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Law School News

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BENCH AND BAR

LAW SCHOOL NEWS

The fifty-ninth school year began on September 20, 1957. The enrollment in the School of Law for the First Semester was as follows: Thirty first-year law students; forty-one second-year law students; and twenty-eight third-year law students.

The North Dakota Chapter of The Order of the Coif held its thirty-third annual dinner meeting on May 1, 1958. Judge Charles J. Vogel of the United States Court of Appeals, Eighth Circuit, was the Honorary-elect for 1958. The subject of his address was "The Jury System." The three Student-elect were: John M. Nilles of Fargo; Garry A. Pearson of Minot; and Gerald W. Vandewalle of Noonan. The title of John Nilles' talk was "An Analysis of Receivership in Usury Violations"; Garry Pearson's speech was entitled "Charitable Bequests to Bar Associations—Can They Be Deducted"; and Gerald Vandewalle spoke on "Status of Canadian Money Judgments in North Dakota".

Gerald W. Vandewalle has been Student Editor-in-Chief of the NORTH DAKOTA LAW REVIEW for the year 1957-58. Based on his law school record and his experience as a law review editor, he was recommended by the Law Faculty to Attorney General Leslie R. Burgum for a one-year appointment as an Assistant Attorney General. The Honorable Ronald N. Davies of the Federal District Court approved the recommendation of the Law Faculty and appointed Thomas J. Gaughan of Verona as a Law Clerk. The Honorable Charles J. Vogel of the United States Circuit Court approved Armond G. Erickson of McVile as a Law Clerk for one year.

William F. Lindell of Washburn and Richard A. Rahlfs of Berwick each received a \$100 scholarship from the Women's Auxiliary of the State Bar Association of North Dakota. These two second-year law students had the two highest scholastic averages in their first-year law courses. In 1956-57, Mrs. August Doerr of Napoleon was President; Mrs. Duane Nedrud of Grand Forks was Secretary; and Mrs. Roland Heringer of Rugby was Treasurer of the Women's Auxiliary of the State Bar Association of North Dakota. This annual Scholarship, to leading first-year law students, promotes constructive and competitive interests among law students.

Honor's Day Convocation was held on Sunday afternoon, May 11, 1958. The Legal Research Awards of the State Bar Association were presented to the following third-year law students: Gerald



NORTH DAKOTA LAW REVIEW EDITORIAL STAFF
1957-58

Front Row, l. to r.: John M. Nilles, Associate Editor; Gerald W. VandeWalle, Editor-in-Chief; Armond G. Erickson, Associate Editor; Cecil E. Reimke, Associate Editor. Second Row, l. to r.: Joseph R. Maichel; Mervin A. Tunkland; Dennis M. Sobolik; Rodney S. Webb; Ronald G. Splitt; Ralph E. Koenig. Third Row, l. to r.: John M. Orban; Michael E. Miller; John P. Craven; Garry A. Pearson; John C. Stewart; Richard A. Rahfs; Charles L. Crum, Faculty Advisor.

W. Vandewalle of Noonan; John M. Nilles of Fargo; Armond G. Erickson of McVile; Ralph E. Koenig of Rugby; Garry A. Pearson of Minot; Ronald G. Splitt of LaMoure; and Cecil E. Reinke of Grand Forks.

The United States Law Week Award was presented to Armond G. Erickson of McVile. It consists of a one-year's subscription to the "United States Law Week." "The Charles E. Dahl Award" in Law was granted to Thomas A. Gaughan of Verona.

Representatives of The Merchants National Bank and Trust Company of Fargo and the North Dakota Underwriters Association held a joint dinner meeting on May 10, 1958, in Grand Forks. The Law Faculty and the second-year law students were guests. The first-prize award of \$50 in the Wills Contest was presented to Rodney S. Webb of Cavalier; the second prize of \$30 was given to Paul G. Kloster of Sharon; and the third prize of \$20 was given to Richard A. Rahlfs of Berwick. Mr. James E. Leahy, (L. 1949), Trust Officer of the Merchants National Bank and Trust Company of Fargo presented the awards. He made a brief analysis of the 1958 Estate Planning Problem. Carther Jackson, Trust Officer; E. C. Lebacken, County Judge; and Henry G. Ruemmele were judges of the forty-one papers on Estate Planning.

There were two law graduates at midyear; namely, Duane R. Jensen and Wayne S. Jensen, both of Kenmare. They received the LL.B. degree. On June 8, twenty-four students graduated from the School of Law. The following were awarded the Juris-Doctor degree: Armond G. Erickson of McVile; John M. Nilles of Fargo; Garry A. Pearson of Minot; Ronald G. Splitt of LaMoure; and Gerald W. Vandewalle of Noonan. The degree of Bachelor of Laws was granted to: A. E. Elroy Arnason of Grand Forks; Leo J. Beauclair of New Rockford; Wallace R. Brantseg of Sisseton, S. D.; John A. Doerr of Napoleon; Thomas J. Gaughan of Verona; Leibert L. Greenberg of Grand Forks; Walfrid B. Hankla of Minot; Larry M. Hatch of Linton; Roger L. Holte of Voltaire; Loren L. Johnson of Lakota; Ralph E. Koenig of Rugby; David A. LeMieux of Ellendale; Bruce K. Listoe of Fergus Falls, Minn.; Marvin J. Morrison of Cloquet, Minn.; Oliver L. Price of Dunkirk N. Y.; Phyllis A. Ratcliffe of Fordville; Robert R. Remark of Ada, Minn.; John M. Riley of Lidgerwood; and Morris A. Tschider of Bismarck.

O. B. Burtness (L. 1907) District Court Judge of Grand Forks, was one of the law alumni who was awarded the degree of Doctor

of Laws Honoris Causa at the University Commencement on June 8, 1958. The citation of Judge Burtness given by Dr. George W. Starcher, President of the University of North Dakota, was as follows:

“OLGER B. BURTNESS, Class of 1906, Judge of the First Judicial District:

Distinguished jurist and public servant, former member of the North Dakota House of Representatives, member of the Sixty-seventh to Seventy-second United States Congresses, and now Judge of the First Judicial District. Your work has earned the admiration of your peers. Skilled and creative in your employment of legal knowledge, you have earned your rich inheritance of the American tradition of law and government through unselfish service to your country and to your state. You have also earned our deepest gratitude for your service to the University and its Alumni Association. Your Alma Mater is honored to confer upon you the degree of Doctor of Laws.”

John H. Crabb, Assistant Professor of Law, has been appointed to a visiting professorship at the University of San Carlos in Guatemala for the summer of 1958. He will teach International Law on the Faculty of Law at that university and instruction will be in Spanish. This grant has been made pursuant to the Smith-Mundt Act and has been awarded by the Department of State upon recommendation of the Conference Board of Associated Research Councils. The period of instruction is from about June 23 to September 1, 1958.

June 10, 1958

O. H. THORMODSGARD, *Dean*.

JUNIOR BAR ASSOCIATION NEWS

The 1957-58 officers were: President, Wally Brantseg; Vice President, Leo Beauclair; Secretary, Norman MacPhee; and Treasurer, John Stewart.

Highlighting the year was the victory in the first annual hockey game between the schools of Medicine and Law. Dean Harwood of the Medical School presented a smiling Dean Thormodsgard with a handsome trophy.

Sensing a need for orientation of incoming law students, the Junior Bar has developed a program which, if the faculty approves, will be inaugurated in the fall of 1958.

The Junior Bar Speakers Club, under the successive leaderships of John Stewart and John Orban, continued to provide facilities for training in public speaking.

The Legal Placement Committee headed by Earl Allen did a splendid job of contacting all the members of the North Dakota Bar and other sources of legal employment to remind them that a new wave of legal talent would soon be available. We are especially grateful to Lynn Grimson, Executive Secretary of the State Bar Association, for his assistance.

Efforts are still being made to establish, with the cooperation of the Grand Forks County Bar Association, a legal aid system to provide interested students with some opportunities for practical experience under the guidance of established attorneys.

Officers elected for 1958-59 are: President, Norman MacPhee; Vice President, Paul Rohde; Secretary, Dennis Sobolik; and Treasurer, David Orser.

NORMAN MACPHEE.

PHI ALPHA DELTA NEWS

Under the able leadership of Justice Armond Erickson, Corliss Chapter of Phi Alpha Delta has recently completed another successful year. During the school year several rushing smokers were held for the freshmen law students. In April seven men were pledged into the chapter. Initiation ceremonies were held in May in the courtroom of the Law School for eight pledges including: Roger L. Holte, Lyle R. Carlson, Moody Farhart, Robert Severson, Shannon Mahoney, David Orser, Alan Warcup, and Dennis Hill. The initiation was followed by a banquet at the Vets Club in honor of the new initiates.

As in former years, the brothers of Corliss Chapter ranked high scholastically with Garry A. Pearson and Jerry Vandewalle being elected to the Order of the Coif. Three of the brothers were appointed to the Law Review Staff including Michael Miller as editor, Richard Rahlfs, and John Stewart. The annual award for outstanding legal writing went to John Stewart. Richard Rahlfs received a \$100 award from the Auxiliary of the State Bar Association for high scholastic achievement in his freshman year of law school.

In athletics the brothers finished the season with a .500 average by winning the hockey game very handily and losing the softball game by a slim margin.

Michael Miller and Armond Erickson attended the District VII Conclave in Topeka, Kansas, last fall where Michael Miller was elected Student District Justice. Brothers Miller and Maichel were selected to represent Corliss Chapter at the National Convention to be held in Pittsburgh in September.

Spring Junior Bar Election saw Phi Alpha Delta retaining the offices of President and Treasurer with the election of Norman (Shag) MacPhee and David Orser. Phi Alpha Delta also served as law school royalty with the election of Jerry Vandewalle as King and Joan Covey as Queen.

The outgoing officers include: Justice Armond Erickson, Vice-Justice Wallace Brantseg, Clerk Norman MacPhee, Treasurer Vernon Volney and Marshall John Stewart.

New officers include: Justice William Yuill, Vice-Justice Richard Rahlfs, Clerk David Orser, Treasurer Jerry Kruta and Marshall Lyle Carlson.

WILLIAM D. YUILL.

PHI DELTA PHI NEWS

Bruce Inn Chapter of Phi Delta Phi, under the very able leadership of Magister Paul Rhode, had another successful school year both academically and socially.

The membership of Phi Delta Phi continued to grow with the pledging of many outstanding new men in the law school. Initiated on May 2, 1958, were John Craven, Charles Adams, William Hodny, James Corum, Thomas Book, Glenn Birkeland, and Michael Quigley. Others pledged, but not initiated, were Keith Nelson, Wesley Harry, Lloyd Noack, Hans Walker, Gil Record and Kenneth Schnell. Mr. Scott Swisher of Iowa City, Iowa, province president of Phi Delta Phi, was present for the initiation ceremony.

Roy Ilvedson, prominent Minot Attorney, was this year's honorary initiate. Following the dinner he gave an analysis of a questionnaire he sent to several young attorneys in this state concerning opportunities for a law school graduate. Mr. Ilvedson thought the future looked very bright for the lawyer who plans to practice in North Dakota.

The PDP monthly speaker-dinner meetings were held at the Bronze Boot Steak House this year. The meetings were enjoyed by everyone who attended as we were treated to the best in food and speakers.

Among the list of honors awarded to PDP men was the election of John M. Nilles to the Order of the Coif. Brother William Lindell was awarded a scholarship for having the highest average in the freshman class. John Orban was appointed to serve as Recent Case Editor on the staff of the NORTH DAKOTA LAW REVIEW. Cecil Reinke was also named to serve as a hold-over member.

Bruce Inn had to settle for a split in the athletic events. PDP

lost the hockey game to our arch rivals 9 to 6, but came back to win the soft ball game 12 to 7.

Dennis Sobolik, the PDP nominee for Secretary of the Junior Bar Association, was elected last spring. The Queen, Joan Covey, and the Chancellor, Tom O'Shea, who were part of the Law School royalty, were also PDP candidates.

The outgoing officers are Paul Rohde, Magister; Earl Allen, Clerk; John Doerr, Exchequer; and Gerald Jukkala, Historian. The newly elected officers who will guide PDP in the 1958-59 school year are Earl Allen, Magister; Pedar Wold, Clerk; William McMenamy, Exchequer; and Michael Quigley, Historian. With a slate of officers of this stature the 1958 graduates can rest assured that Bruce Inn will again enjoy the success we have had in the past.

GERALD JUKKALA.

DISTRICT COURT DIGESTS

DISCOVERY—PRODUCTION OF DOCUMENTS THROUGH INTERROGATORIES CONDITIONED UPON CONTRIBUTION TO COST.—*Whitnack v. Great Northern Ry. Co.*, District Court of the First Judicial District, Grand Forks County, North Dakota, O. B. Burtness, District Judge.

The plaintiffs sought to recover damages from the defendant alleging negligence on the part of the latter in the construction of a spur track which caused water to overflow the plaintiff's farm land. Interrogatories were served upon the defendant relating to whether surveys had been made and photographs taken, and if so that a copy of each be furnished the plaintiff.

Judge Burtness ruled an objection that this material constituted the "work product" of the attorneys was unfounded, but the defendant's contention that the information sought was not hidden or concealed and was as readily available to the plaintiff as to the defendant was of "substantial merit". "It would seem that a survey is essential to the establishment of plaintiff's alleged cause of action . . . [T]o require the plaintiffs . . . to duplicate the work involved would create an additional expense which ought not to be necessary when they [the photographs and survey] are available and where only undisputed factors are involved."

"[T]he issue involved is one addressed to the discretion of the Court." The "disputed interrogatories" should be answered, but copies need not be furnished. The defendant was ordered to advise the plaintiff in their replies what the expense of producing the survey and photographs was, and [i]f the plaintiffs then desire

copies of either the survey materials or the photographs they must tender to the defendant one-half of such expenses for whatever items desired."

CIVIL PROCEDURE — THIRD PARTY COMPLAINT UNDER RULE 14 OF THE NORTH DAKOTA RULES OF CIVIL PROCEDURE. — *Sjol v. Hatley* (Sjol, Third-Party Defendant), District Court of the Second Judicial District, McHenry County, North Dakota, Obert C. Teigen, District Judge.

On July 28, 1956, a collision between two automobiles occurred in which the parent of Richard and Rhonda Sjol, minors, was killed while riding as a guest. The two children brought an action by their guardian ad litem to recover damages for the wrongful death of their parent, naming Hatley, driver of one of the cars involved, as defendant. Hatley filed a third-party complaint impleading Wendell Sjol, driver of the automobile in which the decedent was riding as a guest. The third-party complaint prayed for (a) dismissal of the plaintiff's action and (b) judgment against the third-party defendant for damages caused to Hatley's automobile.

A motion to dismiss the third-party complaint was filed.

Judge Teigen granted the motion.

It was held that the third-party proceeding did not fall within the scope of N.D.R.Civ. P. 14, since Hatley was not seeking "contribution, indemnity, or does not claim to be proceeding against an insurer." Rule 14 permits the defendant to implead any person "who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against him." "The defendant's complaint against third-party defendant does not ask in its prayer for liability over."

Judge Teigen ruled that if the third-party complaint were permitted it might compel the plaintiff's to litigate unwillingly against the third-party defendant, in effect tendering a substitute defendant to the plaintiff in place of the defendant plaintiff was seeking to hold. This was outside the scope of Rule 14. *Reese v. Akers Motor Line*, 7 F.R.D. (N.D. Ga. 1947); *U. S. v. Domrowalski*, 16 F.R.D. 134 (D. Md. 1954); *Androneidas v. Theisen*, 94 F. Supp. 150 (D. Neb. 1950).

Nor could the impleader be justified under Rule 20, which regulates Permissive Joinder. 2 Barron & Holtzoff, *Federal Practice and Procedure* 106 (Rules ed. 1950). And this was not a compulsory counterclaim under Rule 13 since the claim asserted was di-

rected toward one not a party to the action instead of toward the plaintiff. 1 Barron & Holtzoff, Federal Practice and Procedure 817 (Rules ed. 1950).

DIGEST OF ATTORNEY GENERAL OPINIONS

CORPORATIONS — APPORTIONMENT AND DISTRIBUTION OF PROCEEDS OF COOPERATIVE ASSOCIATIONS

March 7, 1958

Section 10-1533 2a of the 1957 Supplement to the North Dakota Revised Code of 1943 provides that educational funds of cooperative associations shall not be paid to any other organization whose officers and directors are not elected by the secret ballot of "bona fide farmers".

"A 'bona fide farmer' is one who in good faith devotes his full time and energies to the cultivation of the farm, or in case of a rancher to the operation of a ranch . . . [A] wife living on a farm, assisting her husband by carrying out her household duties and raising children, is a bona fide farmer; . . . a 16 year old daughter who helps around the house on the farm, and who does not have any other employment except going to school is a bona fide farmer."

COUNTIES — POWERS OF BOARD OF COUNTY COMMISSIONERS TO PURCHASE ELECTRICITY FROM NON-FRANCHISED SOURCES

April 8, 1958

Section 11-1114 of the North Dakota Revised Code of 1943 gives the county commissioners the power to furnish all "things necessary and incidental to the performance of the duties of their respective offices . . ." Electricity being "necessary and incidental", "[i]f the commissioners can furnish the electricity most economically by building a transmission line to a power company located outside the franchised area within which they are presently being serviced, then . . . they have not only a legal right but a legal duty to do so."

City of Grafton v. Otter Tail Power Co., 86 N.W.2d 197 (N.D. 1957).

ELECTIONS — DESIGNATION IN PRIMARY ELECTIONS

May 9, 1958

Where a candidate files in a party column in the primary election he is not entitled to any designation for identification. Only ". . . where there is danger of the candidates' names being con-

fused" will identifying comments be allowed. The designation of a person filing in the Democratic column as a member of the Non-Partisan League is not permitted under the statutes.

MOTOR VEHICLES — POWERS OF HIGHWAY PATROL

April 1, 1958

Section 39-0309 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides that members of the highway patrol have the "power of a peace officer for the purpose of enforcing the provisions of this title." Under this provision highway patrolmen have the "power to enforce *state* law regulating motor vehicle traffic" even within municipalities; but they have no power, except as private citizens, to enforce city ordinances.

If an act of a motor vehicle operator constitutes both a violation of state law and city ordinance, it is the duty of the patrolman to charge the offender under state law. In fact ". . . he would be remiss in his duties as a state peace officer, to ignore the state offense, and he may in fact be committing a crime by compounding the offense. (See section 12-1711 NDRC). There is no legal objection, of course, to the prosecution of the same individual in both state and city courts for a single act which is an offense against both the city and the state."

OCCUPATIONS AND PROFESSIONS — EFFECT OF CHANGE OF EMPLOYMENT ON REAL ESTATE SALESMAN'S LICENSE AND BOND

May 12, 1958

The acquisition of a new license by a real estate salesman upon change of employers as required under Section 43-2312 of the 1957 Supplement to the North Dakota Revised Code of 1943 does not require an "application" for a license. "The procedure contemplated . . . is a 'transfer of a salesman's license', rather than an 'application for license' and the fee, therefore, would be that required by Subsection 7" of Section 43-2313, or five dollars, rather than the twenty dollar fee for application as provided under subsection 3 of the same section.

Section 42-0309 of the 1957 Supplement provides that every application for a real estate salesman's license shall be accompanied by a bond in the amount of one thousand dollars, and this ". . . bond shall remain operative for the period of the license."

The "period of the license" is ended by a change of employers, whereupon the old license is cancelled and a new one issued. "It is therefore our conclusion that in the event of a licensed real

estate salesman changing employment, that either a new bond, or a rider on the old bond acknowledging the surety's liability on the 'new license' is necessary."

PRECINCTS AND VOTING PLACES — POWER OF COUNTY COMMISSIONERS TO COMBINE VOTING DISTRICTS

May 23, 1958

Under Section 16-0901 of the 1957 Supplement of the North Dakota Revised Code of 1943 "the board of county commissioners may divide the county into precincts and establish the boundaries of the same", with the exception of wards and precincts which have been legally established pursuant to the provisions of the title, "Municipal Government". In instances where the board of county commissioners established the precinct, they may alter it.

Prior to the revision of the statute the North Dakota Supreme Court in *Fuerst v. Semmler*, 28 N.D. 411, 149 N.W. 115 (1914), held that the procedure, though irregular, should not render an election a nullity in the absence of fraud or bad faith. "[A]t the least, the same conclusion would be reached under the present statute. Further it is questionable that under the present revision of the statute such procedure would be held to be irregular."

REFUND MOTOR FUEL TAX — GASOLINE PURCHASED BY DEALERS FOR USE IN DEMONSTRATING TRACTORS

May 12, 1958

Section 57-5001 of the 1957 Supplement to the North Dakota Revised Code of 1943 allows a refund of gasoline tax where the fuel is purchased for "agricultural or industrial purposes".

"The purpose of demonstrating tractors is neither agricultural nor industrial, but is rather the commercial purpose of selling tractors." For this reason refunds of gasoline tax used for this purpose will not be approved.

SOCIAL SECURITY — FEDERAL-STATE AGREEMENT FOR COVERAGE OF PUBLIC EMPLOYEES

March 13, 1958

Section 52-1003 of the 1957 Supplement to the North Dakota Revised Code of 1943 authorizes the State Unemployment Compensation Division to enter into an agreement with the Federal Government to extend the benefits of the federal old age and survivors insurance system to employees of the state or any political subdivision. Retroactive coverage for agreements entered into on or after January 1, 1958, cannot be made effective to services rend-

ered prior to the first day of the calendar year in which the agreement is made.

Section 218 of the Federal Social Security Act was amended by Congress to allow additional time, until December 31, 1959, in which to secure retroactive social security coverage dating back to January 1, 1956. This amendment has had no effect upon the North Dakota statute. Section 52-1003 will have to be amended by the legislature if advantage is to be taken of the change in the federal act.

TAXATION—AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS
TO ABATE, ADJUST AND REFUND PROPERTY TAX

March 24, 1958

Section 57-2020 of the North Dakota Revised Code of 1943 is a procedural statute and was “. . . not intended to grant any right to the board of county commissioners to authorize refunds of taxes.” It “. . . does not authorize a board of county commissioners to abate, adjust or refund property taxes except in those cases specifically authorized by statute.”

TAXATION — SECRECY OF RETURNS

March 21, 1958

Section 57-3837, Subsection 1, provides that the commissioner “. . . shall not divulge nor make known, in any manner, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter.” This does not prohibit the commissioner from divulging the names of those persons who have *not filed* returns. “A disclosure that a particular person has not filed a tax return is not the disclosure of information or particulars set forth in the return or the report.”

TRANSIENT MERCHANTS — APPLICABILITY TO NORTH DAKOTA
RESIDENTS

May 12, 1958

Chapter 51-04 of the 1957 Supplement to the North Dakota Code is entitled “Transient Merchants”. The identity of persons covered thereunder is established under Section 51-0401. The wording includes both corporations and individuals, and makes no exclusion for North Dakota residents. “. . . [C]orporations, whether domestic or foreign, resident or non-resident, licensed or unlicensed, are subject to Chapter 51-04 . . . when operating as transient merchants as defined by Section 51-0'01 of the act.”