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# The San Francisco Conference

David A. Simmons

Other district officers are Lester T. Sproul of Valley City, vice president, and Mart R. Vogel of Fargo, secretary and treasurer. The district includes Cass, Grand Forks, Nelson, Steele, Griggs, Barnes counties.

E. T. Conmy of Fargo, president of the Cass County Bar Association, presided and Mr. Vogel was chairman in charge of the banquet.

Members of the state executive committee present included Roy A. Ployhar of Valley City, acting president; O. B. Herigstad of Minot, past president; H. P. Jacobson of Mott, Fred Graham of Ellendale, O. B. Benson of Bottineau, Mr. Soule of Fargo, M. L. McBride of Dickinson, state secretary.

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## THE SAN FRANCISCO CONFERENCE

By David A. Simmons

President of the American Bar Association
Consultant to the United States Delegation at the United Nations Conference in San Francisco

(From July Number American Bar Journal)

(Continued from last issue)

The next morning a New York newspaper carried a three-column headline to the effect that the spokesman of the American Bar Association was attempting to pressure the American Delegation into forming an anti-Russian bloc. Nothing could have been farther from the truth, as I was merely discussing a fundamental American principle and never once mentioned Russia or her position on the matter.

Fortunately, the Russian correspondents took the product of the sensational press with a large grain of salt. One of them was reported as saying: "Can anything be concealed from the ubiquitous American press? The correspondents succeed fairly quickly in getting wind of what is being discussed at a closed conference, but to get wind of a subject does not mean truthfully reporting and explaining it. Every day, every hour the press, and particularly the local press, is full of assumptions, conjectures and open and concealed provocation."

I do not mean to imply that the press in general did not do an excellent job of reporting the Conference. I think they did; but with 2,700 correspondents purporting to give their views, it is not surprising that the American public did not in all instances get a clear and factual statement of what was going on. The Charter is a legal document and, as many of its provisions use phrases having a legal background, it is understandable that laymen might occasionally interpret them in terms of expediency. The lawyers of America, therefore, have an obligation to study the Charter and explain its principles to the people of America.

In view of the world-shaking events of the past few years which have conditioned the living and thinking of all our citizens, I believe we may safely assume their maturity and discuss frankly

with them the realities of the world in which we must live. The Organization which has been shaped and molded in San Francisco, in my opinion, is bound to have the profoundest effect, for good or ill, upon the lives of each and every one of us, and upon the life of our country.

### THE BLUEPRINT WAS DUMBARTON OAKS

In seeking to evaluate the San Francisco Charter let us bear in mind the objectives of the Conference and then see what was done to accomplish them. The Conference was called to bring into being not some theoretical world organization but the organization suggested by the Big Four Powers in the Dumbarton Oaks Proposals. The dominant note of the Proposals was security, and the force envisioned was to be directed against our present enemies and against any lesser power that might turn aggressor and endanger the peace of the world. There was a bow in the direction of a world court, but there was no mention of justice or international law as a standard of conduct for the nations, great or small. Neither was there any word in the Proposals relating to dependent peoples, colonies or mandated areas, although fully one-third of the people of the world fall in one or another of those categories.

With this understanding of the blueprint which the Delegates had before them when the San Francisco Conference convened, we can consider the additions and changes agreed upon and then see what the Charter, as amended, does and does not purport to do.

First, however, lest anyone assume that mere attendance at the Conference qualifies one as an expert, let me confess the limited role I occupied as a Consultant.

### THE ROLE OF A CONSULTANT

The principal function of the consultants was to testify to group sentiment in the United States and thus enable the Delegation to discover the highest common denominator acceptable to the American people. The Charter of necessity must be a common denominator of opinion within the United States and, at the same time, a common denominator of the views of the forty-nine nations participating in its drafting. The subjects with which it deals must, accordingly, be few in number and fundamental in character. Advanced thinkers who want a federation of mankind and a parilament of the world will have to wait at least until something simpler has been tried and found wanting.

The United States Delegation consisted of seven delegates, a number of official advisers, and forty-two consultants selected from national organizations representing business, labor, agricultural, legal, racial, religous and educational groups in our country. The conduct of our delegation was above reproach. In their dealings with the visiting delegations they exercised the greatest courtesy and restraint in pressing their views on others, a restraint expected of a host and worthy of the great nation they

represented. In their dealings with their own advisers and consultants they displayed the greatest consideration. We were called in for consultation at every stage of drafting the Charter.

In the June issue of Atlantic Monthly there is a passing reference to a complaint by one of the consultants that the United States Delegation ignored the consultants and never spoke to them the first two weeks of the Conference. This is another instance of the confusion reported to the American people. My notes show that in the first two weeks the consultants met with members of the United States Delegation seven times and both questioned and advised.

I am glad to report that the consultants exercised restraint and usually each made suggestions on policy and drafting only in his own limited field. For instance, being appointed to present the views of the American Bar Association and legal groups affiliated with that association, I limited my participation in discussion to matters affecting the World Court, the principle of justice, the rule of international law and the amendment provision.

Our view that justice and international law should be major objectives of the organization coincided with similar views of many visiting delegations, particularly those of Latin America, and found ready acceptance with our own delegation. The question of whether the old World Court should be retained or a new one with equal powers and functions be created, was resolved in favor of a new court due to the difficulties attendant upon membership in the present court statute of seventeen nations, including some enemy states, who are not presently members of the United Nations.

Now, briefly, let us see what the Charter does and does not do.

### What the Charter Does Not Do

It does not set up a new government with sovereign powers.

It does not end war. There have been 72 wars of greater or less magnitude in the last one hundred years, and there has been so-called world war once each 23 years for the past three centuries. There will be an end of war when mankind has progressed to the point that inherited tendencies toward violence are controlled either through self-restraint or through restraint imposed by some world government yet to be devised.

It does not provide for collective action against one of the Big Five nations who are members of the organization, even if one of them becomes an aggressor.

It does not repeal the law of conquest. The San Francisco meeting was not a peace conference, although one of the San Francisco newspapers persisted in calling it such. It was a conference to set up a future international organization to provide collective security for its members. When the peace is written, or perhaps I should say dictated, I think we will find that the conquering nations will retain strips of enemy territory, just as

the United States will retain such conquered islands as are necessary to our future protection. Being perhaps a little more civilized, or a little more sensitive of the right of self-determination of other peoples, we shall probably retain only infinitesimal bits of territory and such as are suitable for air and naval bases. Some of our allies, seeing no virtue in such self-restraint, will consider it appropriate to retain whole countries or parts of countries, either on the assertion of military or economic necessity or on that other delusion which has caused so much grief to the world, that at some ancient time the newly-acquired territory was part of the fatherland. And such lack of restraint on their part will sow seeds which in due time will mature into causes for another world war, unless education in national self-restraint and national generosity toward lesser nations develops through the organization now projected. Whether the peace which follows this war will be a real peace or merely another long armistice will depend primarily on the will for peace among the people of Russia, Britain and the United States, for I assume this time we will be realistic enough not to furnish our present enemies with the means to re-arm.

(Continued in next issue)

## OUR SUPREME COURT HOLDS

In John Bredeson, Administrator of the Estate of Roselle Bredeson, Deceased, Pltf. and Applt., vs. Truesdell Warren, Deft. and Respt.

That where the the Supreme Court deems such course necessary to the accomplishment of justice, it will remand the case for retrial in the district court, even though a trial de novo is demanded in the Supreme Court.

That for reasons stated in the opinion, this case is remanded for a new trial in the district court.

From a judgment of the District Court of Grank Forks County, Englert, J., Plaintiff appeals. REMANDED FOR A NEW TRIAL. Opinion of the Court by Broderick, District Judge, sitting in the place of Morris, J., disqualified.

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In Emelie Muhlhauser, et al., Applts., vs. Selma Becker and George Gappert, Apps.

That where parties claim to be entitled to the estate of an intestate decedent, under a contract made by the decedent to adopt them as his children and where no statutory adoption proceedings were had, the remedy of said parties to establish their right to the estate is in a court of equity in an action to determine the validity and extent of the contract.

That where, during settlement of the estate of an intestate decedent, claimants appear in the county court asserting their right to the estate under such a contract made for their benefit by the decedent, it is error for the county court to attempt to determine the rights arising under such contract, as the county court has no jurisdiction to hear and determine actions or proceedings inequity.

That where an appeal is taken to the district court from the judgment of the county court in a matter not within the jurisdiction of that court to hear and determine, and on the appeal appellants specifically raise this want of jurisdiction of the county court over the subject matter, it is error for the district court to overrule the objection of the appellants to the jurisdiction of the county court. In such case it is the duty of the district court to sustain the appeal and reverse the decision of the county court.