen to be couched in that technical language and form required by the courts in pleading when the law required the infliction of the death penalty for stealing a sheep or imprisonment for life for what now may be called a misdemeanor." And what is said with reference to technicality in the criminal practice is being more generally applied with reference to forms, procedure, and rules of evidence in the civil practice. By virtue of their usual supervisory powers over inferior courts and a heeding of complaints indiscriminately made against all courts, they can do still more to reinstate the judiciary in public favor by making justice more speedy. Reforms designed to help make their decisions final in a larger percentage of cases so as to avert new trials are worthy of serious investigation. And not the least important of the changes they alone can effect is the shortening of their opinions to conform to the efficiency ideals of the day.

But inseparable from the place of the courts in giving effect to the law is the part played by the legal profession. What the practicing lawyer too often forgets is that his function is to aid and not to hinder the courts; that in theory his objective is to secure justice for his client, and not victory at any price, and that when he yields to the seductive spell of the lucre offered for advantage without regard to honor he prostitutes the profession which his life and service should exalt.

Though perfection is not to be expected in those of our calling any more than in those engaged in any other pursuit, the trend is in favor of a raising of the general level of the profession. For at least fifty years there has been a movement in the direction of more thorough qualification for admission to the bar. Professional schools have raised these prelegal requirements and have increased the length of the professional courses. The high standard prescribed by the American Bar association as reasonable and desirable has been adopted in a number of states. While in this state it has not yet seemed wise to adopt such standard, the general raising of requirements in the schools and elsewhere reflects itself in the constantly improving character of candidates for admission to our bar. We are the beneficiaries of the steady

change in the general situation, and no doubt in time it will seem advisable to prescribe the higher standard.

While there always are exceptions to what seem unvarying rules, the general education of a practitioner may reasonably be expected to bear a definite relation to the character of the service he will render to society as one of those responsible for the administration of justice. The more readily a lawyer can perceive the significance of the social and economic movements of his time, the more helpful he can be in giving the basic principles of the law new vigor and meaning by their adaptation to what hitherto has been foreign to the law. The broadening vision of the profession to which reference already has been made is a distinct advance. The very cause of our common criticism has been the general belief that lawyers have their faces to the past. With the growing view that the law is in a state of constant flux, there is developing a more constructive profession.

But not only is there demand within the calling for a higher degree of fitness for it, but for greater fidelity to professional honor. The obligations of lawyers to their clients have long been clearly defined, but breach of these has not always met the official reproach which it has merited. Men with professional pride always deprecate the manipulations of the shyster, but they have too commonly borne the disgrace heaped upon the calling as a whole on account of his delinquencies rather than to bring him to bay. In these later days with their emphasis upon ethics in business relations there is evident growing exaction as regards professional conduct. With higher standards of professional fitness, greater interest in moulding the law to the current needs, and more rigid adherence to ethical requirements, the bar will contribute materially to more effective service by the courts.

The final factor to be considered is the public. The courts, the legal profession and judicial procedure have been under the condemnation of what we rather loosely denominate "public opinion." Strangely enough no other factor has more to do with the state of the administration of justice than this collective thought. The individual citizen could not evade his constant contact with the law and the effect of its application if he would. It guards his life and his property. Under our system the public chooses its lawmakers and at times legislates directly. It elects executive and judicial officers who, where the right of recall exists, hold their terms subject to the popular will, and from its ranks come jurors and litigants. The public then is not an innocent bystander impartially observing the law in process. It is a party to its administration and the law which is applied and the effectiveness with which it is done on the whole will be about

what the public demands. It will not reach absolute justice, but its administration will approximate what the conditions which the public has made will permit.

It therefore is from the public that complaint of defects will come and it is its demands which obviously there is effort to satisfy. But without its help there can be no improvement and without expert guidance of its opinion its efforts to help with the problem will be futile. In most of the code states there has been an inclination to seek added efficiency of the courts in the legislative increase in the details of procedure. The inevitable consequence is quibbling over the non-essentials so universally disapproved. While such measures are intended to serve the ends of justice, they in fact are retrogressive. They mean a procedural tendency in the direction whence we have come. In the main they are the gropings of the inexpert. There is no need that methods so fruitless be continued when those fitted by training to devise remedies for defects in the law or practice are engaged in a great movement to make courts more efficient and when the courts and the bar are shaping and urging the adoption of definite proposals to remedy the very shortcomings with whose nurture they have been charged. The law is as much a science as is medicine or engineering, and the recommendations of the profession as to procedural questions should be accepted as readily as the views of physicians or engineers are accepted upon the technical problems touching their respective professions. Disregard by legislative assemblies of these recommendations will mean a defect of the very ends cherished and sought by all lovers of justice. No doubt the public will yield to the views of the profession in this field if fully informed of the plans designed to assure greater judicial effectiveness, and convinced of a genuine purpose to achieve such end.

Then too the public has a direct responsibility and duty with respect to crime. Prosecuting and police officials will be as vigilant in the discharge of their official duties as the public to which they owe their choice dictates. The public view again will reflect itself in the verdicts of juries. What is considered a serious offense in one community in another may be indulged, and the views in each will be manifest by the attention paid to prosecutions of the offense and the results obtained. Some failure in enforcement is due to incapacity of public servants charged with enforcement and suggests the need of remuneration and insistence upon professional qualification commensurate with the official responsibility imposed.

But not all the fault can be laid at the door of enforcement officers or defects in procedure. There is too much indifference

of the public to observance of the law. Individualism has been rampant through our national history. Always there has been and is a stressing of individual rights. Ratification of the federal constitution was well nigh defeated because it contained no bill of rights. While there is no condonation by the public of crime as such, the emphasis, in case of trial for crime is always upon the rights of the accused. This emphasis accounts for the prevalence of the technical interpretation of criminal statutes and of statutes defining our criminal procedure taken from England, though the historical reason therefore existing in England does not exist here. Still more important is the fact that this individualism is manifest in defiance of the law when its provisions do not meet the approval of the offender. There is general hostility toward restraint. The idea of individual liberty as the term is generally interpreted, is not compatible with submission to it merely because it is imposed by law. The rights of the individual too often are deemed more sacred and important than the rights of society. The public opinion demanding enforcement of the law, if consistent, will also insist upon its observance.

Changes in criminal procedure and a more prompt disposition of criminal cases are to be desired, but a healthy public opinion which is willing to brand and deal with a violation of law as a crime is just as much to be desired. With such an opinion supporting police and prosecuting officers after the commission of crime more offenders will be apprehended. If such an opinion surrounds the courts in the trial of criminal cases more of the accused will be convicted. And if there is more general regard for the rights of society after conviction, the punishment measured out to criminals will be more nearly commensurate with their offenses. Better citizenship is inextricably interwoven with the better administration of justice.

Out of all the welter of agitation for improvement, the study of conditions, the plans for restatement of the law and other reforms, and the higher level of the profession, there is bound to come a more effective and satisfying administration of the law. But as members of the bar we can not sit complacently by and expect the evolution of greater efficiency unless we contribute to the evolving process by our individual and collective efforts to improve the existing order. The end sought is neither novel nor unreasonable. Means proposed for reaching it may be impracticable or premature, but if they are found to be so, other means can and will be devised. The judicial branch of government is no less efficient than are the executive and legislative branches but reforms in all departments are under way. Because of their professional aspects, it is to be expected that the bar will lend

special aid to bring the movement for greater effectiveness in the administration of justice to wholesome fruition.

VICE-PRESIDENT MCINTYRE: We have all listened with a great deal of pleasure and advantage to the paper of our president.

MR. NOSTDAL: I move you that the address of the president be received and printed in the minutes and that the recommendations contained in the address be referred to the committee on legislation.

The motion was duly seconded and carried.

PRESIDENT YOUNG: (After various announcements.) The meeting will stand adjourned until two o'clock p. m.

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AFTERNOON SESSION

SEPTEMBER, 9, 1926

2:00 p. m. President C. L. Young, of Bismarck, presiding.

PRESIDENT YOUNG: I think it quite fitting that the chief justice of one of our well-known courts should be introduced by the chief justice of our own court, so I present Chief Justice Christianson, who will introduce the speaker.

CHIEF JUSTICE CHRISTIANSON: Members of the bar, ladies and gentlemen: All of you here, I think, know that generally the law may be divided into two classes; one for the prevention of wrongs and one in which you seek vindication for a wrong.

Criminal law has formerly been looked on as a system for punishing the offender. As far back as we read we hear of "An eye for an eye, a tooth for a tooth." In recent years, though, men and women have come to realize that the best way to deal with the crime situation is to seek to prevent it, at least it is one of the essential ways to deal with the situation. There is perhaps no subject on which there has been so much stuff said and written as there has been on the so-called crime wave and crime situation. Those who have not had the slightest thing to do with the enforcement of law, who have not been inside a penal institution to study, have not had the slightest hesitancy in bursting into print. Take the newspapers outside of the Minneapolis Journal and they used to have the whole paper full of men whose names were unknown even in the community where they lived but they had no question but that they had the supreme wisdom that would enable them to cope with the question that humanity has struggled with from the beginning of time.

Among the men who have spent years of study, not merely in

theoretical abstractions, but in practical contact with the administration of criminal law, is the man who is about to address you. He has devoted to it the best years of his life. He is one of the men who has been able to change his views, as he admitted this morning in talking to the judicial committee up here that he did as he got further light on the subject. He is here at the invitation of the bar association of this state to give to us a discussion which is the result of his high standing, court activity for years and years, and careful study and consideration. He believes that one of the good ways to deal with the criminal situation is to prevent it, not alone to aid it until some young life has been taken and then punish the offender, because by doing that you can not restore the life that is gone. He will talk to you on the subject of human destiny and I am sure that when you have heard it you will realize that the destiny of humanity lies in human hands, and that the Almighty has placed it there, and it is up to us to work it out ourselves.

It is a peculiar pleasure and privilege to present to this audience one who is deeply interested in the subject and has come here because it wants to hear from a man who knows what he is talking about—it is a pleasure to present Chief Justice Harry Olson, of the municipal court of the city of Chicago.

CHIEF JUSTICE HARRY OLSON: Members of the North Dakota Bar association, ladies and gentlemen: I should much prefer in a general audience like this, to talk to you extemporaneously on this subject this afternoon, but I feel that an extemporaneous address runs down too many blind alleys and I have come too far to make a general extemporaneous address. I cannot cover the ground that I should cover when I do, so I ask you to bear with me now and at the banquet I shall talk to you extemporaneously, but I am afraid somebody will print it and I have got to have it as it should be.

This is a highly controverted subject. I happened to be on the committee of law presided over by Elihu Root, who is working on the reform of criminal prosecutions, and I called attention to the preventative method rather than the punitive one. One of the judges looked at me and I asked how long he had been on the bench and he said he had been there four years. But then I read an article of his and it showed that he had a purely academic view.