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Proceedings of the State Bar Association, at Its Annual Meeting, Held at Valley City, North Dakota, September 4-5, 1929

North Dakota State Bar Association

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PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT
ITS ANNUAL MEETING, HELD AT VALLEY CITY,
NORTH DAKOTA, SEPTEMBER 4-5, 1929

MR. LEWIS: The Convention will come to order and we will listen to an invocation by the Rev. Thomas E. Nugent, Valley City.

(Invocation by Rev. Nugent)

MR. LEWIS: We extend the thanks of the Association to you, Mr. Nugent, for giving us this invocation. It goes without saying that we are all very glad to be present in Valley City and Valley City tells us we are thrice welcome and they propose to welcome us thrice. We have the pleasure of listening to three addresses. The first one by the Mayor of the City, Hon. Fred Frederickson.

MR. FREDERICKSON: Mr. President, Members of the State Bar Association of North Dakota, and distinguished guests: Valley City deems it a great pleasure to be the host at this meeting of the lawyers of the State of North Dakota, and it is a genuine honor for me to have the opportunity of extending to you the glad hand of welcome and to greet you upon this occasion. Many of you come from cities larger than ours, and many of you come from smaller cities, but be you large or small, we hope that you will find many points of interest while here, and that you will derive both pleasure and profit from the days you may spend with us.

We in Valley City take pride in the magnificent setting, the beautiful surroundings, and the natural beauty of our city. We like to speak of our well lighted and well kept streets, our wonderful schools and churches, and we hope that you will find us hospitable and entertaining, and that you will return with naught but pleasant memories of your visit. The city has cooperated with the local bar and the state organization in arranging this meeting, and if any one of you should find something undone, I assure you that it has been a slip of the hand and not of the heart, and that if you will but indicate or suggest your desires, you will find us more than happy to serve you, if possible.

In closing, again I want to tell you how pleasant and happy we are to have you with us and hope that you will return to your homes in safety and come again soon. I thank you.

MR. LEWIS: I do not know whether Mr. Frederickson by hoping that we will return to our homes with safety means he does not want any more rain or not but we will take it as meant. The next address will be a welcome for the Barnes County Bar by Mr. A. P. Paulson.

MR. PAULSON: Mr. Chairman, Members of the Bar Association of the State of North Dakota. It is always difficult perhaps to find words that are fitting on an occasion like this. It is more or less of a perfunctory address and usually is not as well attended being near the opening of the convention, but you have heard the invocation by Mr. Nugent; you have heard the address of Mr. Frederickson, who is the Mayor of our City; and I think

they have substantially covered the ground and anything more that could be said would be simply a matter of repetition.

The local Bar of Barnes County is a small association, but we have the spirit of fellowship, good fellowship, and I think that as an Association we are an ardent exponent of good fellowship, and I think that may be said of the Bar Association of North Dakota. I think that as a profession the lawyers are perhaps as friendly, perhaps as sympathetic toward one another as any professional men and more so than most of them. The reason for that is not that we are constituted different than other professional men or that we are any better morally or intellectually but the nature of our work is such that it brings us together, and seldom is a matter of importance brought before the court unless it is presented by one or more on a side and our associations in professional and business transactions bring about a feeling of friendship and sympathy more in our profession perhaps than any other, and it is a fine thing for us all to get together once a year, lay aside our regular avocations, regular professions and business, and get together in a friendly spirit and advance that perfect justice as nearly as possible that Brother Nugent spoke of in his invocation, and I am sure that is the feeling of the Bar of the State.

The local Bar Association joins with the mayor of Valley City and the civic and commercial organizations in welcoming you to our city. I particularly want to address a few words to the ladies that are here—there are none present, but I presume there will be some here, and if you have your wives or ladies with you, sisters or sweethearts, I am sure they would be glad to hear something of the arrangements that have been made for them. It is on the program, but sometimes programs are lost. I think there are two principal functions arranged for them. One is a tea this afternoon from three to five at our home on Normal Avenue. This is easily reached going down Fifth Avenue across the bridge, then down to the right and walk to the end of the avenue. You will find the house there painted cream color and it stands there at the end of the avenue so you will have no trouble in finding it.

Another function arranged tomorrow at one o'clock at the Country Club and vehicles will be arranged for the ladies to be taken over there so they can get together and get acquainted and enjoy their stay while here.

As Mayor Frederickson has said, it is the desire of the City and of the local Bar and the business organizations of the city to make this stay here as pleasant to you and as profitable as possible, and I am sure that every citizen in town will be glad to point out to you and refer to you the places where you want to go. We have arranged for some vehicles to take you around so feel free to call on them. I thank you.

MR. LEWIS: Perhaps there is no body of men to whom the activities of the commercial club are more important than that of the lawyer. They are taking a part in our life today that never used to be taken and it is with great pleasure that we shall listen to an address of welcome on behalf of Civic and Commerce Association by Mr. L. T. Sproul.

MR. SPROUL: Mr. Chairman, Members of the North Dakota State Bar Association: To the words of welcome extended by Mayor Frederickson and Mr. Paulson, I wish to add a few words of greeting in behalf of the Civic and Commerce Association and the business men of our city.

During the past years and this year we have had, of course, many conventions and entertained many groups, but I wish to say frankly that no group is more welcome than the North Dakota lawyers. We greatly appreciate the fact that you accepted the invitation to hold your convention in our city and I wish to say at this time that we feel especially honored by your presence here at this time. Although your time no doubt will be taken up largely by the program of this convention, nevertheless the business men of our town would feel greatly honored if they could meet you personally and would feel especially honored if you could call at their places of business whenever the occasion would present itself. They would be very glad to know you and greet you personally, and I might further say that if, during your stay in Valley City, you would find time for play or special entertainment, you are welcome to the use of the Country Club and the Country Club golf course.

We have also, as Mr. Paulson stated, arranged a trip around the city tomorrow afternoon for those who are able to go. We are sure that this trip would prove profitable to you if you can find your way clear to take the ride with us and it would be very entertaining.

If there is anything now that we have overlooked in the arrangements we have made, and if there is anything further that we can do to aid and assist you in making it comfortable for you here, to assist in your entertainment, every member of the Civic and Commerce Association would be very glad to do anything that you would call upon to them to do, and we want you to remember that Valley City now, and at all times, holds out a very hearty welcome to the lawyers of the State.

MR. LEWIS: In accordance with the custom, the response to the address of welcome will be made by our Vice-president, Horace Bagley.

MR. BAGLEY: Mr. Mayor, Mr. Paulson, Mr. Sproul: On behalf of the Bar Association of the State of North Dakota, I wish to express to you our gratitude for your welcome to Valley City. We are not only grateful, Mr. Mayor, for the hospitality which you so generously tendered to us, but we are especially grateful for the kind words in which you gentlemen have made that tender. Kind words are something to which the lawyer is not accustomed either individually or collectively, and when they are used to him and of him as you have used them here, our hearts swell with gratitude, and our thankfulness to you is only exceeded by our surprise. We are not only grateful to you, Mr. Mayor, for the hospitality you have tendered to us but we wish to express to you our appreciation of your beautiful city. We are delighted with your beautiful shade trees, your pavements, your splendid business blocks, your fine

public buildings and above all, with that magnificent college on the side of the hill yonder.

I may say personally that I am not only delighted with Valley City but I am also surprised and I will tell you the reason why. I drove down here yesterday from Towner and by way of Jamestown and not being familiar with the road down here, I inquired my way at Jamestown. I noticed that the traffic "cop" up there was not very busy copping so I asked him if he could tell me the way to Valley City. He said, "Valley City, Valley City—oh yes, I know where that town is. Sure I can tell you the way. You go right across the railroad track up by the college on the top of the hill. Then you turn to the right, follow the trail east along the railroad track. First you will come to a little town along the track. That won't be Valley City. You will go a few miles further and you will come to another little town, that won't be Valley City. Then you keep going along the trail until finally you will come to a long trestle over a deep gulley. Well you turn down at the end of that trestle, down into the gulley and there will be Valley City." I did as directed and I came to the end of the trestle and I turned down into the Valley and there before my eyes was spread out your beautiful city, surely the finest residential and convention city in the State of North Dakota.

And now Mr. Mayor I want to say to you, personally, that not only are we delighted with Valley City, but you will be interested to know officially that when we leave your city, we are going to leave it absolutely intact. No trees will be uprooted, no pavement smashed, no store fronts demolished, all of your public buildings will remain just as they are now.

Some of us are Elks, some of us are Legionnaires, but when we meet as a Bar Association we meet as straight sober citizens who regard every rule and regulation of your city and every law of the state. You know we lawyers make the law of the state, and we worship our own handiwork. There are 69,762 separate penal laws on the statute books of these United States and we lawyers respect and honor every one of them, and especially, Mr. Mayor, you in your official capacity will be glad to know that we respect and honor above all others that act known as the Volstead Act. Every jot and tittle of that famous act is sacred in our eyes. I don't know what a tittle is. I don't know as I ever knew anybody that knew what a tittle was but whatever it may be, every tittle of the Volstead Act is just as sacred to us. You know Mr. Mayor during the war at home when our boys went across, the Y.M.C.A. presented each one of them with a little bound volume of the New Testament and the boys wore those bound volumes in their uniforms in France. Now just in the same way, Mr. Mayor, this Association has had printed and distributed to the lawyers of this state a little bound volume of the Volstead Act, and every lawyer of this state carries one of those bound volumes of the Volstead Act with him wherever he goes. You can always tell a lawyer of this state, as he carries the Volstead Act with him; that is you could tell a lawyer, if a lawyer could tell a lawyer anything. And I may say, Mr. Mayor, that just as that little volume which the soldiers carried in France is said to have stayed the progress of many an otherwise deadly bullet, so this little volume of the Volstead Act which we carry with

us in conventions such as this has kept many of us from getting shot.

Now I have said that we are a law abiding body and we are, but as every lawyer knows and every layman knows, there are exceptions to every rule and we have our exceptions, and I think it only fair to you, as the law enforcing officer of the city, to call your attention to the exceptions so that you may be prepared to preserve order in this city while the convention is in session. I am going to be specific so you can make no error.

I first want to call your attention to one of our members who hails from the Mouse River Valley. I might as well name him by name. His name is "Jim" Johnson, a name known to every homesteader in northwestern North Dakota. "Jim" was there in the Mouse River Valley before Minot asked the question, "Why Not Minot," because Minot was not when Jim took up his residence there. He was there before the white settler set foot in North Dakota, and he was there and lived with the Indians for years and years before North Dakota was on the map. His childhood playmates were Red Cloud and Sitting Bull, and from his association with these wild Indians, Jim himself became wild and he has been wild ever since and he is always wildest when he gets on a convention like this. I ask you, Mr. Mayor, to use your youngest and most vicious policeman to watch him every minute while he is here, and I can say to you frankly that he will run that young policeman so ragged and make him so foot sore, that he won't be worth a cent to the City of Valley City for thirty days.

There is another matter, but I hate to speak of it. You have a little lawyer here in Valley City, a little bit of a fellow, Mr. Mayor, and when he gets away from home, oh my, how that boy can travel. He represented the Bar Association of this State at Seattle a year or so ago at the National Convention and the reports which came back of things he did and said out there still bring the blush of shame to the cheek of every lawyer in the State. My advice to you, Mr. Mayor, is to deputize two or three members of the W.C.T.U. to follow him wherever he goes in this convention.

There is a group of men, not an individual, just a group of men who hail from the neighboring city of Jamestown. I attended a state convention at Jamestown something over a year ago and those fellows from Jamestown so conducted themselves at that convention, I wished somebody would take them out and hang them, everyone of them; and if they conduct themselves down here, Mr. Mayor, as they conducted themselves up there in Jamestown, in the name of the Association I authorize you to take them out and shoot them at sunrise.

Then there is another bunch of fellows belonging to this Association. I want to warn you against them. I refer to the fellows from Fargo. Now, the chances are that practically none of them will be out here. You know the general impression among the lawyers of Fargo is that the boundaries of the State of North Dakota correspond with the boundaries of Cass County. Nevertheless we must take this into consideration, that every two years they break out of their confines and get out as far as Bismarck. We all know what they do on that biennial visit to Bismarck so it is possible

that some of them may stray as far away from Fargo as Valley City and attend this meeting in the off year. If they do I advise you to watch them.

Now, this convention is about to open its sessions. As you will notice, Mr. Mayor, our deliberations are being presided over by the handsomest and most graceful and best dressed officer who ever presided over the deliberations of the Bar Association of this State. For that reason, we cordially invite the ladies of Valley City to come out as often as they can and give their eyes a real treat. Our sessions are open to the public. We welcome the citizens of Valley City to attend those sessions. Addresses will be delivered by the judges of the Supreme Court, by the sage of Mandan, and by many other well known lawyers. Those speakers are going to cast pearls of wisdom before us with a lavish hand, and any of your citizens who desire to come out and collect a necklace or a tiarra of those pearls, as a souvenir of this occasion, is welcome to do so.

In conclusion, Mr. Mayor, let me say from my heart, let me say we are glad we are here in Valley City. We are glad that you are glad that we are here, and when our sessions are over, and we have departed to our homes, may your remembrance of us be as lasting and as pleasant as I am sure will be our memory of you.

MR. LEWIS: I doubt if Judge Bagley should be promoted to the Presidency of this Association. I think he should be retained as Vice-president for the next twenty years to make responses to addresses of welcome.

Our first business of the program is the report of the Secretary-Treasurer which Mr. Wenzel will give.

(For report of Secretary-Treasurer see Appendix.)

MR. LEWIS: You have before you the report of the Secretary-Treasurer, which has been accepted and approved by the Executive Committee, what will you do with it?

MR. LAMBERT: I move it be accepted and placed on file and approved.

MR. CUTHBERT: Second the motion. Carried unanimously.

MR. LEWIS: We now come to the reports of the committees and discussion. First will be the report of the Committee on Legal Education and Admission to the Bar by Roger W. Cooley of the University Law School.

MR. COOLEY: Mr. President and members of the Bar: I haven't any formal report to make. Late last fall the Chairman of the Legislative Committee communicated with me and asked me if I would meet with the Legislative Committee in Jamestown. It was impossible for me to be present at the time. Subsequently, however, the Chairman of the Legislative Committee wrote me suggesting that a sub-committee consisting of W. A. McIntyre and Mr. H. C. DePuy meet with me in Grand Forks to confer on the question of preparing a bill for submission to the Legislature, in accordance with the recommendations of the committee on Legal Education endorsed by the Association in 1927 and in 1928, viz., providing that candidates for admission to the Bar must have had at

least two years of college training before appearing for examination. Unfortunately Mr. DePuy was unable to meet with us but Mr. McIntyre and I had several conferences on the subject which finally resulted in the drafting of the bill relating to admission to the Bar, drafting of bill amending that section by inserting a proviso merely to the effect that candidates for admission to the Bar have at least two years of college training in an approved college. We had just completed our references on the subject when I received a letter from Mr. Traynor asking me if I could be present at Bismarck at the meeting to be held there, but for certain reasons it was impossible to go to Bismarck at that time, but I forwarded Mr. Traynor the bill with our recommendations merely suggesting that it be presented to the legislature for passage, if possible. I never heard anything more about it and I know nothing of what consideration was given to the matter except what I see in the report of the Legislative Committee.

So nothing has been done apparently, I am frank to confess, through my own fault, perhaps, but certain conditions arose which made it impossible for me to do anything at that time, so nothing has been done toward the adoption of the increased requirements for admission to the Bar. I conceived, or rather I took it for granted, that the committee on Legislation of the Association was the only Committee that had jurisdiction over presentation of matters before the Legislature so I took no steps personally to secure the introduction of the bill. If I am mistaken in that, why of course, it can be corrected at the next session of the Legislature, but in any event, I have only this oral report to make and only this recommendation that the Committee on Legal Education and Admission to the Bar convene and make their report, and then active steps be taken at the next session of the Legislature to secure the necessary increase of requirements; at least those that have been endorsed by the Association heretofore. If it is desired that any formal report be made, I will be very glad to draw one up and give it to the Secretary for insertion in the minutes.

MR. LEWIS: Gentlemen, you have heard the report, is there any discussion.

MR. YOUNG: It might be of interest to the members of the Association to know that without reference to some specific additional requirements by statute, the standard gradually has been improved and at our last regular examination, we examined seventeen candidates. My recollection is now—possibly Mr. Adams will remember more distinctly than I do, but everyone of these candidates had academic training above the High School, most of them at least two years and a considerable percentage of them, I would say six or seven of them, had academic degrees so that while the legislation of which Dean Cooley speaks has been approved by this Association, the fact is that just by reason of the agitation and the general interest in education we are building up the profession and are getting men who have a better foundation than was common even as recently as six or seven years ago when the present members of the Bar Board first went on that Board.

MR. LEWIS: Mr. Young, I am under the impression, it is my recollection, that the last meeting of the Association did go on record

as endorsing that standard, is that correct?

MR. YOUNG: That is my understanding.

MR. ADAMS: In connection with this report, I talked to Professor Cooley last night telling him that three distinct Bar Associations have unanimously recommended to this Association that in addition to the requirements for admission now endorsed by this Association and suggested by Professor Cooley, they also include a provision for internship of six months. It may be new to this Association but our district association is unanimously in favor of internship; that is a lawyer appearing before the Bar Board for examination must be able to show that he has been in a law office at least six months. That has been the practice in New York State and other states are considering it. I think we should make provision that young men should have six months' work in a law office before being admitted to the Bar. It can be taken in the summer time or taken in the office and gotten through legal education in the law school. It is coming before the Association probably next meeting and I want to warn you it is time to consider it. Our Association is very strongly in favor of it, and we shall be ready to recommend to this committee our further suggestions which can be embodied in the law to be proposed to the legislature.

MR. COOLEY: I think that this suggestion which came to me from Mr. Adams last night certainly ought to be embodied or rather considered by the committee on Legal Education. It seems to me it is a matter of very vital importance in raising the standards of the Bar, that they should have a certain length of time in actual contact and practice before they are admitted to the Bar. I suppose many of the attorneys, in fact nearly every one of you, have had the same experience as was mine, that is the lack of proper knowledge of what the practicing attorney has to do makes the first few years of practice a bed of thorns and anything that can be done to raise the standards along this line should be done, and it is well to increase his knowledge as to the administration of a law office. It certainly ought to be encouraged and anything that the Bar of North Dakota sees fit to endorse in that respect will receive the very hearty support from the faculty at the Law School.

Along that line, I urged upon the administration of the University the necessity of securing, so far as possible, for our law faculty, men who have had practical experience in law offices and I am glad to say that two new men are coming in this year, both of them have had that experience. I think that will increase our efficiency and will enable us to turn our graduates more thoroughly trained in the requirements of the Bar Board.

MR. WENZEL: Right at that point, I would like to direct your attention to the fact that during the past year I have made reference to a number of articles on that question in Bar Briefs. The position taken by eastern law organizations varies somewhat. Some of them are suggesting the probation system and others are suggesting the law office practice, and others suggesting methods of record keeping and so forth. There are three or four different plans. I would like to suggest to members of these various committees, when articles of that kind are referred to or summarized in Bar Briefs, it is merely for the purpose of getting expressions of opinions from the

members of these various committees so those expressions of opinion may go out to the members of our Bar Association. It is not the desire of the present editor or of the members of the Executive Committee to make Bar Briefs the organ of officers of the Bar Association. It is your expression of opinion that ought to go in there when those questions are raised. I bring that to your attention at this time so you will remember it this coming year.

MR. LEWIS: Any further discussion on the matter? It is interesting work for next year's committee. What will you do with the report?

MR. WENZEL: I take it that the suggestion made by Mr. Adams is accepted by the Chairman of the Committee.

MR. COOLEY: It is so understood.

MR. HANCHETT: I will move that the report of the committee be accepted and adopted including the suggestions made by Mr. Adams as adopted in the Third District Convention.

MR. LAMBERT: I second the motion. I want to add a few words. It seems to me that that particular thing which has been said is probably as good a thing as we will hear during this convention. I really think in actual practice it is pretty near necessary if we are going to have successful lawyers in the early part of their practice. I never had it better illustrated than recently. I have been on the examination committee for some Boy Scout troops in Minot and having been brought up on a farm I thought I knew something about horses. Some of these boys were sent down for examination on horsemanship, and I thought they must know something in regard to that work in their studies, but when they got through I figured that a saw horse was about as much as they would dare to handle. I don't believe you could do much on horsemanship without the horse around, and I don't believe you can do much in being qualified for law practice unless they get in actual contact with the practice of law. I haven't heard much of this before and it strikes me as being the real thing.

MR. LEWIS: Any further discussion? If not, you have heard the motion for the acceptance and adoption of the report including the recommendations. All those in favor of the motion, signify by the usual sign. Contrary. It is carried.

The next is the report of the Committee on Comparative Law.

MR. HANCHETT: I may say preliminary that I was quite dumbfounded by the report of my activities at the Seattle Bar meeting by Judge Bagley. I assure you it was an entirely different kind of a report than I delivered at Minot last fall. The only way I can explain it, Judge Palda was there and must have been following me around and came back to Minot and "spilled the beans." Anyway I will hasten with my report and try to get it off my chest, before any of the ladies of the W.C.T.U. get hold of me. This report is the report of the Chairman of the Committee rather than the committee inasmuch as we were unable to have any committee meetings prior to the meeting of the Association.

I move that the report be accepted and adopted.

MR. PALDA: Second the motion.

(See Appendix for Report.)

MR. COOLEY: I do not care to discuss the report, of course, but one remark that occurs in the report influences me to say a word or two, concerning the problem other Committees on Comparative Law have had in making proper research. I do not wish to bring the matter up here at present but through the activities of the Judicial Council, they are providing for a committee on research. I wish to say this, however, to any Chairman of Comparative Law who may be appointed, if he will write the Law School indicating certain particular lines of legislation that he wants investigated, the law school will try to help him out. We have five men there who could put in a little time, at least, examining new legislation and furnishing the material to the Chairman of the Committee on Comparative Law, and I make that offer on behalf of the Law School, that we will do our utmost to help them out, if they will simply indicate to us the particular line of research they want.

MR. LEWIS: That offer is certainly appreciated, Dean Cooley, and it will no doubt prove of great value. Any further discussion? If not, those in favor of the motion may signify by saying "aye." Opposed. Carried.

The next is the report of the Committee on Public Information and Cooperation with the Press. Mr. Wenzel has the report in Mr. Sgutt's absence.

MR. WENZEL: On behalf of the Chairman of the Committee, I move the adoption of the report and call attention particularly, although I had not read it before, to Item Four of this report. I think that is an important function to be performed by the members of this Association.

MR. STUTSMAN: Second the motion.

MR. LEWIS: Gentlemen, you have heard the motion. It is now open for discussion. Is there any discussion on the adoption of the report? If not, those in favor of the motion will signify by saying "aye." Opposed. The motion is carried.

(See Appendix for Report.)

The next is the Report of the Committee on Constitution and By-Laws by Mr. Dullam. Have you any report?

MR. WENZEL: Mr. Dullam indicated some time ago that this Committee would have nothing to report at this meeting.

MR. LEWIS: Mr. Dullam wrote me a letter also, the exact contents of which I do not remember, but it was to the effect that the Constitution and By-Laws were working so beautifully that the committee was simply a side issue. I take it that will be taken as a report. Do you move its acceptance?

MR. WENZEL: I so move.

MR. HANCHETT: Second the motion.

MR. LEWIS: You have heard the motion. All those in favor

signify by saying "aye." Contrary. Carried.

The next is the committee on Jurisprudence and Law Reform, Judge Wartner of Harvey.

MR. WARTNER: Mr. President, Members of the North Dakota Bar Association: This report is again, as Mr. Hanchett has just stated, a report by the Chairman. I had hoped that I would be in Valley City early enough to meet with the other members of the Committee. That seemed to be impossible so whatever this report contains is my own work and should not be charged to the rest of the committee.

(Report read).

I move the adoption of the report.

A MEMBER: Second the motion.

MR. McINTYRE: I, too, second the motion. I think Judge Wartner has called our attention to something that we must have in this State, and that is a codification of our laws. If this Bar Association does not take an active part in that, how can we expect to get it? We have been met many times with the statement, "It is going to cost too much." I talked with a recent Governor about it and he says, "Yes, that is fine, how much does it cost?" I told him the cost would be considerable. He says, "We ought to get that done for \$1000." He was going to recommend it in his message. He didn't. I presume on investigation he found \$1000 would not go very far. Seriously, haven't we a real problem before us. Talk about laymen not knowing what the law is. I find it difficult myself to keep track and find out what the law is. To my chagrin, very often I have taken a great deal of time and gotten out a very fine opinion only to find before the letter left the office, or unfortunately afterwards, I had forgotten some law, some amendment which had slipped in somewhere I had not been able to locate. If this is my experience, the average practitioner, what can we expect of school boards and county officials who attempt, in good faith, to understand it and administer in good faith our tax laws. It seems to me the Association can undertake no bigger problem and one serving the state better than to bring about an early codification of the law of this State, even to the extent of the members of the Association forming voluntary committees to assist in the work and get the Legislature to see the necessity of this codification.

MR. ADAMS: I wonder if Mr. McIntyre does not mean revision rather than codification.

MR. HANCHETT: I think that is a matter that should be referred to the Legislative Committee to be taken up at the next session of the Legislature. I should like to add an amendment to that report. I would move that the matter of the revision or codification of the laws of North Dakota be taken up by the Legislative Committee and they in turn take it up with the Legislative Assembly. Perhaps Judge Wartner would consent to that.

MR. WARTNER: I will be pleased to have that inserted as part of the report.

MR. LEWIS: There are many interesting things contained in that

report. Any further discussion. If there is no further discussion, I will put the motion together with the amendment. All those in favor of the motion as amended, signify by saying "aye." Opposed. Motion carried.

MR. MCINTYRE: Some one just made a suggestion which appeals to me which I do not think would be out of order. That is that a special committee be appointed during the next year to investigate and to report to our next annual meeting the probable cost of a complete revision of the laws of this State. I make a motion to that effect.

MR. LEWIS: You have heard that motion. Is there a second?

MR. BANGS: Second the motion.

MR. LEWIS: Any discussion? If not, those who are in favor of the motion, signify by saying "aye." Opposed. Carried.

The next is the Report of the Committee on Uniform State Laws by Robert Norheim.

MR. WENZEL: The report is presented by me on behalf of Robert Norheim, Chairman of the Committee.

(Report read.)

On behalf of the Chairman of the Committee, I move the report be adopted, Mr. President.

MR. LAMBERT: Second the motion.

MR. LEWIS: You have heard the motion, is there any discussion? If not, those in favor will signify by saying "aye." Opposed. Carried.

(See Appendix for Report.)

The next on the program is the report of the Committee on Ethics of Bench and Bar, Honorable John Burke. I understand the entire Supreme Court has come to this meeting but so far I have noticed they have not yet arrived. Has anything been seen of them? I think under those circumstances, we had better postpone the report and get it in a little later.

The next is the report of the Committee on Criminal Law, F. F. Wyckoff, Chairman. Is Mr. Wyckoff here? Have you any report from Mr. Wyckoff?

MR. WENZEL: I have not, Mr. President.

MR. LEWIS: The next is the report of the Committee on American Law Institute. Judge McKenna has been for many years, and now is Chairman of the Committee and has given us a very interesting report. This year he was unable to go and Judge Burke went and Judge McKenna asked him to make the report. Do you expect him in this afternoon, Mr. McKenna?

MR. MCKENNA: Yes, I do.

MR. WENZEL: Mr. President, there is just one announcement that I would like to make at this time; that is that all the members

of the District Courts and the Supreme Courts together with the Past Presidents of the Association, and present Executive Committee, Dean of the Law School, and the members of the local committee on arrangements are to meet at the Rudolph immediately following this session this morning. That is the only announcement I have at this time.

MR. MCKENNA: One matter that I feel should be brought to the attention of this Association before we adjourn for luncheon. You all know that one of the outstanding members of the organization and the last Ex-President of the Association has been recently singularly honored by being selected by the Attorney General of the United States to be Assistant at Washington. He leaves in a few days, I understand, to take up his duties there. The Secretary stated here on the floor this morning that he expected to be here before this meeting adjourns. Wouldn't it be very proper and fitting that the organization go on record complimenting him upon the appointment and also thank him for the splendid work he did for us as President during the many years he served. I refer to Honorable Aubrey Lawrence of Fargo and I move that the chair appoint a committee of three to draft proper resolutions in conformity with my remarks.

MR. TRAYNOR: Second the motion.

MR. LEWIS: You have heard the motion, gentlemen, I take it that it needs no discussion. Those in favor will signify by saying "aye." Opposed. Carried.

I will appoint Judge McKenna as Chairman, Judge Bagley and Mr. Thomas G. Johnson, and ask them to have their resolutions ready for presentation shortly. Mr. Lemke, I think you have an announcement you wish to make.

MR. LEMKE: I would like to have the committee on Powers, Terms, and Salaries of Judges meet with me at the Kindred Hotel as soon as possible after luncheon.

MR. LEWIS: That closes the formal program for this morning. I dislike to go ahead of the program because the morning session the first day is sometimes poorly attended, although I do not think any one can say that is the occasion here and it is very unusual that lawyers do not take up their full time, but it is only half past eleven. Is there anything that you would like to take up which is not on the special program of business at this time before we adjourn for lunch? That reminds me that we have quite a full program this afternoon and we will try to get started promptly at 1:30. If there is no objection, then the meeting will now stand adjourned until 1:30.

WEDNESDAY, SEPTEMBER 4, 1929

AFTERNOON SESSION

MR. LEWIS: I would like to call your attention to the fact that the meeting tonight is in the Teachers College Auditorium. We will have Attorney General Youngquist of Minnesota here to give our annual address on Crime Prevention and Law Enforcement. Mr. Youngquist seems to have a very splendid reputation in Minnesota

and I am told he is going to give us a splendid address. My guess would be from what I have seen of him he would do so. That, of course, is open to the public. We would like very much to have a large attendance at eight o'clock at the Teachers College Auditorium. We now have a number of copies of the program here on the desk so if any of you do not have them, they are here.

The first thing on the program this afternoon is the annual President's Address. I will ask Vice-President Bagley to take the chair.

MR. BAGLEY: Just a moment, Mr. Lewis, this audience is sitting too far back in the hall for the convenience and comfort of the speaker. Will you be kind enough to take the seats in the front, gentlemen.

Gentlemen, I now have the pleasure of introducing to you Mr. John H. Lewis, who will deliver the Presidential Address.

(President's Address.)

I am sure I but express the sentiment of every member of this Association in saying that we thank Mr. Lewis for his very able address. Let me say that we have seldom heard an address from our President so charged with clarity, common sense and broad democracy and permit me to say, personally, after many years of acquaintance, that these things, clarity, common sense and democracy above all things distinguish this man who is our President. We have honored ourselves in honoring such a man. Do I hear any remarks from any of you present with respect to this address.

MR. KNAUF: I move you that the address be adopted, recorded and printed as a part of our regular minutes in our regular book of proceedings.

MR. JOHNSON: Second the motion.

MR. BAGLEY: All those in favor, may signify by saying "aye." Contrary. Carried unanimously.

(See Appendix for President's Address.)

MR. LEWIS: Gentlemen, the next on the program is reports and discussions, the first report of the Committee on Law Enforcement. Is Mr. Kelsch here? Mr. Wenzel says no report has been submitted. We will pass that for the present and we may have one before the meeting is over.

The Committee on Fee Schedule, Mr. Cuthbert. Is Mr. Cuthbert here? Mr. Wenzel says that report is printed, and carries no particular recommendation. We adopted the custom last year of not reading the reports that have been printed in Bar Briefs. Assuming that the lawyers have been reading Bar Briefs regularly and have become acquainted with its contents, if there is no further action to be taken at this time, we will follow that custom and throw it open to discussion. Is there any discussion on the Fee Schedule?

MR. LANIER: I have read with very considerable interest the Report of the President of the Committee on Fee Schedules. I

was present at Jamestown at the time that the new schedule was adopted. At that time I felt, as I think the majority of the members of the Association did, that it was an experiment and with experiments, the only way in which their value can be determined is by trying them out. We were very much hurried at the time that the schedule was presented and did not have time to discuss it in detail, so it was adopted entirely without discussion, as I remember, and unmodified has been in force ever since. I am much interested in the report of Mr. Cuthbert this year and I may say that I find his experience with it is the same as mine, that it has not been enforced either in spirit or in fact. I take it, however, that the fee schedule is not intended or expected to be enforced to the letter but I feel equally certain that it was intended that it be enforced in spirit. It was to give the practicing lawyer a thought of what was the general opinion of the Bar within the state should be a reasonable minimum fee for certain services which he is being called on to perform. I find, however, a matter that is not noted by Mr. Cuthbert, that it is not only not being enforced along certain lines, but it is not being observed in a most effective way. Now I am going to speak of what I will call the price cutter among the attorneys of the Bar, or the fee cutter, perhaps that would be more suitable; that there are some of those in our neighborhood, there is no doubt. I mean by that, the attorney who does not rely on his skill or his experience in doing the work for which he has been appointed, but who seeks to divert certain work into his channels by lowering the fee. It is this person who makes an effective use of the fee schedule. He looks it over. There he finds what the professional lawyer is expected to charge, the minimum fee that he must put upon certain services. Consequently when competition is close and the prospective client comes to him, he can cut under that from the fact that he knows what it is going to be. In this sense, the schedule is a positive detriment to the Bar, and I wish by these remarks, to call attention to that feature. I was in hope that the Chairman of the committee would be here to hear this. I presume some of the members are. I think it is a matter well worthy of consideration, that unless we can rise to what may be said to be a better average of observance of the fee schedule, it might be better to abolish this in all that is fair to the usefulness of the fee schedule.

MR. LEWIS: Any further discussion? If not, a motion to adopt the report of the committee will be in order.

MR. LAMBERT: I move that we adopt the report of the Committee on Fee Schedule.

MR. YOUNG: Second the motion.

MR. LEWIS: You have heard the motion. All those in favor may signify by saying "aye." Contrary. Carried.

(See Appendix for Report.)

The next is the report of the Committee on Local Organizations. Is Mr. Downey here? Have you any report, Mr. Wenzel?

MR. WENZEL: There is none.

MR. LEWIS: In the cases where the Chairmen do not appear here, I am going to ask for the reports before the meeting closes.

The next is the report of the Committee on Legislation, Fred H. Traynor. That report has also been printed and carries no recommendations. Is there any discussion of that report at this time? If not a motion to accept it will be in order.

MR. YOUNG: I move that the report be accepted and placed in the file and approved.

MR. KNAUF: Second the motion.

MR. LEWIS: You have heard the motion. All those in favor may signify by saying "aye." Contrary. Carried.

(See Appendix for Report.)

We have a little time, owing partly to the absence of some of the Committee chairmen, before three o'clock, and the Supreme Court have promised to treat us to an interesting ceremony at this time which they have not had before at the Bar meeting. They propose to convene and admit an applicant to the Bar. At this time, I will leave the chair and turn over this meeting to Chief Justice Burke in order that the Supreme Court may hold its session.

MR. BURKE: Mr. Chairman: I declare the Special session of the Supreme Court of the State of North Dakota open. Dean Cooley, have you a motion to make?

DEAN COOLEY: May it please the Court, I appear before you to move the admission to practice before the Supreme Court of the State of North Dakota and the District Courts of the State of Percival W. Vieselmann. This motion is based upon the certificate of the Clerk of the Supreme Court of Minnesota showing Mr. Vieselmann was admitted to practice in the State of Minnesota, June 11, 1915, an affidavit from Mr. Vieselmann showing that he has been in constant practice since that date up to September, 1928, when he removed to North Dakota, and other affidavits and certificates showing compliance with the requirements for admission to the Bar in this state. I am also advised his application for admission has been approved by the State Bar Board. Therefore, your Honors, I move the admission of Mr. Vieselmann to practice as an attorney and counselor of law in the State of North Dakota.

MR. BURKE: Hold up your right hand. You do solemnly swear that you will support and defend the Constitution of the United States, the Constitution of the State of North Dakota, and that you will faithfully discharge the duties and the obligations of the office of attorney-at-law in the State of North Dakota to the best of your ability, so help you God.

MR. VIESELMAN: I do.

MR. BURKE: The Court stands adjourned.

MR. LEWIS: We have, a number of us, been before the Supreme Court, and watched that august body in action, but this is perhaps the first time that I have been before them without wondering what they were going to do. I notice and note with great relief that they do not commit men for smoking; and also that they did not say anything about applause during the session of the Court. You have all seen a good many times what a good looking body of men they

are and I want to say for this Bar Association, that it appreciates very much the attendance of the Supreme Court at this meeting. It seems to me that is a pleasant thing about our Bar Association, but quite a few years past, it was not so many, fifteen or twenty years ago, they did not do it, and we appreciate the fact that the Court feels themselves a part of the Bar and that they do come and take a part in our meeting. The District Judges do it quite a little and this is the second time that the entire Supreme Court have been at our annual meeting. It seems to me that it greatly increases the morale of the Bar and that it is a splendid thing for us. I hope it does not hurt them too much and we certainly appreciate it more than we can tell you.

Our speaker this evening has just reached town and I want to, at this time, present to you Attorney General Youngquist of Minnesota.

MR. YOUNGQUIST: Mr. President, Ladies and Gentlemen: I do not want to inflict myself upon you twice, at least not in the same day, but I do want to say that I was impressed with the ceremony that we have just witnessed. I think it is an excellent thing that we old practitioners, I put myself in that class, should be reminded of the solemnity of the oath that we take upon admission to the Bar, and indeed, it is gracious, I think, of a Court to come and repeat before us that old lesson. I am surprised—I should not say that—I am surprised to see so large an attendance at the Bar Association meeting and I think you are to be congratulated upon that and upon all else that I have seen thus far.

MR. LEWIS: At this time we will take a little rest from the course of our strenuous proceedings and listen to a song by Mrs. Marsbach who has very kindly consented to sing to us.

(Singing.)

In behalf of the Association, I want to thank Mrs. Marsbach for those delightful songs. We might consider meeting in Valley City every year.

I am now going to take advantage of my first opportunity to call on Judge Burke, the Chief Justice of the Supreme Court, and remind him, although not fine him, that he was not here this morning to give his report, on the Ethics of Bench and Bar.

MR. BURKE: Mr. Chairman, if my memory serves me right, the chairman called me up a few days ago and said that I appeared on the program as chairman of two committees, one on the subject of Ethics of the Bar and the other on the report of the meeting of the American Law Institute, and if I understood him correctly over the phone, he says, "Of course, you won't want to speak on both subjects and if you will suggest somebody to me, I will appoint him to deliver a report on the subject of Bar Ethics," and so I suggested Mr. McIntyre of Grand Forks, and he said he would call him up on the phone and ask him to report upon that particular subject on this occasion. I paid no more attention to it, and now he insists on me getting up here and making a report to you upon a subject that he relieved me of here just a few days ago, if I understood him correctly over the phone.

JUDGE LEWIS: You are trying to lay all of that onto me? The actual full conversation was that Judge Burke, having those two reports, it would be too much to ask him to make the third as chairman of the Judicial Council and I asked him to designate a member to do that, and he designated Mr. McIntyre.

JUDGE BURKE: Well, I haven't got any report to make on that particular subject and I think that is about as far as any member of this organization has got on that subject so far as I am able to understand. I do not know whether the committees that have had that subject under consideration have considered that that was a subject that did not need any discussion nor consideration among the members of this organization; that their ethics would be right without any fixed rules so I am not prepared to report on that, but I am very sorry that this little misunderstanding took place. I can see now that when these matters of great importance come up, that we have got to get closer together. It is too far between us, I can see that now, but I am not prepared to make any report on that. I can tell you about the meeting of the American Law Institute if you will want a report on that at this time.

MR. LEWIS: If the Association proposes to waive Judge Burke's report on ethics on the ground that he says he doesn't know anything about them, we will now listen to his report on the American Law Institute.

MR. WENZEL: Mr. President, before the Chief Justice proceeds with that, it seems to me we should clear the record here. I believe that the usual punishment for perjury should be suspended at this time so as to leave him free to say what he desires to say.

JUDGE BURKE: That might be a very wise provision. Upon that other subject, I will take that up later with the other members of the Bar and with the other members of the Committee and we will file the report which may be printed in the Bar Briefs, if Dick will print it. Of course, I think it will be all right printed. It wouldn't be like our friend, Ring Lardner. Ring, you know, is one of the funny men, and he said he had some great difficulty when he went down to Baltimore to write up Mencken and Babe Ruth, because he said he couldn't understand what Mencken said and he couldn't print what Babe Ruth said, but we will try to put the report in such shape that it can be both understood and printed.

(See Appendix for Report.)

MR. LEWIS: Gentlemen, you have heard Judge Burke's very interesting story of the work of the committee. Is there a motion to adopt that report?

MR. LAMBERT: I would like to ask the Judge if he could not inform us where we could get as much of the work as has been done.

JUDGE BURKE: Yes, William Draper Lewis is the Secretary of Philadelphia. I haven't got his address but I will send it to you.

MR. LEWIS: I suppose we should have a formal motion.

MR. HANCHETT: Mr. President, I move that we accept and adopt the report as given by Judge Burke with special emphasis

upon what he said with reference to old friends. I am getting somewhat along in years myself.

MR. PALDA: Second the motion.

MR. LEWIS: You have heard the motion, all in favor may signify by saying aye. Contrary. Carried.

We will now have the pleasure of listening to an address by a man who is said to be a leading expert in grain matters in the North Dakota Bar. Mr. Stutsman has had much practice in that line and I am sure it is a subject in North Dakota we are immensely interested in and we shall be much interested in hearing about it. Mr. Stutsman will speak on "When Is a Grain Gambler?"

MR. STUTSMAN: Mr. President, I don't know whether I will be able to make good on this proposition or not. I never heard about being the best authority on the subject as I have only been a student.

(See Appendix for address.)

JUDGE LEWIS: We thank you. That is an extremely interesting discussion of a subject on which public opinion, in fact most all of us I think, have been pretty hazy. I would like to make an announcement at this time. Judge Christianson wishes to announce that the Committee on Provision for Young Children of Delinquents, of which he is Chairman, will meet after the adjournment at the State Teachers College, immediately after Attorney General Youngquist's address this evening.

The next is the report of the Committee on Powers, Terms and Salaries of Judges, Honorable William Lemke.

MR. LEMKE: Mr. President, Members of the Bar Association: As you have noticed, our Committee's report is to be on Powers, Terms, Salaries of Judges. I think our Committee is very happy the Supreme Court adjourned its special session before we were called upon to make our report.

I want to say, that in our case, the same as in most of the other committees, we have had some difficulty in getting all the members together, and different members and different times have met and what we have here is more or less a composite report or idea of the different members.

(Report read.)

On behalf of the committee, I move the adoption of the report.

MR. WEHE: Second the motion.

MR. LEWIS: Gentlemen, that is a very interesting report containing much controversial matter and it is now open for discussion.

MR. KNAUF: I move you Mr. Chairman, that the report be printed in the regular yearly annual.

MR. LEWIS: That is included practically in the motion for adoption. It is now open for discussion.

MR. STUTSMAN: Are we to understand that in voting for the adoption of this report, we are to concur.

MR. LEWIS: That is as I understand it.

MR. STUTSMAN: I am opposed to the report in this shape. I think we should pass upon each separate paragraph. As an amendment, I move that these be voted upon, one at a time.

MR. LEWIS: Is that amendment satisfactory to you, Mr. Lemke?

MR. LEMKE: Yes, the report may be received at this time and then they may be taken up separately. I move that the report be received and printed and that we now take up each provision separately and discuss it.

MR. LEWIS: You may take it up now, I suppose.

MR. KNAUF: It appears to me that there will be no meeting of the Legislature until after our next annual meeting and I would therefore like to make a substitute motion that the report be received and accepted, not adopted; that it be printed in our regular annual proceedings; that it be considered by our next session of the Bar Association, and at that time adopted or amended as the Association may deem best.

MR. PALDA: I second the substitute motion.

MR. BANGS: It seems to me as practicing attorneys of the Bar, we have all well defined ideas. We have heard the report and each one has his own ideas as to whether it is correct or not and I am not in favor of the substitute motion. I move you that the report be accepted and adopted.

MR. ELLSWORTH: Second the motion.

MR. LEWIS: Now we first have a motion to adopt an amendment, which is accepted by the maker, that it be accepted and placed on file and discussed section by section. Then we have a substitute motion that it be accepted and the action go over to the next meeting. My impression is that the substitute motion will have to be acted on first.

MR. MCINTYRE: I second Judge Knauf's substitute motion.

MR. LEWIS: I take it that the substitute motion is open for discussion.

MR. BANGS: It seems that the substitute motion is analagous to the position that many of us take when we say we are on the slow side. We don't know whether we are right or wrong, but we say, let's delay the matter until the next term of court goes by and then we will see where we stand. Here we are—we certainly should have some ideas on this question and know where we stand on these different things. I believe that is about as good a time. I don't see any reason waiting for a year on some other point to see whether we approve or reject the report made by this committee. It seems to me a very good report. It brings up questions this Bar Association should decide, and if we would ever be in a position to decide, we are in that position right now to decide it. I hope this motion for delay will be lost and that we may bring this question up and settle it now as to where this Bar Association stands on the different questions.

MR. LEWIS: If the chair would make a suggestion, which of course, he ought not to do, I think whether or not you take action on this report today, it would be a pity not to discuss it, and discuss it thoroughly, a report with so many constructive questions. The question is on Judge Knauf's substitute motion, that it be accepted and placed on file and taken up again next year.

MR. ELLSWORTH: Now as to the matter of terms and salaries, this will have to be acted on by the Legislature, or rather the matter of salary, I should say, not of terms, the matter of salaries will have to be acted upon by the Legislature, of course, so it might be entirely proper to take a year to think about that and still consider it before the meeting of the next Legislature.

This matter of powers as suggested in regard to court procedure which will not be acted upon by the Legislature at all but by the court and it seems to me as to it, it would be improper to postpone it at this time for that length of time. As Mr. Bangs suggested, it means slow action and I am against the substitute motion.

MR. WEHE: Mr. Chairman, I think this report should be acted upon at this time. We are practicing attorneys and understand the report, it is in very plain English. I don't think there is any necessity for delay in that respect and I support Mr. Bang's position. Now if we delay this, we have our Legislature coming on again and if there is something here that might come up in that connection, we may want to pass some laws in regard to this report. If we go on record and recommend it at this time we can shape our legislation in the future to carry these things out. If the courts continue to construe these certain sections contrary to what you and I think they should be construed, and the majority of them think they should be construed that way, we should go on record now and pass this report; that is we will receive it as a report, I presume, as all other reports are, and order it printed. Then the proposition to come up is whether we want to adopt that as the report of this body, and then if we do, and there are certain things in there to cut out, now is the time to take them up and discuss those things. The fee proposition should come up and be decided.

I am in favor of that proposition of increasing the salaries as outlined. I am also in favor of the other provisions in that report in regard to this dismissing of cases. I had a case myself right in point, a \$20,000 case, that was practically up to the jury, and taken away from the jury over an objection stated in the record. We are taking an appeal to the Supreme Court. We didn't have a right to go to the jury. I for one want that decided and I would like this Bar to go on record whether their construction of that is wrong, or whether we are going to have a subterfuge by taking away by dismissal. A dismissal and motion for directed verdict are two different things altogether.

MR. LEWIS: I take it discussion at this time ought not to be on the merits of this proposition, but whether or not we are going to merely accept this report and take action on it next year.

MR. WEHE: Well we are all vitally interested in this proposi-

tion and I would like to see these things squarely met at this time, either passed upon or adopted.

(Question called for.)

MR. KNAUF: After the discussion I want to state this, I have been in favor of this report. The fact is I helped a little bit in making it and I wish to withdraw the substitute motion and join in a second of the motion to adopt the report.

MR. BANGS: I want to suggest that this report and the motion to adopt it must be correct because it is the first time in all of the years I have practiced here that Mr. Lemke and I have agreed, and now that we are agreed, we must be right.

MR. LEWIS: The first motion is not to adopt the report but to accept it and place it on file and then immediately go ahead and discuss it section by section. Mr. Lemke's motion as amended is that the report be accepted and placed on file and then discussed section by section. All of those in favor of this motion signify by the usual sign. Opposed. Carried.

We will now proceed to take up the report, recommendation by recommendation.

MR. MCINTYRE: I am wondering if we cannot postpone the discussion and meanwhile have it printed. I think we are all agreed that the recommendations as far as terms and salaries are concerned are right. Possibly some of us might even go a little further on the salary proposition.

It seems to me there are some recommendations as to powers—as far as I am concerned, there are some recommendations I would like to see in print so I could read them over and get a little better acquainted with them and possibly realize the import of some of those recommendations.

We are here, as I read those recommendations, criticizing the courts of our state for the idea they are taking on certain questions. It is a very serious matter. I think we ought to go a little bit slow on discussing that unless we have before us these recommendations and know what we are discussing.

MR. LEWIS: That, of course, is always a good suggestion, Mr. McIntyre. We have a fairly full program tomorrow. Would it, or not, be practical to have them printed before tomorrow. How about it, Mr. Wenzel?

MR. WENZEL: I doubt whether we can get them printed. I could rush them off right now.

MR. LEWIS: I hardly think it is practical Mr. McIntyre. Is Mr. Sproul in here? Have you a public stenographer here. I think we could have it much sooner if we were to have them mimeographed. Could you have them for us tomorrow morning?

MR. SPROUL: Yes we do have. I can get in touch with them immediately. I imagine we could get them at six or seven o'clock.

MR. LEWIS: Is it the wish of the Association that they be printed in order that we may have them in printed form? (Yes).

You could distribute them at the evening session, could you not, as they come out of the hall?.

MR. SPROUL: Yes.

MR. LEWIS: You will be here tonight, Mr. Lemke?

MR. LEMKE: I think so.

MR. LEWIS: Did you put that in the form of a motion, Mr. McIntyre?

MR. MCINTYRE: I hesitated about doing it but would be glad to move that the discussion of the report be made a special order of business at whatever hour tomorrow you suggest.

MR. LEWIS: I think by putting the address by Mr. Traynor, which is in printed form, on this afternoon, that we could take it up at 10:05 tomorrow morning.

MR. MCINTYRE: At 10:05 tomorrow morning, and that copies of the report be placed in the hands of the members of the convention as early as possible.

MR. LEWIS: Is there a second?

MR. WARTNER: I second the motion.

MR. LEWIS: Any discussion? If not, those in favor of Mr. McIntyre's motion, may signify by saying "aye." Opposed. Carried.

(See Appendix for Report.)

That will be printed and will be the special order of business at 10:05 immediately following Mr. Bangs' address on "Some Aspects of the Minimum Wage Law."

The next report is the report of the Committee on Public Utilities. That report is printed and does not, as I understand, contain any recommendations. In accordance with the custom, we will not read it unless requested. Is there a motion to accept the report?

MR. BANGS: I move that the report be accepted, adopted and placed on file to be printed in the annual report.

MR. PALDA: Second the motion.

MR. LEWIS: All those in favor of the motion, may signify by the usual sign. Contrary. Carried.

The next is the report of the Committee on Internal Affairs. That report has also been printed and does contain some recommendations. If you will take the special sheet, you will note the two recommendations.

Mr. Netcher, do you desire to make a motion for the adoption of this report?

MR. NETCHER: Yes, I move the adoption of the report.

MR. LEWIS: That recommendation is in the alternative?

MR. NETCHER: Yes. I think the two suggestions should be discussed. It is the consensus of opinion of the Committee that this

Committee be disposed of and the matters be turned over to the Secretary of the Association and that the committee act merely in an advisory capacity. Outside of that I do not see any reason for them acting.

MR. LEWIS: Perhaps in view of the fact that the recommendations are in the alternative, we might, although not according to "Hoyle," have the discussion before the motion. Mr. Netcher, what do you think, which of those should be accepted and adopted.

MR. NETCHER: Personally, I feel that the elimination of the Committee is entirely proper. I do not see that they have an opportunity to function, at any rate, and as with most committees of this kind, matters submitted devolve entirely upon the Chairman, as a rule. To save time, trouble and expense, there has only been one or two matters which have been turned over to the committee and submitted to the committee as a whole because of lack of time. We have had, since the report has been filed, two additional cases, so we have had thirty-two matters before us this year. I am glad to say the majority of them have been eliminated and settled.

It would seem to me the Secretary of the Association could carry on the correspondence, which is all it amounts to, just as well as any committee. In the event, he could not effect a compromise, he lives in Bismarck where he is fairly available to the Bar Board and if necessary, drastic action can be commenced immediately. I think it is the proper thing to eliminate this committee and the duties formerly devolving on it over to the Secretary of the Bar Association.

MR. WENZEL: Mr. President, Members of the Association: I think it advisable to call your attention to the reasons for the change in referring these matters to the Committee. A number of years ago, all this was in the hands of the Secretary of the Association. There were certain objections raised by the members of the Association. One of them was that it placed too much power in the hands of the secretary. Another one was, which seems to be entirely opposed to that criticism, that members of the profession were inclined to look upon any letter coming from the Secretary's office as being of no particular import, and they paid little attention to it. These matters I think, came directly before the Association, originally, and later on were taken up by the executive committee and the whole situation was discussed at that time, and this Internal Affairs Committee, or really, Grievance Committee, was devised to take care of all complaints. You understand, of course, that there are no powers which may be exercised by the Committee. There is considerable force to the argument that when a committee delegated by the President of the organization gets hold of a complaint, and gets in personal touch with the particular individual involved, it does have more of an effect on that individual than letters written by an officer of the Association. I think that will be found to be true, yet so far as I am personally concerned, if I should continue to be Secretary, I should be perfectly willing to do the detail work. I doubt whether the results achieved would be so satisfactory by turning the whole matter over to the Secretary, as would be the case if you adopted this alternative, retain the committee, a special committee, instead of referring all matters back to the Executive Com-

mittee, retain the special committee, let the Secretary do the detail work, and then if he meets a situation in which he finds it necessary to consult others, he will have a committee with which he can confer before it ever goes to the Bar Board.

MR. ELLSWORTH: Mr. President, it has seemed to me that ever since the provision for this committee on Internal Affairs has been made, the committee has been superficial and that is covered by what this chairman has just said about it. There is nothing that this committee can do that is not now lodged with the State Bar Board, or its Secretary, and it seems to me that it is the proper body to take care of it. Now as I understand it, Mr. Netcher has made a motion that the Committee on Internal Affairs be dispensed with.

MR. LEWIS: There is no motion yet.

MR. ELLSWORTH: Then I would make a motion covering the suggestions in this report, that the committee on Internal Affairs be dispensed with, and that matters formerly referred to it, be handled by the Secretary of the State Bar Board.

MR. PALDA: I second the motion.

MR. LEWIS: You have heard the motion and second. Is there any discussion?

MR. ADAMS: As a member of the Bar Board, I think there should be some understanding of our duties. We only consider matters referred to us upon sworn complaint by the Supreme Court. This means matters would have to go to the Supreme Court and then referred to the Bar Board. That is the only way we handle these matters. I think perhaps there is a misunderstanding on the part of the Bar Board.

A MEMBER: You don't accept complaints direct from people who have a grievance?

MR. ADAMS: No, sometimes they came to us but generally we refer them to the Grievance Committee, unless they are in the shape of a sworn affidavit, and then we report back to the Supreme Court, and they advise whether they want formal charges filed. There is a difference in jurisdiction, and I think there is a place for the Grievance Committee. I do not think we should place a lawyer who has committed some minor offense in the same position as one who has committed a grave offense, where he will have to appear before the Bar Board.

MR. BANGS: It seems to me that both the Bar Board and Committee on Internal Affairs has a distinct duty to perform. I am fully aware of the fact that there are a great many things come to this committee on Internal Affairs that could have been settled with the Secretary of the Association without the necessity of calling on the Committee on Internal Affairs.

Now it would strike me that this second alternative that is suggested can be worked out with satisfaction to everyone and that is some method by which the Secretary of the Bar Association handles matters in the first instance. Those matters that evolve into something of importance where it really requires the necessity of a coin-

mittee can be referred to the Committee on Internal Affairs. They in turn can pass on it, if they deem it of sufficient importance.

I would move you that the report of the Committee on Internal Affairs be referred to a special committee of three to report to this Association at tomorrow's session a plan for the future operation of the committee on Internal affairs.

MR. LEWIS: Do you wish to withdraw your motion, Judge Ellsworth or does this act as an amendment.

MR. BANGS: I move that as an amendment.

MR. LEWIS: Is there a second.

MR. McINTYRE: Second the motion.

MR. LEWIS: I will put the amendment. The original motion was that the Committee on Internal Affairs be dispensed with. The amendment is that this report be referred to a committee of three to report at tomorrow morning's session. Are you ready for the question? The question is on the amendment. Those in favor of the amendment, signify by saying "aye." Opposed. Carried.

That committee is to be appointed how, Mr. Bangs?

MR. BANGS: By the chairman, of course.

MR. LEWIS: I will announce the appointment of that committee before adjournment tonight.

MR. BANGS: I don't want to be on it.

MR. LEWIS: We don't always get what we want in this world. Sometimes we get what we don't want.

(See Appendix for Report.)

The next is the report of the Committee on Citizenship and Americanization. Mr. Herigstad, I believe, is not here.

MR. WENZEL: I have no report but there is a letter here which explains the reason for no report and makes a recommendation so it may be considered as the report, I presume. This is under date of September 2nd, 1929 and really in the form of a personal letter to me. (Letter read.)

I move that be accepted as a report and adopted.

MR. LEWIS: Is there a second to that motion?

MR. LAMBERT: I second the motion.

MR. LEWIS: Any discussion? If not, all those in favor of the motion will signify by saying "aye." Contrary. Carried.

MR. PUGH: I want to say a word or two in regard to the Third Congressional District. A number of essays were sent to me as Chairman of that Committee in May and immediately we arranged for the meeting of the judges. After we had done this, other contest papers came to us direct from the county superintendents.

Now, I had been under the impression that there was a time limit within which the county superintendents should submit the essays to the committee and I so informed one of the county superintendents and he said that there was no time limit. I then had some correspondence with him to ascertain when the essays had been submitted to him and found they had been submitted to him some six weeks or two months prior to that time. That took the matter along for some little time and I thought it probable that other counties were in the same situation. I took it up with a number of them who were not representatives of the contest. That required more time. That took us into practically the Holiday season and I will have to confess right here that as a matter of fact, I overlooked the returning of these essays to the other judges to have them read, the additional essays with the essays already entered, so we are doing the work twice and I expect the report from the other two judges to be in when I return home. As soon as those reports come in, we will forward them.

I am very sorry indeed that the Third Congressional District was at fault in this matter but I think in the future the committee having this in charge should be very specific in their directions, that the contests are to be in the hands of the committee by a certain time, and that all contests not in the hands of the committee at that time will not be considered. That would obviate this little matter of difference between some of the county superintendents and the committee.

MR. LEWIS: I thank you, Judge.

(See Appendix for Report.)

MR. LEWIS: The next on the program is an address by Brigadier General D. S. Ritchie, on Military Courts-Martial. General Ritchie.

(Paper read.)

I want to say that it is also a remarkable fact that there was not one record of an execution of an American soldier for the commitment of a military offense during the late war. There were a number of executions by hanging, but in no case was the finding of guilt pronounced by reason of the violation of any rule or law of war or any army regulation. They were all matters that referred more particularly to violation of the civil law and in every case the chastity of a woman was involved. I want to say in no case was a white man hanged. There were, of course, a great number of convictions and of sentences to death by court-martial in France, desertion in face of the enemy, and other military offenses of the gravest kind, but in every one of these cases reviewing and approving authority commuted the sentence to penal servitude, so we have that record before us, a record of a court that had over five million men in arms, and it wasn't necessary to execute one American for the violation of military law.

MR. HANCHETT: Mr. President, I move that this Association extend a vote of thanks to General Ritchie for giving us this very interesting address on an important subject which most of us know very little about. I would include in that motion that the address

be filed with the Secretary and be printed with the proceedings of this meeting.

MR. MCKENNA: Second the motion.

MR. LEWIS: You have heard the motion, all those in favor may signify by the usual sign. Contrary. Carried.

(See Appendix for address.)

MR. LEWIS: I will announce at this time the appointment of the special committee to act on the report of the committee on Internal Affairs. Tracy Bangs, Chairman, S. D. Adams and Clyde Duffy. They will be ready to report tomorrow morning.

Gentlemen, there was a special committee appointed this morning on Resolutions in regard to Aubrey Lawrence, our beloved member who is departing from our midst, having received an appointment in Washington. Judge McKenna are you ready to report?

MR. MCKENNA: We are all ready Mr. President. Mr. President and Members of the Convention: You will recall that the Committee appointed this morning was Honorable Horace Bagley of Towner, Mr. Thomas G. Johnston of Killdeer and myself. We have prepared for your approval the following resolution:

RESOLUTION

(Unanimously Adopted, Rising Vote)

Whereas, it has come to our notice that our former President, Hon. Aubrey Lawrence, of Fargo, has recently been appointed Assistant Attorney General of United States, and is about to remove, with his family, to Washington, D. C.; now, therefore,

Be It Resolved, by the members of the North Dakota Bar Association, in annual meeting assembled, that in the departure of Mr. Lawrence we are deeply cognizant that the State is losing a distinguished and singularly valuable and faithful servant, one of its foremost public spirited, enterprising and highminded citizens;

That we fully realize that this organization is parting with a brilliant lawyer and advocate and that each of us is bidding adieu to a beloved co-worker, companion, neighbor and friend;

Be It Further Resolved, that we desire to express to Mr. Lawrence how deeply we appreciate the wonderful work which he has done as a member of the Bar, as President of the Association, as one of its Executive Committee, to improve and strengthen our organization, and to build up and foster in the public mind a deep respect for the legal profession; that his work has been notably efficient among the younger men by his inspiring example, his high ethical standards and his kindly and unselfish interest in their careers; that we desire to assure him that he carries with him into his new field of labor our sincere affection and highest regard, and that we hope and trust that the kindly Goddess who has heretofore crowned all his efforts with success will continue to favor him with a smile of approval and good fortune, and that the coming years will bring him a plentitude of prosperity, happiness and peace; and finally, should the occasion ever present him returning to this, the

State of his past achievements, the wholehearted welcome of every member of this Association will be awaiting him at the threshold.

Judge Geo. M. McKenna,
Vice President Horace Bagley,
Thos. G. Johnson.

MR. LEWIS: Do I understand you move the adoption of this report?

MR. MCKENNA: Yes, I so move.

MR. PALDA: Second the motion.

MR. LEWIS: All those in favor of this motion, may signify by rising. It is unanimously carried.

MR. BANGS: I think, Mr. Chairman, there should be something in the Resolution with respect to welcoming him back again to North Dakota because all these people who move away eventually come back.

MR. LEWIS: Tracy, you see the Judge and see that he puts that in, and Mr. Wenzel, will you see that Mr. Lawrence gets a copy of the resolution.

If there is no further business at this time, I know you are all tired, and a motion to adjourn until this evening will be in order.

MR. LAMBERT: I so move.

A MEMBER: Second.

MR. LEWIS: All those in favor may signify by the usual sign. Carried.

Wednesday, September 4, 1929

EVENING SESSION

MR. LEWIS: It has always been the custom of our Bar Association to have at its annual meeting in addition to the local doings, one or more speakers from outside to give us the views of the world.

This year the Executive Committee thought they would lay emphasis upon the great principle of quality rather than quantity, and secured only one speaker, Attorney General G. A. Youngquist of Minnesota.

He is a man with an enviable record of public service, both in military and civil affairs. He bears a very high reputation in his own home which is the most I think that can ever be said of a man. If a man does that, he is sure to be all right from start to finish.

I could tell you the things that he has done but I am reminded of the story "Sid" Spooner of Wisconsin used to tell about introductions. He said he had made a great many addresses in his life and he had heard a great many different kinds of introductions, but the best he ever heard was from the old German Mayor of a little Wisconsin town who introduced him thus:

"I have been asked to introduce to you "Sid" Spooner who will

a speech to you make, yes; well I have now done so and he will now do so."

In accordance with that example, I now present to you our speaker, Honorable G. A. Youngquist, Attorney General of Minnesota.

(See Appendix for address.)

MR. WARTNER: I move you that the Bar Association of the State of North Dakota extends its thanks to Attorney General Youngquist for the splendid and constructive address that he has given us this evening, and I further move you, Mr. President, that he be elected as an honorary member of the Bar Association of the State of North Dakota.

MR. LAMBERT: Second the motion.

MR. LEWIS: You have heard the motion. I would suggest that we have a rising vote. Carried.

We are extending to you, Mr. Youngquist, the thanks of the Bar Association and extending to you an honorary membership in the Association. I want to say that such an interesting, straightforward and informative address has been, it seems to me as I am sure it seems to us all, one of the most enjoyable and worthwhile we have ever had, at one of these meetings.

We have deeply appreciated you coming up here and we hope now that you are one of us, you will come up again.

If there is no further business, the Association will stand adjourned until 9:30 tomorrow morning promptly at the City Hall.

THURSDAY, SEPTEMBER 5, 1929

MORNING SESSION

MR. LEWIS: Gentlemen, we will come to order and we will listen to an invocation by Monsignor Baker.

(Invocation by Rev. Baker.)

At this point I will appoint a committee on resolutions for this meeting to draw up the usual resolutions expressing our appreciation for the hospitality offered by Valley City, and other things. As Chairman, Mr. A. M. Kvello, Lisbon; Judge J. L. Johnston, Fessenden; Hon. Pat Norton of Minot.

I have here a telegram from one whom we all love and respect, Judge Kneeshaw, stating: "Exceedingly regret unable to attend Bar Association. Best wishes."

Gentlemen, when we came to prepare for this Bar Association, it seemed to me, and I found on talking with some of the others, that the idea was decidedly favorably received, that we are not close enough in relationship with the Bar Association of our neighboring jurisdictions, South Dakota for instance. Owing to the fact that it is only recently that automobile transportation has come in and that the roads east and west have been improved, it seems that we deal with the Twin Cities rather than with each other and consequently

have had comparatively little to do with each other. Then on the north, you know the flag is different than ours, but there are some jurisdictions with which our relations are extremely friendly, but not so close as we wish.

We sent invitations to the President of the South Dakota Bar Association, and the President of the Manitoba Bar Association to be with us as our guests at this meeting. The President of the Manitoba Bar Association expressed his great pleasure in receiving the invitation but said owing to the fact that the Canadian Bar meeting was being held in Winnipeg at the same time, it would be impossible for him to come or send a representative.

I am very happy to say that the President of the Bar Association of South Dakota accepted our invitation and will be with us today. He will be with us at the banquet tonight and talk to us and I want to introduce him now and have you welcome him here, and have him talk to us for a moment, and after that, when we adjourn, you may all get better acquainted. Mr. Clark is a former Attorney General of the State of South Dakota; also former United States District Attorney, and has been very prominent in the work of the South Dakota Bar Association and stands very high in the state. I at this time I want to present to you as our honored guest, Mr. S. W. Clark, President of the South Dakota Bar Association.

MR. CLARK: I am very happy to meet you. I am sure if the South Dakota Bar members had known of this very cordial and generous invitation on your part, there would have been a great many more candidates for the position of President. You may recall, or know, that our Bar Association met a few days ago. I was elected President and I am just beginning to find out where I am at but if the members of that Association had known of this invitation, that the newly elected president would have had the opportunity to have been here, there would have been many candidates for that honor and I would not have gotten to be President. In fact there might have been bloodshed, but as it is, there was none. I was the only candidate and therefore, for that reason, I was elected.

Speaking personally, from a personal standpoint, North Dakota is not unfamiliar to me. I came to the state, I might say, on the water wagon, that is I rode on the hurricane deck hauling water for a threshing machine in the northern part of the state near Pembina. I was seeking the elusive dollar for the purpose of trying to acquire some instructor who would impart some information. Since that time I have had the opportunity of being in North Dakota on several occasions for the purpose of pleading the cause of my client in court, so that I am not a stranger here in North Dakota.

Speaking in a representative capacity, I bring to you cordial good will, greetings and regards of the South Dakota Bar, and I think every one of them. When this invitation was read after the election, it was unanimously adopted that I should go and respond to this invitation.

I agree with your President Lewis that there has not been the same cordial intercourse between the members of the Bar of these two sister states because of conditions as they have existed in the past, but with the coming of automobiles and good roads, North and

South Dakota will, I hope, enjoy a closer relationship between the Bars of these two great sister states.

I will try to so conduct myself here on this occasion that we may perhaps receive another invitation to come and greet you again, and I am sure there will never be another meeting of the South Dakota State Bar Association without there having been an invitation extended to the Bar of North Dakota to send a representative to meet there with us, so noting that you have a very fine program, I am not going to take further of your time. I know I will have a wonderful time here and have the opportunity to enjoy the program with you and I expect and hope to meet each one of you individually. I will say no more at this time.

MR. LANIER: I move you sir, that the brother and friend from the sister State of South Dakota be made an honorary member of the Bar of North Dakota.

MR. MCKENNA: Second the motion.

MR. LEWIS: You have heard the motion; may we have a rising vote on it? Carried unanimously, and we welcome you.

The next on the program is an address of Philip R. Bangs of Grand Forks on "Some Aspects of the Minimum Wage Law."

MR. BANGS: Mr. President, Members of the Bar Association. I have prepared this and written it and I am going to ask your pardon for reading it, but if I do not read it, I am apt to stay here longer than you would want to have me so in order to limit myself, I will confine myself to paper.

(See Appendix for address.)

MR. LEWIS: I am sure we feel much indebted to Mr. Bangs for that able and vigorous paper. Whether we agree with it or not, it is refreshing in this machine age to hear an individualistic discussion of that matter.

We have now reached the special order of business, the discussion of the report of the Committee on Powers, Terms and Salary of Judges. You have these printed reports now.

MR. MCINTYRE: I move you that the address of Mr. Bangs be printed in the report of the Association.

MR. WEHE: Second the motion.

MR. LEWIS: You have heard the motion; all those in favor signify by saying aye. Contrary. Carried.

It will be necessary to limit the debate to five minutes per person on each of these points. The first article is under the Powers of Judges and is in regard to the inclination of the court not to make use of certain powers in regard to the reviewing of decisions of boards and commissions.

MR. MCINTYRE: May I suggest we discuss section by section and pass on each section.

MR. LEWIS: Yes, the first section is now open for discussion.

MR. MCINTYRE: I move you at this time, an amendment to the first section, that we disapprove of giving to any Board or Bureau heretofore or hereafter created by legislative or constitutional enactment the right to render final decision or judgment on matters submitted to them involving substantial rights as to person or property and favor the enactment of such legislation as may be necessary to permit of a review of all such decisions or opinions by proper courts of our state.

MR. LEMKE: I wish to state that amendment destroys the very substance of the proposed bill. I also understand there is a misconception on the part of some of the attorneys stating this is a criticism of the courts. It is not a criticism of the courts. It is a criticism of a system, not only practiced in this state, but by all courts of recent time. The amendment is contrary to the spirit of the section for the reason that the section says that we find our constitution and laws give the courts ample power. Why create more laws, when we have too many laws already, when the law at present is ample to give the courts power.

I want to state that I am not criticizing the courts. I consider all of the judges of our district courts in this state my personal friends. It is simply a question as to whether or not they should know what the feeling of the attorneys of this state is in regard to refusing to review, and exercise, if you please, the judicial functions of these various political boards. In the changed condition we have today, it has become absolutely necessary to have boards. I am not one of those who is opposed to boards. I am in favor of them and think certain matters should be submitted through such and such a board but what has been the result. These boards have gone hog wild. They feel there is no restraint or anything else to curb them and there is no limit and they do not follow the legal evidence. All you have to do is refer to the records of the state and you will find they do not follow the legal evidence; that they follow their own inclinations. Under those conditions, under the sections of the Constitution which I will read, I maintain there is sufficient power, and the courts of this state as every state has become lax in using and enforcing that power. We lawyers are responsible for it. I will read Section 22, Article I—Declaration of Rights:

Article I, Sec. 22—"All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct."

And then Section 85 of our Constitution:

Article 4, Sec. 85—"The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages."

Let us go a little further. What does the Legislature do? There does not seem to be much difference but I am going to read you

something funny. In 1917 some of the attorneys felt they went too far in taking powers from the court. What did they do? In 1917 they passed this law, Section 1, Chapter 225:

Chapter 225, 1917 Laws, Sec. 1.—“The supreme court of the State of North Dakota shall have authority to prescribe rules for the issuance of writs of error to inferior courts of this state, to enforce the due administration of justice in all matters within its jurisdiction.”

That is what we are all after. That is what the courts are after. I agree fully with my friend Bangs that whenever public opinion finally meets and runs in a channel, then it is generally right.

Then in 1919 Justice Robinson whom I consider one of the real brainy men of the State, in spite of the fact many felt he was a little eccentric, got me to introduce this bill for him into the Legislature. Section 8445—Writ of Certiorari.

Chapter 76, 1919 Laws, Sec. 8445.—“A writ of certiorari shall be granted by the supreme and district courts, when inferior courts, officers, boards and tribunals have exceeded their jurisdiction and there is no appeal, nor, in the judgment of the court, any other plain, speedy and adequate remedy, and also when in the judgment of the court it is deemed necessary to prevent miscarriage of justice.”

That is about enough to give the Board. The case came up and when the Judge did not feel inclined to be on that side, he went too far and held with the majority and nullified this very act. I am not criticizing the Judge but I think he made a mistake. It was all right in that case to say we did not attack the jurisdiction but in place of that virtually by that admission, nullified the effect of that amendment. What is the use of passing more laws unless we use what we already have. We feel they ought to take the jurisdiction and supervise the acts in case these boards go too far. That is all I want and I do not think there is an attorney who wants the court to go over all the records but we want them to say, “You have gone too far, Mr. Board, we call a halt” and that seems to be amply provided for in the report. I am absolutely opposed to the amendment.

MR. COMBS: Gentlemen, I cannot agree with Mr. Lemke, either on his criticism or rather his commendation of the public opinion as a guide to the rule of action in courts of justice or upon his contention that this proposed amendment either destroys his original resolution, or if not, is irregular and would be ineffectual.

In the first place I want to suggest that I favor this motion on this amendment and shall try to direct my remarks, Mr. President toward its adoption.

In the second place, it is not true that the truths of history and our experiences as a self governing people establish a conclusion that public opinion at its first outbreak and when first advanced on any important public matter is wrong? It is, as a rule, the result of emotional action instead of the result of fine and settled judgment on the subject involved. It would be, to my notion, a disastrous thing for our American government for courts of justice to observe

and follow public opinion in deciding litigation, which comes to it, or comes to them, for final determination.

Now as to Mr. Lemke's objection to the proposed amendment, may I not propitiously suggest that from my experience with him in litigation, and I have had considerable of it as the records of our Supreme Court will show, and it has been pleasant, I am glad to add, that from my observation of his attitude in other litigation, the final decisions of which I have read with great interest, I have reached the conclusion that he is mistaken as to the cause which he says gives rise to the trouble of which he complains. The legislation itself is at fault and since he now concedes he is the father of it, I think that it is quite proper that we should point out his error and suggest a remedy.

He embodied in the act itself a declaration that the judgment of these boards, some of them especially, should be final and conclusive, and that no court should have even the power to touch them, say nothing about reviewing or reversing, if they are wrong. From my own review of the record of some of these cases upon which he now predicates the objection, the failure of our courts of review to reverse so-called judgments of the board, and I happen to know that the judgments of those boards were wrong; they were, I think, decidedly against the facts and the principles of common justice, and I ascribe the result to the fact that they were protected by that provision of the law which undertakes to prevent the court of review from reviewing the judgment and reversing it because it is wrong.

This amendment, it strikes me, is directed to the remedy of that situation and it is an expression of this Bar calculated to instruct the Legislature to take action accordingly.

One further thought, then I shall have been done. Of course, I recognize the fact that Mr. Lemke can argue as he has indicated he will from the fundamental law, from the Constitution itself, the Legislature has no power to pass such legislation as that which you suggest. If that is true, and I am inclined to think maybe it is, then the whole article is void and he is out of court.

I favor the adoption of this amendment and think it will bring the result desired in time.

(Question called for.)

MR. LEWIS: The question, if I remember rightly, is whether the courts have sufficient power under the present law, in the opinion of the Association, and should so express itself.

MR. BANGS: Just a word, Mr. President, the language of the report of the committee is that we find that our courts are not inclined on all occasions to make good use of the power vested in them. Then it seems that the courts decline to review judicial acts of political boards with the excuse that the courts have no jurisdiction.

I do not understand that the Supreme Court of North Dakota has ever in any decision hidden behind any excuse. The Court stands at all times upon the law, as the members of the Court

construe it, and while we, as individuals, may at times damn the Court, as a Bar Association, I am not prepared to put upon the records of this Association a wholesale criticism of the Supreme Court of North Dakota.

If we were to make any resolution with regard to the actions of our courts, it would be a resolution of commendation that I would desire to vote for. Now the court has passed upon some of these questions of their right of review. The decisions handed down by that court constitute the law of this state at this time, and we, as an Association, must recognize the fact that the law has been fixed by the court. If we do not approve of the law, if we want some other law, then let us go to the body that enacts the law and have legislation enacted that will be clear enough so that the Court will find it has the power that some of you here desire. Concerning this amendment that is suggested, let me read it once more so everyone will have it in mind:

"That we disapprove of giving to any Board or Bureau heretofore or hereafter created by legislative or constitutional enactment the right to render final decision or judgments on matters submitted to them involving substantial rights as to person or property and favor the enactment of such legislation as may be necessary to permit of a review of all such decisions or opinions by proper courts of our state."

Now then gentlemen, there is the only remedy that is open to the people of this state. If there is any complaint to make because the courts have not taken jurisdiction to review actions of Boards and Bureaus, the remedy is made plain by this amendment and it is the only thing that we have any right as self respecting members of the Bar to do to adopt this amendment.

MR. LEMKE: Isn't it a fact that the Ohio State Legislature has enacted a similar act or remedied a condition like that? I wish to say that I differ with my Brother Bangs; in fact last night he told me he would be with me.

MR. BANGS: I was in an entirely different mood last night. I was agreeing with everybody.

MR. LEMKE: I am sorry you are not this morning. I have the highest respect for Mr. Cuthbert's and Mr. Bang's opinion and it may be after more deliberation during the night, they have come to a different conclusion.

There is no intention, and I do not think any member of the court here feels, that there is a personal criticism in this resolution. If they do, let's remedy it accordingly, but the proposition is, these men have been doing what Tracy said last, and what my friend Knauf said, trying "to pass the buck." We do not know what the Legislature will do, but the Constitution is the fundamental law of the State, and the courts should have the judicial power given to them in that Constitution. My friend Cuthbert says those laws make it final, the action of certain boards is final, but I do not know of any law that says it will be final, except those passed by your political faction, when the Nonpartisan League lost, so I say we have a right as attorneys, and I am sure the courts welcome the right of an

expression, whether or not we feel that they should on occasion review the acts of those boards. I know that that question has been decided to the contrary.

I am also satisfied that after very serious consideration and discussion by that court, they have followed one step which I think is not for the best interests of the public. Do we mean to say we are going to let the Workmen's Compensation Bureau make decisions that will cause the injured employees to suffer. The Constitution gives the court the right to review the decisions and the legislature does not always act.

One time when I was arguing a case to get an amendment, we got it changed, but these folks were there and lobbied and got the Governor to veto it. That is the situation, if the Constitution gives the public certain rights, then the public should be considered, and not certain individuals. It was the intention of the framers of the Constitution that there should be a review of some kind of the decisions of the various boards, and I think as a body of attorneys we should express our opinion. That is all it amounts to.

MR. WEHE: I think that the Bar Association is the proper place to discuss just such things as these and thresh them out among ourselves and see what we want. Whenever the time comes that the "gag" is going to be put on members when they come here to express opinions as lawyers, then our existence should be at an end. We have had too much of that in the past. I for one, as long as I am a member of this Bar Association, believe in free discussion, and when the time comes to speak I think that I will exercise that as long as I am a member.

MR. LEWIS: The question is on the amendment. You have heard it. Those in favor of the amendment will signify by saying aye. Opposed. The ayes have it.

The question now comes upon this section of the report as amended. Those in favor of the motion, signify by saying aye. Opposed. Carried.

We now come to the second amendment in regard to directing verdicts or dismissing cases. That is now open for discussion. If there is no discussion, a motion will be in order.

MR. WEHE: If it pleases the chairman and members of the Bar, now in making these remarks in regard to Number Two, I wish it clearly understood that there is no criticism thrown upon the courts in any action that they have taken in the past. District Courts or the Supreme Court sometimes will go amiss, the same as the lawyers go amiss. They are not infallible. I do not look upon the court as infallible. I do not believe any of you lawyers here in your hearts look upon them as infallible. They make mistakes. They are human like we are. In that spirit I am taking up and discussing Section Two in regard to the dismissal of actions after they have been once submitted to a jury, the jury empaneled and after evidence has been submitted, and to have your action snatched away from you and the case dismissed with prejudice as is being done by the district judges, some of them, in this state. I think this is a mistaken idea and I am going to show you the reason for it. Anyway it is

against the spirit of the law as was passed in the last instance by the Legislature. Who was chairman of that Legislative Committee—Starke. He was present when they tried to do away with that practice we had before. They tried to amend that law since, and the Legislature has refused to amend it. I have been attending these meetings of the Legislative Committee and saw them refuse to amend directed verdicts after taking it away from the jury, and also in a way, the dismissal of actions. I am going to show you my reasons for it.

I have a right to discuss them and this is the place to discuss them and I intend to discuss them. The law for the dismissal of actions was passed and approved March 11, 1905, Chapter 6, page 10, now section 7597 C.L. 1913:

Sec. 7597 C.L. 1913.—“A civil action may be dismissed, without a final determination of its merits, in the following cases:

“1. By the plaintiff, at any time before trial, if a provisional remedy has not been allowed, or counterclaim made, or affirmative relief demanded in the answer; provided, that an action on the same cause of action against any defendant shall not be dismissed more than once without the written consent of the defendant or an order of the court on notice and cause shown.

“2. By either party, with the written consent of the other; or by the court upon the application of either party, after notice to the other, and sufficient cause shown, at any time before the trial.

“3. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action, or right to recover.

“4. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

“5. By the court, on the application of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

“6. The dismissal mentioned in the first and second subdivisions of this section may be made by an entry in the clerk's register, by the plaintiff or his attorney, and a written notice of such dismissal and entry served on the adverse party, and judgment may thereupon be entered accordingly; provided, that in cases mentioned in the said first subdivision, and in cases which the parties to the action consent in writing to the dismissal of such action, the judgment of dismissal may be entered by the clerk on motion of either party without any notice to the opposite party, and without an order from the court or judge.

“7. In every case, other than those mentioned in this section the judgment in the action shall be rendered on the merits.

"8. All other modes of dismissing an action, except as provided in this chapter, by non-suit or otherwise, are hereby abolished."

Now it goes on and cites five sub-sections of that law. That is the law they are attacking and there is a provision in the law there that they seem to take refuge in dismissing these cases. We want to see if that section in spirit is being violated. This section in question without reading the whole law, the law says itself that the action shall not be dismissed with prejudice. You can start right over again after they have dismissed them, go to the Supreme Court and have that ruling reversed and then come back and try your case over again, and this idea of dismissing your action after you have submitted it to the jury, I think, is wrong in spirit, and I am going to show you the reason why.

MR. LEWIS: Your time is up, Mr. Wehe. Gentlemen, what shall we do with this report?

MR. PALDA: Seeing that I am very much opposed to the adopting of this section Two of the report, I desire to say a few words, but it looks to me as though we are doing a great deal of speech-making along the lines of section Two, not for the purpose of accomplishing anything, but to try to overwhelm the good judgment of the district judges, who are trying various actions that come before them.

If the judges can't dismiss, all they can do in advising the jury as to what the law is, is to say, "Gentlemen, there is no law applicable to the case because there is no evidence." What is the difference if they say that in their instructions or whether they dismiss the case and allow the litigants to go to the Supreme Court and find out if it is good or bad. It seems to me we are backing up and making a lot of noise over nothing.

District Judges are not dismissing cases for pleasure; they are dismissing them because their best judgment tells them there is no lawsuit established. If there is no lawsuit established, what kind of instruction could they give as to the law when no law is applicable. I am opposed to this section and I make a motion at this time that Section Two of the report be disapproved.

MR. CONMY: I want to second that motion. I would like to meet some of the district judges who have been directing verdicts as referred to. I have always construed this particular section of the statute to mean that when there was a total failure of proof, there was nothing to submit, no issue the judge could submit. I have made that kind of a motion preliminary to a motion for directed verdict and I have not found any judge agreed with me. I agree with Judge Palda, and it seems to me it is putting the judiciary down to where they are not exercising any judicial function whatsoever where a case is presented with total failure of the proof. I distinguish between total failure of proof and a dispute in the testimony. What can a judge do, he can't charge a jury on the issue when there are no issues to submit. Should he declare the pleadings as vacated or should he take the issues set out in the pleadings and submit them without any evidence in cases of this kind? I think that about sums it all up. If there are no issues to submit, I think

there is no violation of the spirit or the letter of the law in a district court directing verdicts. Personally I always felt the statute itself was wrong. If we have district judges sitting on the bench, why not use them as judges, and as such have them direct verdicts. I understand the idea of the law was to save the expenses of a new trial. I have seen it work out in my own experience where it has not saved much expense.

MR. NORTON: It seems to me that in the discussion of these two sections, there arises a considerable as to the duties of the Boards and of the Supreme Court. There is a reason, of course, for the enactment of the legislation pertaining to Section Two which provides that the district court shall submit all matters to a jury and shall not render a directed verdict until the facts in the case have been passed on by the jury. As to the Legislative Authority for boards to enact final jurisdiction, the Supreme Court says in that case, or the Legislative Assembly has said, that the decision of the Board shall be final, and we cannot, under the Constitution, or under any other authority that we have, review the matter.

MR. LEWIS: We have been dealing with the matter of Boards but we are now dealing with the matter of directed verdicts.

MR. NORTON: I thank you for the suggestion. I thought in connection with the discussion of Section One, I would also discuss Section Two. I say the court has said that it has no power to review the actions of courts in final decision because the Legislative Assembly has said no to the court, but under Section Two, the Legislative Assembly has said that the court has no authority to render a verdict of dismissal before the facts are submitted to the jury, but nevertheless some of our courts do that, and it seems to me that those who have proposed this Section Two, have that in mind, and I know the reason particularly for the enactment of this legislation and the reason was that a great many felt that some of our district courts were directing verdicts against the plaintiff where the facts did make a case and they were directing verdicts in favor of the actions such as my friend Mr. Cuthbert has to defend in a great many cases and the Legislative Assembly passed that directly for that purpose, but our courts, in some cases overlook that and use their own free will and some of us do not feel that it is proper.

MR. LEMKE: Just a minute, Mr. President, I wish to state that I agree with my friend Cuthbert that the legislation perhaps is at fault, but they can get away from that by dismissing the action.

The Chairman of the Judicial Committee at the time when this law was passed in the Legislature, and the author of the bill, Mr. Starke, is here, and he can tell you what the intention of the legislation is.

My friend Norton stated the purpose of the legislation very nicely but sometimes the courts forget what the Legislature has said. This is not a criticism of the courts. We try to keep the cost of justice reduced, and that was the intention of the Legislature. The Legislature may have been mistaken; if they were, now is the time to get it correct, and I will advise my friend Bangs and Cuthbert to go to the Legislature and get it repealed. They will have a long time doing it, though. We have the Legislature

enacting certain laws and the courts may not always understand them and there may be considerable controversy as to the interpretation of them, but a member of our Bar Association and the Chairman of the Judicial Committee will tell you what the intention of the legislation was. I think the intention was to prohibit the court, after evidence had been submitted, from dismissing by directing a verdict, because if the verdict is entered, then the judge can immediately set the verdict aside and enter judgment anyway. Then you take an appeal and when you come to the Supreme Court, it sustains the lower court and that ends it. If the Supreme Court does not sustain the verdict of the lower court, then all we have to do is have the case re-instated and we are saved the second trial. I can't see any reason why there should be any objection to this recommendation.

MR. COMBS: I am not so sure but I am inclined to think that it was Mr. Lemke that instituted or rather inspired and secured the passage of the act, including this provision regarding directed verdicts. For my part, whether that is true or not, I would not care to go on record as a member of this Bar Association in an effort to interpret the intent of that legislation as expressed and vamped in this clause. Let me read it to you. He asks us to say to the world that it was the intention of the Legislature when they passed that law that after a jury was called and the evidence submitted that the case should be submitted to the jury on the issues framed and that in case the jury found a verdict contrary to law or without evidence or on erroneous issues, that then the court could set aside the verdict and enter judgment notwithstanding the verdict.

Now I couldn't for the life of me support that resolution because I doubt if I could correctly interpret the intent of such legislation, and moreover and aside from that suggestion, isn't that a logical reason for a rejection of that provision when we are in doubt as to the possibility of the judicial construction of the act itself. Here in this convention we attack the intent and purpose of the Legislature in passing the act, and it seems to me entirely without the scope of proper action of this Association and I urge that it be defeated.

Now I want to add this that I think that the courts in the exercise of their powers as embodied in the statute insofar as directing dismissals of cases and granting of motions for directed verdicts are concerned exercise clemency and to pass any resolution here which would constrain them or regulate their conduct would deprive them of the constitutional discretion they have as a court.

MR. STARK: I have been referred to several times as the author of this act and during the 1921 session, I was Chairman of the Judicial Committee in the house and the author of this act. I was not a member of the faction Mr. Lemke was affiliated with. Bill was not the father of the legislation and by that I mean it was not a factional measure at all. It arose out of the condition which caused a great deal of dissatisfaction among a great many attorneys throughout the State of North Dakota and that condition was that the courts then were exercising a right which they have not, to my knowledge, exercised since directing a verdict in disputed cases, and the case then being appealed to the Supreme Court and re-

versed, in very many instances, came back for a new trial. The whole action had to be gone over at great expense to the litigants, who very often were discouraged in litigation and dropped the matter and settled it for a great deal less than he really should have coming. It was to meet that situation this act was passed. I am not here to interpret it. I think the act speaks for itself. It was not originally mine; as a matter of fact, practically the same law is exercised in the State of Minnesota. It was from Minnesota that we adopted the language of this act largely and the courts have followed it, so far as I, in my practice have noticed. They have followed it consistently. I have understood that in some cases they have resorted to this other 1905 Act and dismissed cases. But the spirit of the law which was passed at that time by the Legislature, which happened to be Independent, was to meet the practice which was considered vicious by a great many attorneys of directing verdicts in disputed cases.

MR. HELLSTROM: I move that the motion be rejected and the bill be laid on the table.

MR. WEHE: I second the motion.

MR. LEWIS: The motion is made and seconded that the motion to disprove this part of the report be laid on the table. Those in favor of this motion may signify by saying "aye." Contrary. The motion seems to be lost.

The question now comes to the motion to disprove this section of the report. Those in favor of rejecting this portion of the report, signify by the usual sign. Contrary. The motion is carried.

We now come to the third section in regard to the signing of Findings without notice to the opposite parties.

MR. TRAYNOR: Mr. President, I move the adoption of Paragraph Three with the words on the next page eliminated, "This is bad practice and leads to many erroneous findings of fact and conclusions of law," and with those words eliminated, I move its approval.

MR. PALDA: Second the motion.

MR. LEWIS: You have heard the motion. Is there any discussion. If not, all those in favor, signify by the usual sign. Contrary. Carried.

We now come to the fourth matter, that in reference to contempt proceedings. Is there a motion on that?

MR. LEMKE: I wish to move an amendment to that to the effect, as was suggested by several members in that case, that is the interested party call in some prominent lawyer to say and to determine the trial and place calling a jury. I imagine the judge can do that if he feels so inclined. We are simply making the suggestion.

MR. WEHE: Second the motion.

MR. DUFFY: It seems to me that that recommendation four is erroneous, at least in part. There may be good grounds for calling a jury or calling an outside party to try a case of what you call

constructive contempt, that is when there is a labor dispute and an injunction is ordered in the case, something happened outside of court, but certainly in the trial of the case, something is done in open court that amounts to contempt of court, it would be a travesty on justice that the presiding judge could not act and act immediately and promptly and declare a contempt. It seems to me that to that extent, at least, this should be modified so it applies only to the contempts occurring outside of the actual trial of the case.

MR. LEMKE: That as I take it is what Mr. Duffy refers, that is summary proceedings, that is as committed in the presence of the court. This is general contempt in general cases. I do not think these remarks are in point.

MR. LEWIS: Do you wish to clarify that?

MR. LEMKE: I would say that I refer only to constructive contempt.

MR. LEWIS: You make that as part of your amendment?

MR. LEMKE: Yes.

MR. LEWIS: Is there any further discussion?

MR. LEWIS: Any further discussion? (Question called for.) Those in favor of the motion as amended, may signify by saying "aye." Contrary. Carried.

We next come to paragraph one of the recommendation as to terms of judges. It deals with the lengthening of terms and also states an opinion against combinations. Is there a motion?

MR. BANGS: I move to strike out all of paragraph one or disprove all of paragraph one after the words "judges" in the fourth line. That will leave the section to read:

"We believe that the time has arrived when the terms of office for judges should be lengthened. We are all agreed that, that should be done which will give us the best and most capable men for judges." We are agreed that should be done. Stop right there.

MR. PALDA: Second the motion. (Question called for.)

MR. LEWIS: You have heard the motion. All those in favor signify by saying "aye." Contrary. The motion is carried.

Now the second paragraph which proposes that there should be some other qualification besides mere admission to the bar. Is there a motion on that?

MR. WEHE: I move the adoption of paragraph two.

MR. HANCHETT: Second the motion.

MR. LAMBERT: I can't quite understand that. It seems to me it is rather indefinite—"some other qualification." It seems to me that is absolutely meaningless unless you say what it is—long whisks, gold teeth or what? It seems to me absolutely meaningless.

MR. LEWIS: I assume, Mr. Lambert, that it means he must have

some experience as an attorney, that there should be some such qualification.

MR. LAMBERT: I move we disapprove of number two.

MR. LEMKE: I might suggest, Mr. President, that the member of the committee who insisted on having this section in the report is not present, but the President has stated the purpose of that provision. The object was simply to give a suggestion at this time that the members can consider when they meet again and consider what qualifications they should have, if any.

MR. LEWIS: Is there a second to Mr. Lambert's amendment to the effect that the section be disapproved?

MR. COMBS: Second the motion.

MR. LEWIS: The question is on the amendment that we disapprove that section. Are you ready for that question?

All those in favor of the motion signify by saying "aye." Contrary. Carried.

We now come to the item of salaries proposing a salary of \$7500 for the chief justice, \$7000 for the associate justices, and the district judges a salary of \$6000. Is there any discussion?

MR. BANGS: I do not understand that there is any reason in this state for making a salary of the chief justices any different from that of the other judges. I would move therefore that that section be amended to read "for justices of the Supreme Court \$7800.00."

MR. LEWIS: You have heard the motion; is there a second?

MR. LEMKE: If Mr. Bangs will change that to \$7500; I am afraid he will find \$7800 pretty hard sledding, then I will accept the amendment.

MR. BANGS: \$8000 would suit me better; I think it should be.

MR. LEMKE: I am inclined to think it is all right if you can get by with it.

MR. BANGS: If we don't ask for it, we won't get it. I will make it \$8000.

MR. LEWIS: I understand that the motion is that it be amended so as to read \$8000 for all Supreme Court Justices and that Mr. Lemke seconds that motion.

MR. NORTON: There is, it seems to me, a very substantial reason why the Supreme Court Justices should receive a smaller amount than the Chief Justice. The Chief Justice, as I understand, has a great deal more work to do. He has to do with the Pardoning Board and the other duties that the Associate Justices do not have and there is the signal honor so that he should be given proper consideration, say \$500 or \$1000 more. Personally I am very much in favor of increasing the salaries for the judges and if it were in order, I think it proper to submit this to the Legislative Assembly, this section, and have them pass on it, which I presume would be the thing to do. I would think that probably \$8000 as the amendment

is now would be sufficient but I think when we have the legislation to pass, the chief justice should be distinguished and should be recognized by somewhat more compensation than the other members by reason of the fact he has a great deal more work to do.

MR. LEMKE: Just to clear up the situation, I understand that while the Chief Justice works upon the Pardon Board, the others are writing opinions and I think the recreation of attending the Pardon Board relieves them and rather gives them a little diversion therefrom and after second consideration I feel that it ought to be uniform for the reason our law makes no difference between Chief Justice and the other justices.

(Question called for.)

MR. LEWIS: The question is on Mr. Bangs' motion that this section be amended to provide for a salary of \$8000.00 for all of the justices of the Supreme Court.

All those in favor of the motion may signify by saying "aye." Contrary. Motion is carried.

The next on the order of business is the second paragraph of this report.

MR. LAMBERT: I move that be approved.

JIM JOHNSON: Second the motion.

MR. CUTHBERT: I would like to move an amendment to the motion and exclude all that part of the paragraph following the words "standard" in the next to the last line. I see no good reason for including that part which reads: "and it will not be necessary for the courts to go into private enterprises or be interested in them." I move that be excluded and I suggest that the same result will be effected by doing so and it serves the same purpose.

MR. LEWIS: Mr. Cuthbert moves an amendment to this section; what is your desire in the matter?

MR. LEMKE: We are perfectly willing to withdraw that part of the paragraph. I may say that the purpose of putting that in there was to draw it to the attention of the members of the Legislature; they may feel that the court has plenty of salary and if it was pointed out to them it was not proper for a judge to go into private business and that he would not need to do so with an increase in salary, they might be more apt to consider the matter favorably. That was given simply to show the necessity of increasing the salary of the judges to \$7000 or \$8000. They forget that a judicial officer is not supposed to have any other source of revenue.

MR. DUFFY: I move as a substitute motion that paragraph two be eliminated entirely in this approval. It strikes me the suggestion contained in there, "Your committee feels that if this recommendation is followed, the best lawyers of the state could afford to become candidates for judicial positions," that seems to me to be an implication, at least, that our present Supreme Court does not constitute the best lawyers of the state. Sometimes I have thought so myself, however.

MR. PALDA: They are sitting behind me and they admit it.

A MEMBER: Second the motion.

MR. LEWIS: You have heard the motion, all those in favor may signify by saying "aye." Contrary, Carried.

MR. BANGS: There was a committee appointed yesterday on the report of the Committee on Internal Affairs.

MR. LEWIS: Do you wish to adopt this as a whole?

MR. BANGS: I move that the report of the Committee on Powers, Terms and Salaries of Judges as changed and amended be adopted.

MR. WEHE: Second the motion.

MR. LEWIS: All those in favor of the motion, signify by saying "aye." Opposed. Carried.

(See Appendix for Report.)

MR. BANGS: I would like to dispose of the report of the Committee on Internal Affairs.

MR. WENZEL: This is the report of the special committee appointed yesterday:

"We recommend that the report of the Committee on Internal Affairs be accepted and filed and that the recommendations of the committee be adopted to the following extent: That complaints be referred to the Secretary of the Association for preliminary investigation and that when he is unable to secure a satisfactory explanation or adjustment, the complaint and file be referred to the committee for such other further action as they may deem advisable." Signed: Tracy R. Bangs and Clyde Duffy.

MR. LEWIS: You have heard the report of the special committee; do you move its adoption?

MR. BANGS: I move the adoption of the special committee's report.

MR. DUFFY: Second the motion.

MR. LEWIS: You have heard the motion, all in favor signify by the usual sign. Opposed. Carried.

We will now take up the report of the Committee on Young Children of Delinquents, Judge Christianson.

JUDGE CHRISTIANSON: The President of the Bar Association on the 31st of July appointed a Committee on Provision for Young Children of Delinquents. Those of you who read Bar Briefs know the basis for the committee appointment.

The Committee made as thorough an investigation of the subject as was humanly possible within the time that was allotted. When I say committee, as is usual the chairman did the burden of the work. We sent communications to every one of the District Judges to ascertain what their practice was as regards to commitment of dependent and neglected children to the State Training School, and

I think it is only a fair thing at this time, when the acts of the judiciary are subjected to scrutiny and consideration to pay a little tribute to the men who are holding down those places. So far as their cooperation with this committee is concerned, every one of the District Judges in North Dakota sent full and complete reports and replies as to their practice, the last one received by special delivery here last night from one of the judges who has been out of the state. I think that speaks pretty well for the fine cooperation that is accorded by the men who are engaged in the trial work of this state, and these men stated with one voice that it is a uniform practice to commit no dependent or neglected children to the Training School.

I might say that there seems to be some difference of opinion among, not only the members of the Bar, but among the members of the bench, those charged with the administration of the law, as to whether there is any authority for the district court judges to send children of delinquents to the Training School. It is also true that in prior years the custom existed but apparently it has ceased to be the custom of the District Judges.

The Chairman of your Committee also went over to the State Training School and inspected the records. They have a complete set of files here, by the way, of the young children there, and found that the young boys—by the way, there are no girls in the school under the age of fourteen, and there are two boys nine, one ten, two or three eleven, etc. However, the total population, the total number in the institution under the age of fourteen, is negligible but so far as those young children are concerned, we find that this practice exists over there, that those boys who have all, with one exception, been committed as delinquents, and some of them, by the way, show very bad cases of delinquency. One of them, for instance, who might be referred to as a little tot, not over eleven years of age, has committed probably a dozen larcenies, some two or three dozen burglaries, and even two or three robberies at the point of a gun; had been tried out in at least half a dozen homes and every possible attempt seemed to have been resorted to before the boy was committed to the Training School.

The judges without exception also stated this, that it is their policy that they never commit to the Training School except as the very last resort.

Now there was one boy in the Training School who was committed as a dependent, a boy between fifteen and sixteen years of age, who was picked up in the western part of the state and turned over to the authorities out there, and who is, by the way, from my observation and also from his record in school work at the State Training School, rather subnormal so far as accomplishments are concerned. Reading between the lines, I rather became convinced that the District Judge was charitable, that he had as a matter of fact been delinquent but he did not want to recite delinquency in the order of commitment.

Now I may say to the members of the Bar that the members of the Judiciary have, for some time, been concerned with the Juvenile Court of this state and the practice under it and it has caused

more or less difficulty. Those of you who have followed our decisions are aware of the differences of opinion as to the definitions of the act. Different practices have existed in the different districts as we have ascertained, and so through the instrumentality of the Judicial Council and also the North Dakota Conference on Social Work, we determined to have a survey made of all the Juvenile Courts of North Dakota, and the operation of the Juvenile Court act, and we took it up with national authorities who are engaged in that kind of work. Those who have made surveys, for instance the Children's Bureau at Washington, Maryland, New Jersey and other states, have made considerable improvements in existing practice and legislation, and by the way, as a result, emergency commission at Bismarck voted to appropriate to defray the necessary expenses, the services we furnish free, and they sent out here the Field Secretary of the National Prohibition Association, an association by the way which is officered very largely by the same type of men Judge Burke referred to here yesterday, among them Charles Evans Hughes. They sent the field secretary out here and she made a survey of the Juvenile Courts in every district in the State of North Dakota and the report has been submitted, but it has not been printed. It will be printed and distributed generally during the year, and from that, every member of the Bar who cares to read it, will get, as I think, a fine birds-eye picture and a little bit more so of the operation of the Juvenile Court act of North Dakota. I thought you might be interested in that to show you that those who are concerned with the administration of the interpretation of this law have taken some interest in it and are concerned with the operation.

Now the District Judges without exception admit some difficulty in dealing with children from ten to fourteen years of age, those who have passed the age where it is difficult to find adopted homes for and who are yet too young, as it were, to be placed upon their own responsibility. They enumerated various institutions they use, and it is singular how much they were alike. They use all the available facilities. By the way so far as institutions are concerned, every one of them have used homes where ever it is possible to obtain homes within their immediate vicinity wherein their juvenile officer may exercise some supervision, but there are various suggestions made.

This committee will make no recommendation but would suggest the state ought to provide some institution in which these children may be temporarily taken care of. All of the district judges with one voice agreed that the ultimate aim of all juvenile officers should be to find a home, or as near as possible, a substitute for a home. In fact in speaking of the Training School, Mr. McClelland says:

"I want it distinctly understood, while we think we have a good place, it is my judgment that the best training school in the world is no substitute for a home."

Now so far this report was merely intended, as I understood, to be informative and that is all we have been able to do. It is the judgment of the committee that this Section 11409 which has fallen into complete disuse, partly through the activities or through the discretion of the district judges, but it should as a matter of fact be changed so there should be no provision made or authority

created under our laws for committment of merely dependent or neglected children to the State Training School. Such children should not be placed in a corrective institution and that is our recommendation that that change be made.

Another thing that occurred to your committee is that—litigation which is reported in our reports show that in instances controversies arise between the various counties and communities as to where the liability lies. One county says, "This family doesn't belong to us. This mother is not entitled to a mother's pension here. This child should not be taken care of here. It is not our charge." We had a practical experience with it in Bismarck. One night the Salvation Army captain called me up and says, "I am down at the depot here and here is a mother with four small children just unloaded from the train and by the way, they are from another city. What shall I do?" I says, "Well can't you take care of them?" He replies, "I can take care of the children but the mother is deathly sick." I had quite a time to locate some doctor to go down and take care of her. The city authorities said it wasn't their case, and they didn't belong to Burleigh County, so then I took it up with the Director of the Children's Bureau, at that time Miss Lund, and she straightened the tangle out.

It occurs to your committee then that there ought to be a small fund provided by the state which would be carried under the direction of the Board of Administration or Director of Children's Bureau, temporary aid could be extended in cases of that kind where they exist in the state, with authority on the part of the respective counties such as there are now with respect to the feeble minded and insane.

I think, by the way, those are the only recommendations your committee has to make.

May I say just one word more, in order to make a full and complete report on this because we are all more interested in the work than most of us realize because every citizen is interested in taking care of these children whether they realize it or not, we brought down with us Mr. McClelland and asked him to come with us so that he might answer any questions anyone might want to put to him with respect to these children and I would ask Mr. McClelland to step forward and he will be glad to answer any questions you might be interested in. I move the adoption of this report.

MR. HANCHETT: Second the motion.

MR. LEWIS: All those in favor of the motion may signify by saying aye. Contrary. Carried.

MR. MCCLELLAND: There is only one thing I want to do, friends, and that is sell the idea of the training school. In no way, do we look upon it as a penal institution, not at all. It is educational from start to finish. There is nothing in there that we do with the boy, no punishment befalls that boy, nor do we discriminate because he came dependent or delinquent, no matter what his delinquency might be. They all start off the same way.

We have four years of high school. It is handled by capable

teachers and there are very few of our scholars but what finish the four years course in three.

We have just two kinds of kids there, tall ones and short ones. They are better behaved when they go to a ball game than the outsiders are. Only twice in the history of the school on any outside doings have any of the kids from the training school been into any mischief, and then it was directly the fault of some outsiders, boys in Bismarck and Mandan. I am not saying our boys are better than these, but at least they are better behaved when they are out. I am giving you that tip, at least, as far as the boys or girls either are concerned.

Some people think they are treated according to their crimes but we don't do it. The only thing we like to know is their history so we know how to handle them, but of course, we can't make one rule to handle two of them. It can't be done. They come from different families, different environment.

If I had my way, there is only one institution I would establish and then we could easily take care of the dependents and delinquents. I would start one for the parents and they would get it, believe me.

The recommendations I would make here—two people are joined together in marriage and many times neither one of them are any good, you can't spoil two families, but they beget children in the first place and in the next place the children lack the proper environment and the first thing you know they send the children to us, when in no way under the sun can you figure the children are guilty of anything. It is the parents, and nothing is done with the parents. All that happens you pay the taxes for the delinquent parents.

I am glad to be able to say frankly the stigma attached to the school is not near as great as it used to be, our idea of selling being that it is not a reform school but a training school, an educational institution. That is one reason why we went to the trouble and work of having the state auditorium there. The Agricultural College and the High Schools come down there to the auditorium just like you and I, to have their competitive games, and we find them there mixing with our boys, and you can't tell any difference between them, these boys that live there and the ones that come down from the outside. Some one who doesn't know anything about the school are the ones that attach the stigma. Our scholars have gone out from our school and been presidents of their high school class, in the football team, debating team and everything else and there is no difference, no discrimination against them.

There is this much true, I do realize there is a certain stigma when the boy or girl goes out who do not behave themselves. They are more or less hopeless and you hear some one say, "That didn't do them any good, the school didn't help them a bit. But the reverse is true when they come out and make an honest endeavor to behave. That is always true, they are not discriminated against in the High Schools, the University or the A. C., or when they go back to the schools from whence they came.

The whole thing the management of the training school is more than a man-sized proposition. First the boy or girl needs to be set on his feet so he can go into the world and take his place. The idea there of correction is teaching the boy or girl to think for himself and if you do not think out each particular case you have, you are not going to be able to help that boy or girl mentally and physically and it is an utter impossibility to help that boy to go out in the world and take his place, and they are just going to get into more trouble.

We have started sterilization but we are careful when we do it and we do it with the permission and at the request of the one involved. We try to handle each case individually. One boy is trusted; another is not. One has developed the ability to be trusted; the other has not shown to the rest of them he can be trusted. I tell them frankly I am not particular what they do at the training school, but they must do something. There is always some one to come and put them on the right track but when they are particularly interested in some thing, they are encouraged, and those that are not so interested, they are advised and we tell them what to do, but we want to get them started on the right track so the boy or girl can stand on their own feet.

The procedure with the girls is just what you have been doing in your own homes. Some of the girls who come there do not even know how to sweep, and as far as cooking is concerned, they couldn't boil water. All right, they start in and they have to go to school a half a day, then work the other half, and they go through a four year high school course in three years. One girl got twenty-two and a half credits in two and a half years. They go to school regularly and keep regular hours and if they are behind in their school work, they are given more time to study. We are not particularly interested in how much work they do except in forming the habit. All the boys and girls down there go to school. We do use the academic department as a method of developing the habit and power of thinking and that idea is always held in front of them and the reason they get through with their work is because they have regular hours for school, work, and recreation. One half breed Indian girl tripled her marks in school and in four years she went from the sixth grade through high school.

Your children come first with you, so just bear in mind that the boys and girls down there are some one else's children. We look upon the responsibility of handling those boys and girls just the same as though they were yours and yours. Many times we have boys or girls there from your town, or some one in whom you have a friendly interest, and if I had a boy there I would want him to get a fair shake. That is all any boy or girl gets there when they go to school regularly and to bed regularly and play regularly, they form the habit of regularity; and all we want to do with those children is keep them busy and they don't get into trouble.

You look at your penitentiary at Bismarck, Stillwater, Waupon, Sioux Falls, and what will you find—the average age of the inmates is in the twenties. It isn't thirty to sixty. And by the way our students are not inmates and it is stipulated. They are students and not inmates. They are boys and girls from your towns where

there has been no responsibility attached to them; you let the misfit get married and you let them propagate and not take care of their children and you have got to take care of them and pay the taxes to hire men down there to take care of them.

What we want to do is sell the idea that it is an educational institution, and we are trying to carry out that idea. To my way of thinking if parents are not fit to handle their children, put them in an institution where they may be properly educated, disciplined and trained just as you do with your own children.

We have very high class teachers in our school. Several of them are graduates of the University. Some of them stay there several years they are so interested in the work. It has been five years since I got into the training school but you can't do everything you want to do in five years. You can't go in there for a short time and accomplish much.

The attorneys come to me and say, "Let that boy out, I know the parents, and they want that boy out", but frankly the reason why we do not comply with their wishes is that we know that boy and we know whether they are ready to be released or not. There was a case down there where the release of a boy was requested. He had burglarized something and been sent to the training school. He was according to his way of thinking, doing time. He had stolen a Buick car, and took the rims, tires, etc. and sold the whole thing for \$15. While he was still waiting for trial he stole over twenty tires and when I explained that to the attorney, he didn't want him released.

There was another case when the father came with his attorney to get his boy released and I knew just as well as anything if I let that boy go, he would be back. I finally told them I would let them make the decision after I had told them the facts, the father and the attorney says, "No, we will let him stay." The mother began to cry and the father weakened and finally against my better judgment I let them take the boy. In three weeks he was back.

The smaller boys are kept by themselves away from the larger and older boys, but they have practically the same training as the older boys. In the morning they start work promptly at seven and have a half hour's work or an hour at the most. We start right in teaching promptness and the are also given a certain amount of athletics because the average small boy doesn't know how to play and play fairly and that is the reason for the games, not to build a big strong body so much as to learn the sport of life.

MR. LEWIS: I am sorry Mr. McClelland but your time is up and we must adhere to a certain schedule.

MR. KNAUF: Before we leave this important subject, I would like to say to Mr. McClelland and I would like to impress upon the members of this audience or the homes they represent, it ought to be and I think it is the duty of every practicing lawyer, when he goes to Bismarck or Mandan, to visit this wonderful institution that is presided over by Mr. McClelland because you will find there a home influence that is lacking in every home the child comes from, and for the further reason that he knows his business, and that

when the student leaves his school, that he has been fitted for American manhood and American citizenship. You will be pleased to know the institution and to come there and find the tests which he places over these boys and girls before they are permitted to return to their homes, so when they graduate from his institution and are sent back, he knows they are real young men and real young women who will make real citizens of the United States and of this state, and for that reason, I wish that every lawyer going to those two cities would make it a point to spend two or three hours to learn the actual workings of that institution. You will love it.

MR. LEWIS: We will now stand adjourned until 1:30 this afternoon.

THURSDAY, SEPTEMBER 5, 1929

AFTERNOON SESSION

MR. LEWIS: The local committee has asked me to request that everyone register whether you want to go to the banquet or not. The Secretary is also very anxious that you should register as it goes down in our records for the enlightenment of the future generation.

The next thing on the program at this time is the report of the special committee on automobile safety regulations and insurance. There was a majority report printed and you have it here in this little slip. There is also, I understand, a minority report to be submitted. I don't know if you have thoroughly read this and if it is necessary to read the majority report or not. I will first call upon Mr. Starke the chairman, and he may read it first and then comment upon it, just as he thinks best. Then we can receive the minority report.

MR. STARK: The report is not so lengthy and I think perhaps it would be worth the while to go over it. I will read it. (Report read).

Mr. President, I move the adoption of the report.

MR. MANLEY: Second the motion.

MR. LEWIS: You have heard the motion for the adoption of the report. All those in favor, signify by saying aye. Contrary. Carried.

(See Appendix for Majority Report.)

Now we have the minority report, I believe, Mr. Lanier.

MR. LANIER: As a member of the committee reporting to you, I want to submit the Minority Report, and you will observe from having heard the reading of the majority report that the recommendations stands squarely behind compulsory liability insurance and I want to say just in this connection that I think that the form of liability insurance recommended in the majority report is as good as any form of liability insurance that you can obtain.

Now this committee has done considerable investigating over a period of three or four months. I am frank to state at the outset

of the investigation, I was inclined toward the idea that we should have compulsory liability insurance but as I have pursued my investigation, my opinion changed and the result of my investigation I have endeavored to embody in this report, which I will now present to you. (Paper read).

MR. LEWIS: Do I understand that you move an amendment to the adoption of the majority report?

MR. LANIER: I move your honor, Mr. President, that the minority report be substituted for the majority report and I move its passage.

MR. PALDA: Second the motion.

(See Appendix for Minority Report.)

MR. LEWIS: Before opening the matter of discussion I should like to congratulate both these gentlemen, who have given such long and able effort to the study of this question. It seems to me that on the two sides, they have expressed wonderfully well the situation. In throwing the matter open for discussion, I think we should call on Mr. Starke first.

MR. STARKE: Mr. Lanier has presented very forcibly his arguments against compulsory insurance. Let me first say that the whole argument for compulsory insurance rests upon our first proposition, that no one should be permitted to operate upon the public highways a dangerous instrumentality, such as an automobile, without being financially able to respond in damages to persons who are injured thereby. If you don't agree with that proposition, you can't advocate compulsory insurance. If you agree with that proposition, that no one should be permitted to operate an automobile upon the highways without being able to respond in damages, then there is no other remedy for that situation except compulsory insurance or compensation insurance, practically the same thing only a different method of reaching the same object.

Mr. Lanier in his argument said that the prime object that we should have in view should be the removal of the careless driver from the road and compulsory insurance would not have that effect; that it could only be justified upon the ground that it would provide a sure and certain remedy for the injured.

In preparing our recommendations, we have had in mind, two objects; one was to make the motorist interested personally and financially, so far as possible in avoiding accidents. The other was in making him financially responsible. It will be noted from the report as printed and as read, that we have a rather new provision. It is a new provision so far as I have seen suggested in this country. It is something that is not included in Massachusetts Compulsory Liability Law, and that is the provision making the motorist a co-insurer with the insurance company to a certain percentage of the damage done. Our recommendations is that he be entirely responsible for the first \$50 damages done and for 10% in excess of that, and that he have no exemptions from that, his responsibility being to the insurance company rather than to the person injured, the idea being that the person injured shall have a full recovery and the insurance company then shall have and recover back for

a proportional amount against the one causing the damage, it being the idea of the committee in this way, and this way only, to see that the careless automobilist be personally and financially interested in avoiding accidents and in abiding by the rules and laws of the road.

So we have endeavored in our recommendations to provide a remedy for the careless driver making him interested personally in avoiding accidents.

The statistics which are quoted by Mr. Lanier in his report are, as he stated, not entirely reliable. As a matter of fact, practically all of the literature which we have been able to obtain on this subject is that provided from insurance sources and there is a great wealth of that with the exception perhaps of the publication which was printed in the last "Case and Comment." Probably many of you have read that. There is a very good article on the subject of Automobile Liability Insurance which does not appear to be inspired from insurance sources, but the statistics which are reported are naturally such as are entirely unreliable. None have been kept so it is largely a matter of guess work as to the number of persons injured throughout the United States and the number who are carrying insurance for careless driving, the number who have been killed, etc. because no statistics of any kind have been kept, so they are not in any way reliable.

As he states in his report, the estimates were from ten to fifty per cent so your guess is just as good as anybody's on that subject.

He has attacked the idea of compulsory liability insurance primarily on the ground that it is not economically justified because the remedy or the benefit received are not commensurate with the expense and the cost of it. The economic ground, the cost ground, is perhaps the most serious argument against compulsory insurance. It is an expensive proposition. It is going to cost the automobilist of the state of North Dakota several million dollars if compulsory automobile liability insurance be adopted in this state and that is a lot of money.

His figures of 60,000 persons in the United States who would be the beneficiaries of compulsory insurance, while not reliable, is for our purpose, perhaps as good as any. He speaks of it as though 60,000 were a few. To me 60,000 people is a lot of people. It is about one-tenth of the people we have in the state of North Dakota, and these 60,000 people that Mr. Lanier says in his report will be benefited.

He speaks of the cost to the automobilist running up into the billions of dollars. The cost would be large. The cost of it is largely guesswork. Whether it would be billions or less or more, nobody can say. The justification economically that he says in his final report and his final recommendation is only the benefit to these 60,000 persons. I think perhaps he has overlooked a great portion and a great field of benefit in limiting it to those 60,000 persons. As a matter of fact, in his argument, he advanced a proposition which I had not seen anywhere else, and that was to the effect that the person insured was a beneficiary of the insurance also. In none of the arguments of any of the insurance companies in the

pamphlets that have been printed has that proposition been advanced, that the insured was a beneficiary of the insurance have looked at it only from the point of view of the 60,000 injured persons, as if they were the only persons beneficially interested in the compulsory insurance. As a matter of fact, Mr. Lanier brings that point out very forcibly but in his summing up, he forgets in entirely.

You will note then that every person insured receives a benefit in that he has the protection of that insurance, which is a very vital thing, a very important thing, and it is the proposition which you and I and all the rest of us who now carry liability insurance pay our premium for. We are interested in paying that premium to obtain the protection of that insurance and so would the general public receive that protection. We are particularly interested in benefiting the person who is injured by our automobile. We are particularly interested in receiving the benefit and the protection of that insurance.

The same situation as that man who crossed into the intersection. He crossed into the intersection and injured another party, whom Mr. Lanier cites in his report he had a judgment for several thousand dollars and couldn't pay except in driblets. It kept him impoverished for years. Perhaps if he had this insurance, he would have had the protection and his impoverishment would not have been continued, so when I say you consider it from an economical point, you must not consider those 60,000 persons who are injured. You must consider all of the automobilists who would be protected by the insurance so the economic ground is much larger and broader than the 60,000 persons injured.

The literature which is received from the insurance companies and from which the statistics are largely gleaned which we have and to whom the Hoover Committee which is quoted by Mr. Lanier in his report, were largely indebted, are as he said perhaps interested, and their figures and their point of view should be considered from the point of their interest.

MR. LEWIS: In consideration of the expediency of time, can you limit yourself to three minutes more?

MR. STARKE: Yes, sir. I would like to state that it is not only one reason that the insurance companies have been and are opposed to this, the one stated by Mr. Lanier, the fee under straight insurance. They also oppose very strongly the removal of the selection of risks; also supervision of rates by the insurance commission which is necessary in any compulsory insurance.

In going over the economic proposition again, and the burden as it would fall upon the people, let me suggest—I am taking the figures of Mr. Lanier, there are twenty per cent of the people now insured, so as to them, there would be no additional burden. As a matter of fact, I contend the burden would be less. As to those now financially responsible, perhaps forty-three per cent, it would be no burden upon them because they could still carry their own insurance if they so desired.

The recommendations provide that they might deposit securities

to the amount of \$5000 instead of providing the bond they otherwise require so the only persons who would be affected by compulsory insurance adversely would be the thirty-three per cent who are not financially responsible and who are now upon our roads.

Going for a minute into the cost of this insurance, let me read finally, and I think I can do that in three minutes. Massachusetts, you understand, is the only state in the Union which has adopted compulsory liability law. It has been in operation two years now. Whether or not the insurance commissioner is biased or interested, I do not know. From him I received a report which is very interesting and enlightening of the actual operation of the law in that state, also as to the cost, which Mr. Lanier says will be doubled, as a matter of fact, the rates in Massachusetts have been materially reduced in the last two years. I have the rates as they are today and before the inauguration of compulsory insurance. In 1926, before compulsory insurance went into effect the rate on the small cars, Ford, Whippet class was \$19. In 1929 the rate was \$16. In the class mentioned above that, the rate was \$23 and is still \$23. In the class of the more expensive automobiles, the rate in 1926 was \$28 and today it is \$30. It is only in the higher priced automobile that the rate is any higher. In the lower priced machine which more people own, the rate is materially less than it was before the law went into effect.

Now that is the situation as regards the State of Massachusetts and I think perhaps it is about as fair an example as to the working out of the law and the effect of compulsory insurance upon the rates as you can have. It would be expected that making the insured a co-insurer with the insurance company would lighten the rates.

MR. LEWIS: I think we should perhaps hear from Mr. Lanier before opening the general discussion.

MR. PHILIP BANGS: I want to speak as a member of the committee and I want to go on record here as opposing certain features advocated in the majority report. I object to the part of the majority report that makes the owner of an automobile a co-insurer with the insurance company, and I wish to also register my objection to that part of the report that provides that the owner shall be liable to the surety or insurance company to the extent of the first fifty dollars damage and ten per cent on all sums above that. I base this objection on the proposition that when I buy insurance, I want to be fully protected. When I am willing to pay the premium for protection, I do not want to have to pay the insurance company after the accident fifty dollars or any other amounts. I want the insurance company to protect me and that is the part of the report I particularly have objection to.

I also wish to register an objection to that part of the report that requires an owner of an automobile to respond in damages to the surety company or insurance company in case of damage caused by drunk or reckless driver, that is compelling me, as the owner of an automobile, in the case of damage by reckless driving, to be absolutely liable to the surety company regardless of what defenses I might have under the present conditions. Those are the phases of the report that I wish to object to.

MR. LANIER: There is only one thing of Mr. Starke's presentation of his argument that I want to discuss, and that is the phase that has to do with the figures showing that the insurance in Massachusetts has not been increased in premiums. I will state here that the insurance commissioner who was in office of that state at the time this law first went into effect undertook to meet the requirements of the insurance company as to premiums. The insurance companies, as I am advised, operating in that state, could not afford to take the risk and do the business unless, that is to say, selective risk was abolished. They could not go in there and take all these risks without increasing the premium. Then the commissioner, a man of experience in that office of many years, saw the sense of the provision of the insurance companies and agreed with them and he passed out of office.

Now then I want to call your attention to the fact that the present time as I am advised, much of the insurance that is being written in the State of Massachusetts showing this reduced premium, or the premium as it is quoted by Mr. Starke, is being written by new companies who have not had time yet, nor the chance, to test out the practicability of the application of the law under the premiums which they are now using. The old line companies are getting off the risks. Those companies know what it means, know it is not reasonable to take away from the insurance companies the right to select its risks. The losses will be greater and naturally they will have to increase their premiums. It seems like to me that that situation follows itself, that there must be increased premiums.

MR. LEWIS: That matter is now open for discussion. In view of the short time at our disposal, I will ask you to limit yourself to three minutes each.

MR. CUTHBERT: I was on that committee and I recognize that there is no legislation but what has its defects. I believe though, that the report is sound in requiring the insured under the compulsory act to respond in damages. I think that that can be taken care of. My friend Philip says when he gets drunk and drives his car, he wants to be insured. I don't know any reason in the world why he can't take out insurance outside of compulsory insurance to cover such occasions. There will always be an insurance company, as long as men want to drive their cars when drunk, to write such cases. As I understand this article, it does not prevent you or me or anybody else from carrying independent insurance just the same as we do now, but unless we have some way of penalizing the men who do get drunk, outside of putting them in jail and depriving them of the right to drive, and those who drive carelessly and cause all these accidents when not drunk, it seems to me that the penalty suggested is very moderate and it meets with my hearty approval.

I believe anyone who wants insurance or full protection can easily take out another policy with some company so you would have full coverage. I do not believe the objection made by Mr. Bangs is at all well founded. It is dealing entirely with the compulsory policy.

MR. TRACY BANGS: It seems to me that the question of responding in damages by the insured is one of the most important questions that has been raised by this report. Now we people who from time

to time have occasion to investigate or perhaps try the lawsuits involved in liability insurance know that in all liability insurance, the great proportion of accidents involve less than fifty dollars so that when you compel every man to take liability insurance, and become a co-insurer to the extent of fifty dollars, you are taking away from a majority of those who must pay for the insurance, the protection for which they have paid, and then when you add ten per cent onto the amount of damages in every case, it amounts to more than fifty dollars. You are taking away that much protection. Now I don't believe that the fact that a man carries insurance makes him reckless. I believe that a man driving an automobile is called careless according to his general nature. Most of the people or a great many at least, want protection. They want full protection and to have that protection they must pay for insurance that protects for every dollar that they suffer by way of loss. It doesn't make any difference whether you are a reckless driver or whether you have been drinking. You are entitled to what you pay for and I believe that the idea of compulsory insurance, and particularly compulsory insurance that does not insure you completely is a mighty poor plan. If we are going to have compulsory insurance, for God's sake, give us something for the insurance. Do not ask us all to pay a premium on something that does us no good. I believe that the minority report as submitted here should be adopted.

MR. MCINTYRE: I have never seen Phil driving his car negligently but Tracy sometimes drives down the street and everybody on the street takes to cover. It seems to me there is another phase of this liability insurance that has not been discussed here. I don't know whether it is a psychological fact or not. I find this, that the average man who is insured, as quick as he has an accident, he becomes a pleader for the other chap. He is sure he was negligent and I don't know just how you are going to remedy that. It seems to me that the high cost of insurance is quite an argument because every one will be compelled to take insurance and necessarily there will be a great many more losses because of that fact and it will enter into the cost of the insurance. I think, Mr. President, this matter is so important that it ought to be postponed for another year for consideration. We have two most excellent and commendable reports. I think they ought to be published in full so the Bar may have the benefit of those reports and the matter be made a special subject for consideration for next year, and I will so move, Mr. Chairman, that the matter be laid on the table for this meeting, and be made a subject for special investigation and report at our next annual meeting.

MR. MANLY: In connection with that, it seems to me there is one matter that has been entirely overlooked. Mr. Tracy Bangs said most of us are reckless drivers because we are naturally careful or vice versa. It seems to me one of the greatest causes of accidents is reckless drivers and drivers who are unfit to drive cars at all. Why wouldn't it be a good idea to provide for an examination of every person that drives a car. For instance, I have four or five members of my family that are all driving and I am responsible for damages. I have in mind particularly a case I tried sometime ago. The boy was driving the car causing the accident, a boy about seventeen years old, and the whole family was in the car. This boy, it turned out, was short-sighted, and he was right up against the inter-

section of number seven and number thirty. He was up against the car before he ever saw it, and of course struck it. He was short-sighted and couldn't see. If that boy was compelled to pass an examination and get a permit before driving a car, he never would have driven a car and that accident would have been avoided. It seems to me to permit any irresponsible person to drive dangerous instrumentalities along the highways, like an automobile, without regard as to whether they are fit to drive a car or not, that we are going to have these accidents continue, running along from 64 to 100 people killed in a year in this one state. There is another thing, we should enforce the law we got. We have a law now providing for a limit to the speed that we can drive over some districts. The state highway passes right through our town. I live right on our Main street and some of our best citizens drive right through at fifty miles an hour. We have some blind intersections where you can't see fifty feet ahead and when they are driving fifty miles an hour, what can you expect? An appeal has been made to the officers in our city to enforce the law but nothing has been done. When we treat the law in that manner, we must expect these accidents, that come from disobeying the law.

MR. COMBS: I want to offer a suggestion to this committee, and that is concerning another feature of the report which is of gravest importance. That is the age limit or the minimum age limit mentioned in the report for the applicant for license to drive. May I not say to you that the State of California recently adopted an article which was very comprehensive and which is now being put in operation in that jurisdiction wherein the limit of the applicant is fixed at fourteen years. I have a son just past that age and with him I appeared before the local bureau officer to take the examination, and by the way as Mr. Manley suggested, is required under the act there, of all applicants. The youngster, due to heredity from his mother, passed a very creditable examination. He is a bright young fellow and we have great hopes for the future. Let me tell you something. I took the examination at the same time that the youth did and out of the twenty-five questions submitted, I missed two and the youth answered them all correctly, and I thought it was a strong indication of the heredity to which I referred, but also the youngsters, both male and female, are brighter than we give them credit for being. I think we will make a mistake in this if we pass that law by limiting the age of the applicant to sixteen years. I think we should put it at fourteen, not only for the reason stated, but for this further and conclusive reason that I asked the representative of the Bureau at that time, how the result of the examinations of the youth just past fourteen compared with the result of the examination with an adult and he told me the youngster of fourteen years of age just past fourteen ranged about seventy per cent higher in their examinations than all other adults. Think that over, when you consider this fatter of age limit.

MR. LANIER: Mr. President, I absolutely do not like this motion to table. Now this committee has been working. They have looked through data over a period of four or five months. There are two reports before this body diametrically opposed to each other. The general criticism of legal bodies over the country that is prevalent is they are too well satisfied to let well enough alone.

MR. LEWIS: I do not understand that motion as being technically a motion to lay on the table although that may be the language. I take it to be a motion to put it over now until next year for further discussion and consideration then before the Legislature meets.

MR. LANIER: Well that softens the motion a little but it doesn't make it completely soft. It seems like to me that the body, in the light of the report before it, the intelligence beaming in the countenances and faces upon which I look, should pass one way or the other. If they are in favor of compulsory insurance, vote that way; on the other hand if, in the light of the investigations made and the presentation of the results, you feel you should not have compulsory insurance, you may act in accordance, but it seems to me like some action should be taken now. I want to say we have got a legislative committee and in the event that this body sees fit to adopt the minority report as substituted and adopted, I believe that from some one here in this body, a motion should be made authorizing and directing the legislative committee to go further into this and to consider it, particularly a bill that has been completed by the American Automobile Association, having in view the adoption of laws through our various state legislatures, interlapping so it will carry out the idea of uniform laws. To my way of thinking that measure that is being sponsored by the Automobile Association is a measure that is going to meet the requirements as much as any measure can possibly do. I believe this matter under proper motion should go to the legislative committee, but I do not believe that there should be any further extension of time by this body as to what they are going to do between these two reports.

MR. STARKE: I would not be opposed to this matter of being passed to the legislative committee. It seems to me we have studied it and we have got as much information on it as we can up to the present time but I would like very much not to have it disposed of finally at this time. Undoubtedly there is a lot of information yet to be gathered that we have not yet had an opportunity to get. For instance several states have compulsory liability laws and between now and the next meeting of the Association there will be reports, which may be looked into. As a matter of fact, the Massachusetts Legislature, at its recent session, appointed a non-partisan committee to make a thorough investigation of the operation of the Massachusetts law, and this committee has on it some of the most representative citizens of the State of Massachusetts. Two of them are now in Europe making a study of compulsory insurance laws in Europe. They are to report back in December of this year so that a final disposition of this matter at this time would be rather disappointing to me. If it were laid on the table or referred to the Legislative Committee, it would be quite satisfactory to me, but with the coming of another year and the report of the Massachusetts committee, I think we could gain a little more light than we have now. Many of us not convinced of the necessity or advisability at this time may be convinced from these reports which may be obtained before another meeting of this Association.

MR. PALDA: It seems to me, with all due respect and appreciation of the wonderful work of the committee, and with that one idea in view, that the same committee should be re-appointed to make further investigation, in view of the fact that further investigations

are being made by other states, and another point, I have not heard a word from either side as to what you are going to do with the transient. How are you going to protect us against the transient who comes into our state? That feature should be looked into and some protection assured if we are going to have compulsory insurance. I am heartily in favor of the motion to put it off for another year and with the recommendation that the same committee be appointed to look further into these various matters.

MR. LEWIS: The motion has been made that the matter be put off until our next meeting.

MR. WARTNER: I would amend that motion that both of these reports be also printed in the proceedings.

MR. McINTYRE: It was my motion they be printed in full so we can have them to study, together with the remarks of Mr. Lanier and Mr. Starke including the letter of the Insurance Commissioner of Massachusetts.

MR. STUTSMAN: Both of the members of the committee speak of referring it to the Legislative Committee. Now I happen to have served on the Legislative Committee at different times. They have nothing to do with determining the merits of this motion or the report. All the Legislative Committee has to do is to prepare the bill pursuant to instructions given to them by this body, and it would be a mistake to refer any measure to the Legislative Committee with a view to having them determine the merits.

MR. LEWIS: The motion says nothing about the committee but I presume the incoming President will bear in mind the suggestions made that the present committee be reappointed.

MR. LAMBERT: It seems to me that we are getting way outside of the record. I have been listening to these gentlemen's reports and I think they are fine. I was wondering why we wouldn't be just as far ahead by acting on these two reports, as we would be by cross-breeding cattle, that is by acting on either one of the subjects. Why should we determine as a body what they should do with the automobile law? If we do, then we ought to recommend something for every single law passed in the state. If we would recommend anything and put it up to the Legislature, chances are they will go the other way just because we recommend it. I have been there and I know how they feel. I have appeared before that committee and I know if they are sure all the lawyers favor any bill, most of them are against it. We have been talking quite a little here about having committees or about being against these political organizations that run things. This puts everything, as I see it, right into the hands of the insurance commissioner; instead of having lawsuits about these, they are all handled by the insurance commissioner. I think if we do pass this, the next thing we ought to do is pass compulsory arbitration so the lawyers can appear in any of those proceedings. Don't absolutely cut our heads off all at one time. I think under those circumstances, the thing to do is thank these gentlemen for what enlightenment they have given us and let us lay the whole matter on the table.

(Question called for.)

MR. LEWIS: The question before the house is on McIntyre's motion that further discussion and consideration of this matter be postponed to the meeting next year. All those in favor of this motion may signify by the usual sign. Contrary. Carried.

MR. MCINTYRE: I move a vote of thanks to this committee, particularly to Mr. Starke and Mr. Lanier for their efforts.

MR. LEWIS: You have heard the motion. All those in favor signify by saying "aye." Opposed. Carried.

(See Appendix for Reports.)

There are two or three committees from whom reports were not received. The Committee on Criminal Law, first we will call on the chairman who is not here. Next Charles Shafer of Mayville. Have you anything you can report from that committee?

MR. SHAFER: I have not. He never called any meeting, as far as I know, or communicated with me. I expected he would be here and have a short session so we could have some kind of a report for this meeting.

MR. LEWIS: The Committee on Law Enforcement, Mr. Kelsch. Is there anyone else on that committee that has anything to report? (None.)

Then there is just one other such committee, that is the Committee on Local Organizations, Mr. Downey.

MR. DOWNEY: I have nothing in particular to report. Time is getting late and I do not wish to take up the time of the meeting, but I will say this, some of the local organizations, especially the Lake Region Bar Association, are doing very good work, and I would suggest, Mr. President, that when the Chairman of this Committee is appointed, that he be a man who is familiar with lawyers throughout the state, and I think if such a man is appointed, that he can do a great work in forwarding the interests of the Bar in this state.

MR. LEWIS: Do you move the adoption of this report?

MR. DOWNEY: Yes, if you wish to call it a report.

MR. TRAYNOR: Second the motion.

MR. LEWIS: All those in favor of the motion, signify by saying "aye." Contrary. Carried.

We will now turn to the Memorials. Honorable Tracy R. Bangs will give the report of the Memorial Committee.

MR. BANGS: (Report read.)

Mr. President, I move the adoption of this report.

MR. LEWIS: After that wonderful tribute, we know that Mr. Bangs is the one man who should deal with those things in this Association. The adoption of the report has been moved, and before that motion is put, I suggest that we all stand with bowed heads in respect to our departed comrades.

MR. STARKE: Second the motion.

Carried.

(See Appendix for Memorials.)

The next business is the report of the Bar Board, Honorable C. L. Young. Is Mr. Young here?

MR. KNAUF: The formal report of the Bar Board is being printed and will be filed and may be printed in the Bar Association record, if so desired.

MR. LEWIS: Very well. A motion would be in order to adopt that report and have it printed in the proceedings.

MR. KNAUF: I move that the report be accepted, adopted and printed in the records.

MR. ADAMS: Second the motion.

MR. LEWIS: You have heard the motion. All those in favor, may signify by saying "aye." Contrary. Carried.

(See Appendix for Report.)

The next is the report of the Judicial Council by W. A. McIntyre.

MR. MCINTYRE: Mr. President, Members of the Bar Association and visitors: I was at a meeting recently where a man was supposed to speak on Einstein's theory. He had a paper twice the size of this and we expected him to read it. However, I am just going to touch the high spots. (Paper read.)

I move the acceptance of this report, and that it be filed with the Secretary.

MR. CUTHBERT: Second the motion.

MR. LEWIS: All those in favor of the motion, may signify by saying "aye." Contrary. Carried.

(See Appendix for Report.)

MR. LEWIS: We will now have the report of the Committee on Resolutions, Mr. Kvello, chairman.

MR. KVELLO: Mr. President, Members of the Bar Association: The Committee on Resolutions beg leave to submit the following report: (Report read.)

I move that the report be adopted and filed.

MR. JOHNSON: Second the motion.

MR. LEWIS: All those in favor of the motion, may signify by saying "aye." Opposed. Carried.

(See Appendix for Resolutions.)

MR. LEWIS: In addition to the election of officers, we have one other feature on our program which I greatly regret being obliged to omit. That is the address by Mack V. Traynor on real estate mortgage foreclosures in North Dakota. However, Mr. Traynor

is not here and the paper will have to be read and we would miss the advantage of hearing him personally deliver it. It is now nearly half past three. I know after two days of work, there is always the feeling that we need a little rest. It might therefore be more advisable, if there is no objection, that that paper, instead of being read by the Secretary, should be printed in the reports of the meeting where we shall all have the opportunity to read it. I will entertain such a motion.

MR. FRED TRAYNOR: I so move.

MR. STUTSMAN: Second the motion.

MR. LEWIS: The motion is before the house, all those in favor signify by saying "aye." Contrary. Carried.

(See Appendix for address.)

MR. LAMBERT: I was greatly moved by the report here made by Mr. Bangs on those who have gone before. It certainly was so sympathetic and in beautiful language, it affected us all. I was just wondering if we are not, although doing a very commendable thing, if we are not spreading our flowers after members are gone. I was just wondering if we should not supplement that by sending greetings and best wishes and flowers to several of our very prominent members at the present time. E. B. Goss is sick in Canada; Judge Lauder is confined to his home. Harold W. Braatlien who was so active last year is now at Albuquerque, New Mexico. I therefore move that the Secretary of this Association be authorized and directed to send words of sympathy and some flowers or remembrances to each of these in their illness, and our best wishes.

MR. KNAUF: Second the motion.

MR. LEWIS: Permit me to say I think that is a splendid idea, Mr. Lambert. I am very glad you brought it up.

All those in favor of this motion may signify by the usual sign. Opposed. Carried.

We now come to the election of officers and nominations are now in order.

MR. STUTSMAN: It has been our practice in the past to select our presidents a year in advance. It is a very fine practice, I think, and in this case, a year ago we selected a man that we expect to put in office at this time, and at that time, all of the good things that were said about him, that were necessary to convince our membership that we made no mistake at the time that we made the nomination for Vice President. A year ago at Minot I was a bedfellow with the candidate, the nominee, through his courtesy. I came to the hotel a little late and was unable to get a room. Judge Bagley took me in with him. I think the money that was paid the hotel was wasted on both of our parts. We slept very little, talked most of the night, and with all due respect to Judge Bagley, the most of the talking that second night was about what he was going to do when he got to be President. I will say, however, that I urged him on. It is with a great deal of pleasure that I suggest to you gentlemen

at this time the name of Horace D. Bagley as nominee for President of this Association.

MR. LAMBERT: I second the nomination.

MR. TRAYNOR: I move the nominations be closed and the Secretary instructed to cast the unanimous ballot for Judge Bagley for President.

MR. CUTHBERT: Second the motion.

MR. LEWIS: You have heard the motion, is there any discussion? If not, all those in favor of the motion may signify by the usual sign. Opposed. Carried. Judge Bagley is unanimously elected. At this time, we must hear a word from Judge Bagley.

JUDGE BAGLEY'S RESPONSE

Gentlemen of the Bar Association, more than that, dear friends: I have not words in which to express my appreciation of the honor which you have done me. It is an honor which may well be coveted by any of our members. On account of circumstances, which you can readily conceive without me stating them, the honor is doubly appreciated by me.

Now I am going to say something which Dick told me not to say. Ordinarily I am going to do what Dick tells me while I am President of the Association. At the meeting at Minot last year, I said that I did not feel competent to hold this position for the reason that I was socially deficient and didn't have the dress suit, and I think that the President of this Association should be socially a model of all the graces, and that he, at least, should have a dress suit. Well, anticipating this election I got around that to a certain extent. I spoke to Judge Burke and Bill Stutsman and they agreed to act as social committee during my administration and see that the social duties pertaining to the office are properly performed, and as to the dress suit, I have gotten around that because Tracy says he has got an extra suit.

Now there is another reason why I don't feel that I should hold this position. My views on the criminal situation, or criminals and crime wave is all wrong. I feel no hatred toward the criminal and I feel no fear of him, and I feel no excitement as to the crime wave of which we hear so much at each meeting of the Bar Association. To me the criminal is only a poor human creature lost like myself in the maze of this existence. I was saying to a friend last evening that I would rather eat with the publican and sinner than to send him to the penitentiary for life and hang him. He says, "Where do you get that stuff?" Well, I says, "I can't just put my fingers on the precedent at the present time." I know there is one that exists. It has been a ritual of this Association to open each meeting with a salute to the crime wave and close with a shudder of fear as to the destiny of America. During the next administration, we are not going to mention the crime wave if I can prevent it and there isn't ever going to be any shudder as to the future of this great country in which we live.

Now I feel my deficiency, both personally and socially, but, gentlemen, there is one thing which I feel I am not deficient in, and that

is in the friendship which I feel for each of you. We live together and reach old age as lawyers, doing practically the same things, earning our livelihood in the same way, and the ties which bind us, in spite of ourselves, are closer than any ties which bind us except those of our immediate family; closer than the ties that bind us in any secret body. It is those ties, which I hope, as President, to strengthen and make more common between us.

Now I am going to speak of a homely thing, but it is an essential thing, and my policy, if any of the members of the Bar Association are seriously ill, while I am President, I hope some other member of the Bar in that town may advise me of the fact so I may extend to him, on behalf of the Association, such sympathy as may be possible, and if any member of the Bar Association shall be called to the reward, that I hope some one of you will immediately advise me of the fact so that either I or some other member of the committee can attend the funeral on behalf of the Association.

I have spoken on general principles. Now I want to speak specifically on what I expect to do, how we expect to operate this Association. In brief, we are going to operate it this way: We are going to let Dick do it. Dick—that is the word you always hear at Bar Association meetings. Dick does all the work and gets none of the honor. I don't know how this Association would operate without Dick Wenzel. If you gentlemen decide to dispense with his services, you also dispense with mine, because it would be impossible for me to do the duties of the President without his assistance. I am going to let Dick do all the work, take all the kicks, take all the blame for my mistakes that are made, and if there is any honor, I will take that. And now in conclusion let me say from the bottom of my full heart, I thank you gentlemen for the honor you have done me, and may God be with you until we meet again next year.

MR. LEWIS: If there are any more things that could be said about President Bagley that have not been said, I should like to hear them, but they have all been said and said many times from the heart. The next order of business is the nomination for Vice President.

MR. MCINTYRE: I see by the button we are wearing, this is the 31st annual meeting of the Bar Association. I think it was 31 years ago this fall that a group of us entered the law school of the University of Minnesota and sat together on the subject of torts. Some of you have gone through that institution, but there was a light haired Norwegian who sat in back of the class who had the faculty of always knowing what was up for discussion, and when called upon seemed, in the language of the present day, to "know his stuff." After graduation from the law school of Minnesota, he came to North Dakota, or was it his residence? I am not sure but what he was born in this state. He entered into practice in one of our leading small cities of the state and has been engaged in practice in that city, I think, since the year 1901, if my memory serves me correctly. He has been successful in his practice, has built up a reputation as a successful lawyer, and strange as the layman may think, has also built up a reputation as an honest, upright citizen, a leader in his community, one whom we admire and honor in electing him as Vice President. I have the pleasure and the honor, Mr. President, to

present to you as a candidate for Vice President, and to this meeting, the name of Honorable Alfred M. Kvello, of the City of Lisbon, who is the choice of the Bar of the Third District for the position of Vice President, and I wish to say the Third District has not had the honor of holding one of the executive offices for a considerable period of time.

MR. ELLSWORTH: On behalf of the Bar of Stutsman County, I wish to second the nomination of Mr. Kvello.

MR. BOTHNE: I also wish to second the nomination of Mr. Kvello. I have known him for some time. I have served with him on the Executive Committee of this Association and I know he is a square shooter in every way.

MR. BUTTZ: I want to second the nomination of Mr. Kvello. I have known him longer than I think any of you gentlemen, ever since he began to function down in Ramsey County, because I got there before he did. I didn't get born there but he did. I went to school with him. He was a classmate of mine until he got smarter than me and left me, but never left me, so far as friendship is concerned—a fine gentleman, able scholar, lawyer among lawyers, he will be a credit to this Association.

MR. CONMY: I wish to correct Judge just a little. Alfred was born in Fargo. For that reason, I wish to second the nomination.

"JIM" JOHNSON: The Ward County Bar Association wishes to second the nomination of the Vice President of the Association. I was acquainted with some of these people before any of these men who have spoken.

MR. COVENTRY: On behalf of the members of the Association of Emmons County, I take pleasure in seconding the nomination of Mr. Kvello.

MR. HANCHETT: Members of the Bar of Barnes County have been kind enough to suggest that I be a candidate for vice president of this Association. It has been very kind of them. In view of the practically unanimous sentiment in favor of Mr. Kvello, and in view of the high regard I have had for him many years, I wish also to second the nomination of Mr. Kvello for Vice President.

MR. EGO: As a fellow townsman of Mr. Kvello and fellow lawyer, I take also great pleasure in seconding the nomination. I want to assure this Association that while perhaps I have not known him as long as Judge Buttz or this gentleman, during the time I have known him, I have found him to be active, earnest, enthusiastic, in the things which he undertakes. I know if he is elected Vice President of the Association, he will be of considerable help to Mr. Bagley. In view of the, as Mr. Hanchett says, apparent unanimous desire upon the part of the membership here, I would move you that the nominations be declared closed and that the Secretary be instructed to cast the unanimous ballot for Mr. Kvello as Vice President.

MR. BANGERT: Second the motion. I agree with Mr. Ego, that Mr. Kvello is very active. Sometimes I think when I sit on the

other side of the table, he has been too active. I will second the motion to close the nominations.

FRANCIS MURPHY: If I may be permitted to give my maiden speech of the meeting, I want to second this nomination, not because I was born in Ransom County as Judge Buttz was, or lived there as my friend Mr. Ego, does, but because I was married in Lisbon.

MR. LEWIS: Gentlemen, I saw a couple of others who appeared anxious to make this unanimous.

MR. KNAUF: I would like to amend the motion or have this amendment accepted by the maker of the motion, that the rules be waived and that the nominations having been closed, that we elect by a rising vote.

MR. LAMBERT: Second the motion.

MR. LEWIS: All those in favor of the motion may signify by rising. Carried unanimously. It is time to hear from the new Vice President.

VICE PRESIDENT'S RESPONSE

Mr. President and Members of the Bar Association of the State of North Dakota: To say I am deeply sensible to the honor you have just conferred upon me would be putting it very mildly. In fact my emotions are such I do not know that I could make any appropriate appreciative speech. I do appreciate more than words can say the honor that you have conferred upon me, and more than that, the opportunity that you have given me in the work that lies ahead of me, in making contacts more closely than has been possible before by the splendid body of men of North Dakota that form our legal fraternity, and I welcome the opportunity to do this additional service because of the fact it will give me the opportunity to make closer friendships and to do greater work for the Association and the fraternity of which I am a member. The honor comes to me with a peculiar sense of gratitude because it gives me the opportunity to work shoulder to shoulder with the man I first learned to know and to love when he was in the University of Minnesota in 1900, and the privilege of working with our president-elect, Honorable Horace Bagley of Towner, is a sweet privilege to me.

There are a great many opportunities for service in any office or any committee of the Bar Association. We have had a great deal of evidence of it here during these past two days, in the study and in the work that is evident in these reports that have been filed and these discussions that we have had.

In North Dakota, we have a little different situation as a Bar Association from any other state practically in the Union. All of us, whether we will or not, belong to that Association, and I know it is the hope of Mr. Bagley, as it has been the hope of the Executive Committees in the past, to create a greater interest in these State Bar Association meetings, and it will be my effort in what little way it is permitted me to work, to assist in that work of bringing home to the lawyers of North Dakota, that this is their Association, and that we have a great work to do for the State of North Dakota, and I pledge you as my offer for the honor that has been given me

here today, to leave no stone unturned, or to leave nothing undone that I can do to advance the interests of the Bar Association and the lawyers of the State of North Dakota, and I would rather say something for the Association and for the things that the Association does than any words I can utter today, and again from the very bottom of my heart, gentlemen of the bar, I thank you for this very splendid honor.

MR. LEWIS: The next is the election of the Secretary-Treasurer.

MR. CUTHBERT: I move you, the President of this Association cast the unanimous vote for "Dick" Wenzel. I haven't anything to say about that because we all know "Dick" and it is my humble opinion that anyone who does not appreciate "Dick" or doesn't like him, there is something the matter with him.

MR. TRACY BANGS: If I ever did anything for the Bar Association of this state, when as President of the Association, I appointed "Dick" Wenzel Secretary. I knew when I appointed him, he would be absolutely indispensable; after a little while I found my guess was right. I second the nomination.

MR. MCINTYRE: As one who for a year obeyed the commands and dictates of Dick, I want to add my second to Mr. Cuthbert's motion. I think that after the bill of health which Mr. Lemke gives Dick, that all of Dick's shortcomings should be washed clear and the slate is now clean.

MR. LEWIS: Gentlemen, you have heard the nomination itself and the motion for casting the unanimous ballot, as well as the seconds. All those in favor of this motion may signify by saying "aye." Opposed. Carried.

SECRETARY'S RESPONSE

Mr. President and Members of the North Dakota Bar Association: I thank you very tenderly for your gracious courtesy in continuing to extend your favor, notwithstanding my shortcomings. It must be my willingness to acknowledge these shortcomings that has made you relent so often, and that also causes the gentleman, to whom you referred just a few moments ago, to point me out particularly in a certain court proceeding. Of course, I would not wish to be understood by my acknowledgment to decline the acknowledgment of others' shortcomings, upon proper occasion. I appreciate the fact that you recognize the possibility of conflicts of opinion, once in a while, and that you are big enough, gracious enough, and sympathetic enough to remember that back of those conflicts of opinion there is, probably, the desire to serve the best interests of this Association. It makes a particularly deep impression upon me to find that the men who have been elevated to the Presidency of this Association, and had their troubles with the stubborn Secretary, have, seemingly, at least, accepted that point of view. But really, you know, those differences of opinion haven't been as serious as some may think, at least not as serious as those we sometimes have on the golf course when an eighteen inch putt is missed after failure to concede it. It has been a pleasure, and a liberal education, to work with the real men whom you have from time to time selected

to serve this Association as President. The fact that my "hunches" sometimes seem to weigh more than their mature judgment and wisdom has only made me the more ready to accept the responsibilities which they have been willing to put upon me. I like this work and enjoy it. That should be enough. Let the Presidents, therefore, enjoy the honors, so richly their due. Again I thank you for your kindly consideration.

MR. LEWIS: Personally I would like to testify to the pleasure of working with Mr. Wenzel and to the great ease of working with him, or letting him do the work, and the entire absence of those difficulties and disagreements which he hints of. In the Constitution and By-Laws, we have a provision for the meeting place of the Association; that is we perhaps can get away from the Constitution, but the By-Laws we have to follow, and it provides that the place of meeting shall be decided by the Executive Committee. It has been the custom to receive invitations at this time.

MR. CUTHBERT: The best town amongst fifteen or twenty fine towns that are capable of handling the Association extends to this Association a most cordial invitation.

A MEMBER: What town is that?

MR. CUTHBERT: I don't need to answer that, that is for any intelligent person. We are recognized as the best town since the Bar Association met at Devils Lake in 1923, when the State Bar said it was the best functioning bar—I speak of the Association—that it had ever had any experience with. Now since that time, the Association has been to Minot, Bismarck, Jamestown, Valley City, Fargo, and Grand Forks; and I appreciate all the wonderful work that has been done in those various towns, and the splendid entertainment that was furnished; but to get right back to first class entertainment, I know the Association wants to come to Devils Lake. I don't believe there is going to be any opposition. I have talked with at least fifty, and the minute I mentioned it to any one up went his hat. Three or four men lost their hats cheering when I said Devils Lake wanted the meeting, so I trust the Executive Committee will keep this in mind. We hope nobody else will extend an invitation, in view of the fact that we are inviting you to come, and seriously, we may as well tell you that we will probably have the Missouri River flowing through there by that time so you will have some good fishing.

MR. STUTSMAN: Mr. Cuthbert can just guess again about that question of opposition. There are other places beside Devils Lake where you can hold the Bar Association meeting. On behalf of the City of Mandan, I extend to this Association an invitation to hold its next meeting at that city. It has been a long time since we have had a meeting there. I have forgotten—it is probably twelve or fifteen years ago—and perhaps some of you have forgotten what Mandan is like and what we can do when you come there, but I want to assure you our reception will be just as cordial as Devils Lake under any circumstances, and by the way, the Missouri River already flows right by it.

MR. CUTHBERT: I understand all about that. Some seasons of the year they very often have an overflow, and that is one thing

this Bar does not want. It doesn't want too much water. Again, I call your attention to this fact: that this suburb of Bismarck, which so cordially invites us to convene there, must not forget that the annual meeting was at Bismarck since it was at Devils Lake, and as long as they permit it to go to the main part of town, they can't expect the suburb to get it.

MR. LEWIS: Are there any further invitations. We appreciate both very much. It will go to the new Executive Committee to be passed on. I see I forgot the report of one very vital committee, the Committee on North Dakota Digest. Mr. Cuthbert, will you report?

MR. CUTHBERT: President and Members of the Bar Association: I was just wondering and waiting to see whether the President was going to pass that up or not. Yesterday I had a report. Every other committeeman, who was not here yesterday, had his report extended until today, but when I got out of the car last night, Mr. President was at the door to tell me that the report had been passed because I wasn't here and that it would not be brought up again. I didn't propose to let him get by with that. This is a matter of great importance to the Bar Association, but you are all anxious to get out so I am not going into any details as to the work this committee did in getting the Digest over. I want to say, though, that there was a good deal of preliminary work to be done by the committee. Most of our work was done by correspondence. We had some difficulty to get a publishing house to undertake it. Mason wanted to get us out a Digest which would sell for from \$35 to \$50, based entirely upon the syllabi. I took this up with the committee, and they all had the same view I did, that this would not constitute a Digest. We all realize that we have at the present time twenty volumes or more that we have no Digest for, and we all realize the terrible situation we are in when we see our learned Supreme Court writing an opinion just contrary to one they wrote two or three volumes before, primarily because they did not have a Digest. While, of course, it is a great convenience for the Association, my heart was set on being able to help the judges out so they wouldn't get in any more such humiliating experiences. Justice Birdzell took a very active part in this work. We first wrote to South Dakota to get their cooperation and this Digest will cover North and South Dakota. It is gotten out by one of the most reputable law publishing houses that there is in America, the Callaghan Company, a company that has successfully digested, within the last ten or fifteen years the decisions of such States as Michigan, Wisconsin, Illinois and others. It was necessary to get legislation through; the company could not give us a digest on the expectant sale of the two states. I made a trip down to Bismarck and appeared before the House Committee and was fortunate in getting the passage of the bill which Mr. Justice Birdzell had prepared ordering the State to buy a set of Digests for all of those officials who, under the present laws, are supplied with State reports. Mr. Cahill, the manager and Vice President of the Callaghan Company was out there and Mr. Justice Birdzell went before the Senate Committee, and this Legislation was passed. Like legislation was passed in South Dakota by the Legislature there. Even after that the cost of this Digest is going to be quite large. Yet it is not too

large when you stop to consider what you are going to get. We pay \$10 a piece for Hill's Digest, three volumes, and you all know that Digest is terribly lame. It would take probably three additional volumes at \$10 a piece to complete that work, which, after all, would not be a Digest. The Digest which we have contracted for through the Callaghan Company is based upon a reading of every case. That work is being supervised by Mr. Mason, who is an experienced digester of many years and has been at the head of the Digest department of the West Publishing Company. This Digest is being carefully gotten out. This experience has taught me that digesting is a real job. Every few weeks, after they started work on it last spring, I got a proof copy of the Digest, on one or two volumes of North Dakota, with the request that I read that and send back suggestions. I undertook to do that, and I found that I would have to quit practicing law and work eighteen hours a day if I kept up with Digest reports; and I want to say to you members that I discovered, by checking particular cases of importance and reading opinions carefully, then checking back the digest, that they are doing a wonderful piece of work. The new matter up to date will average from 35 to 40 per cent over the matter that is covered in the syllabi, and it is all matter of importance, matter which the Supreme Court has passed on, but which the lawyer has no way of reaching under our present condition. I feel certain, therefore, that this Bar Association will realize that it is getting something that is of great benefit. In addition to that, the Digest will be kept up by quarterly issues, in pamphlet form, until the regular Digest comes out, so we will be practically up to date all the time. It was found necessary to publish, according to the estimate, five volumes. Mr. Cahill estimated he could sell this to the Association members for \$15 a volume or \$75, which when all is said and done, compares very favorably to this Hill Digest, which would cost us \$60 to bring up to date and then have nothing. Just one word on the method of digesting. This system was discussed freely between the publisher and the committee in South Dakota and the committee in North Dakota, and we finally concluded to adopt what is commonly known as the Mason Digest System, with some modifications, or, I should say, some improvements. The Mason Digest System, or key system, used by the West Publishing Company, with which all lawyers are familiar, will be the basis, excepting for instance, on the subject of procedure. Under procedure, all of the minor questions will be sub-headed and included in that one subject, excepting those outstanding subjects, such as attachments, garnishment, or matters of that kind, those will carry a separate place in the Digest. Then there is another improvement—Callaghan will insert what is known as the Common Sense System. They will insert, in addition to the ordinary digest words, catch words, or the common sense sign. You can find things more readily. If you are dealing with an automobile accident, look for automobile; you will either find it there, or a cross reference; if a child be hurt, look for child. This committee urged upon this company an undertaking, a monumental work, for a State in which lawyers are scarce as compared to the east, and we said that we believed every lawyer in active practice would feel the dire necessity of having this work. We believe the Bar will very readily respond with liberal subscriptions, and I trust every lawyer in active practice will realize this situation, and when

the Digest comes out, that the subscriptions will go in very freely. Just one word as to when we may expect it. When they first took it up, it was estimated by the Callaghan Company, it would take nearly two years to complete the work. The last letter I got from the Callaghan Company said they had been able to crowd the work along so fast that they hoped to be able to give the Digest to the Bar of North Dakota the latter part of this year, which I am sure you will say is really wonderful progress in work of this kind.

MR. LEWIS: I wonder if Mr. Clark, the President of the South Dakota Bar Association, has anything he would care to tell us about in connection with the Digest.

MR. CLARK: I know nothing about it. I know some work was going on but I wasn't on the committee. I am much interested in this matter, however, and am glad to hear of the progress that has been made.

MR. LEWIS: Is there anything before we adjourn—is there anything under the head of miscellaneous business?

FRANCES MURPHY: On the subject of general benefit of the Association, I do not think it is entirely out of order for me to express to the President, the sense of this Association, of the good feeling and the courtesy of the presiding officer. It is always very easy to elect a new man and let the old one slide out without paying any attention to him. I want to say personally, and I think the other members will agree with me, that a presiding officer of such dignity, such courtesy, who has such knowledge of technique, that he can take a body of lawyers and make the meeting move along the way this one has moved, is to be commended. We are especially fortunate in having had such a fine President.

MR. LEWIS: Thank you Mr. Murphy, but if there is anything I will be given credit for in connection with this meeting, I think it is getting you to attend it. That I believe was a good act.

MR. KNAUF: I move that this Association extend its thanks to the outgoing President by a standing vote. (All stand).

MR. LEWIS: Thank you gentlemen, very much.

TRACY BANGS: There has been nothing said about the banquet tonight, and I am informed that those in charge state that no one will be admitted who comes in a dress suit.

MR. LEWIS: If there is nothing further the meeting will be adjourned and we will meet at the banquet at 6:30 tonight. Is there a motion to that effect?

TRACY BANGS: I move that the meeting be adjourned.

MR. LAMBERT: Second the motion.

MR. LEWIS: All those in favor of the motion signify by saying "aye". Contrary. Carried.

In Memoriam
