

BAR BRIEFS

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—By—

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THE PRESIDENT'S PLEA

To organize the Bar Association of this state so that it may function in the same efficient manner that it has within the past few years is no small task. The work of the Association must necessarily be done through committees, so the first task of each new administration is that of appointment of the necessary committees.

The President with the aid of the Executive Committee has just completed the list of the various committees for the ensuing year and notice of the appointments will go forward to the interested parties this week. We urge upon each member of the Bar who has been asked to serve on a committee the necessity for his services and co-operation if our Association is to continue to grow and to maintain its present high standard.

The work of all our committees is important but that of the Legislative, the Americanization and Judicial Council is particularly so. The work of the Americanization Committee in the past few years has been most commendable and we believe this year's committee will not be found wanting.

The 1927 meeting is still ten months away, but we want to suggest to committee chairmen the advisability of their planning now to get their committee reports in the Secretary's hands long enough before the annual meeting to enable the substance thereof to be printed in Bar Briefs. By so doing we can save time on our program to enable us to have more time for discussion of matters of interest to the Bench and Bar of the State.

EXECUTIVE COMMITTEE MEETING

At the call of President McIntyre a meeting of the new Executive Committee was held at Grand Forks on the 22nd of October, all members of the Committee being present. The meeting was called to order at 9:30 A. M., and continued in active business session until 5:30 P. M.

The more important matters disposed of were:

1. Approval of Committee appointments;
2. Opening and consideration of Bids for printing annual proceedings; bids being received from the following concerns: Hansen Brothers, Jamestown; Devils Lake Journal, Devils Lake; Hannaher-Anderson Printing Co., Fargo; State-Record, Bismarck; Normanden Publishing Co., Grand Forks; Pierce Printing Co., Fargo; Globe-Gazette Printing Co., Wahpeton; Knight Printing Co., Fargo; Bismarck Tribune, Bismarck; Quick Print, Bismarck; Holt Printing Co., Grand Forks; Page Printing Co., Grand Forks; contract was awarded the Bismarck Tribune;
3. Grand Forks was selected as the place for holding the 1927 annual meeting;

4. Prof. Roger Cooley of the University Law School presented a proposal to substitute a quarterly journal for the present publication of Bar Briefs, the same to be published in co-operation with the Law School; final action being to investigate the cost of increasing the issue to 48 pages every third month and continuing the 8 page publication, with larger page, larger type and better quality of paper, authority being given the President and Secretary to make the necessary arrangements with the authorities of the Law School if the matter could be handled under the budget appropriation;

5. The following budget was adopted:

Printing Proceedings	\$500.00
Printing and Postage	150.00
Executive Committee	350.00
Citizenship Committee (*)	350.00
President Expense	200.00
Secretary	480.00
Bar Briefs	325.00
1927 Annual Meeting	600.00
Legislative Committee	200.00

The item marked (*) includes the sum of \$100.00 to be used as prize money for the best essays on the subject: "My individual duty and obligation under a representative form of government", prizes to be divided \$50.00, \$30.00 and \$20.00, and the contest to be limited to students in High Schools and Junior High Schools of the state.

6. Three Hundred and Sixty-eight ballots had been returned on the Bar Board referendum at the time of this meeting, so the Executive Committee opened and canvassed these returns, delegating W. H. Stutsman of Mandan and the Secretary to canvass any ballots received after that

date and up to the time of closing on October 30th. Nine additional ballots were so received. These were canvassed as directed on November 2nd. The result of the ballot is here noted:

S. D. Adams, Lisbon	242
C. L. Young, Bismarck (x)	78
C. J. Fisk, Minot (x)	77
Aubrey Lawrence, Fargo	33
John Knauf, Jamestown	19
A. W. Cupler, Fargo	17
A. G. Divet, Fargo	16
W. A. McIntyre, Grand Forks	14
F. J. Traynor, Devils Lake	14
Alfred Zuger, Bismarck	13
W. C. Crawford, Dickinson	12
Geo. Bangs, Grand Forks	10
Tracy R. Bangs, Grand Forks	10
G. S. Woledge, Minot	10
S. E. Ellsworth, Jamestown	10

The names marked (x) represent present members of the Bar Board, whose terms are unexpired. It is interesting to note the number of ballots cast for these two, notwithstanding the fact that the ballot indicated that they could not be considered as candidates. The total number of names voted for was 121, those not listed above receiving less than ten votes each.

COMMITTEE APPOINTMENTS

President McIntyre has made his committee assignments, which have received the approval of the executive committee. The complete roster of committeemen will appear in the report of the annual meeting, and only the chairmen and vice-chairmen are listed here:

Legal Education and Admission—John O. Hanchett, Valley City, Chairman; F. E. Heckel, Grand Forks, Vice-Chairman;

Legislative—John W. Carr, Jamestown, Chairman; C. L. Young, Bismarck, Vice-Chairman;

Jurisprudence and Law Reform—G. F. Dullam, Bismarck, Chairman; L. E. Birdzell, Bismarck, Vice-Chairman.

Ethics of Bench and Bar—Chas. A. Pollock, Fargo, Chairman; E. T. Conmy, Fargo, Vice-Chairman;

Law Enforcement—Iver A. Acker, Hillsboro, Chairman; C. S. Shippy, Hope, Vice-Chairman;

Criminal Law—George F. Shafer, Bismarck, Chairman; John E. Williams, Washburn, Vice-Chairman;

American Law Institute—Geo. M. McKenna, Chairman; O. P. Cockerill, University, Vice-Chairman;

Terms, Salaries and Powers of Judges—John H. Lewis, Minot, Chairman; Ray O. Miller, Minot, Vice-Chairman;

Local Organizations—F. T. Cuthbert, Devils Lake, Chairman; H. B. Spiller, Cavalier, Vice-Chairman;

Uniform State Laws and Comparative Law—Paul Campbell, Minot, Chairman; G. S. Woledge, Minot, Vice-Chairman;

Internal Affairs—Fred J. Traynor, Devils Lake, Chairman; Torger Sinness, Devils Lake, Vice-Chairman;

Memorials—H. A. Libby, Grand Forks, Chairman; P. G. Swenson, Hillsboro, Vice-Chairman;

Correct Information and Co-operation with the Press—A. W. Cupler, Fargo, Chairman; John Knauf, Jamestown, Vice-Chairman;

Morgan Memorial—Tracy R. Bangs, Grand Forks, Chairman;

Program 1927 Meeting—O. P. Cockerill, University, Chairman; Philip R. Bangs, Grand Forks, Vice-Chairman.

Comparative Law—L. R. Nostdal, Rugby, Chairman; B. F. Whipple, Fessenden, Vice-Chairman;

Public Utilities—John Thorpe, Bismarck, Chairman; E. B. Cox, Bismarck, Vice-Chairman.

Citizenship and Americanization—A. G. Porter, Edgeley, Chairman.

CRIMINAL PROCEDURE

Hon. Herbert S. Hadley of Missouri, as head of the Committee on Criminal Procedure and Judicial Administration of the National Crime Commission, has now presented to the Bar of the country an outline for a Code of Criminal Procedure. Note the names of the other men who had part in the preparation of this outline, namely: Judson A. Harmon, former Governor of Ohio; Roscoe Pound, Dean of Harvard Law School; John H. Wigmore, Dean of Northwestern U. Law School; J. H. Banton, District Attorney of New York County; U. S. Webb, Attorney General of California; Oscar Hallam, former Judge of Supreme Court of Minnesota; Marcus Kavanaugh, Judge of Superior Court of Chicago; E. R. Keedy, Professor at U. of Pennsylvania and former Judge Advocate of U. S. Army; Geo. M. Napier, Attorney General of Georgia; Col. Philip S. Van Cise, former District Attorney of Denver; J. Weston Allen, former Attorney General of Massachusetts; Dan Moody, Attorney General of Texas.

The outline can not be presented in full for lack of space, but the complete outline, together with a statement of reasons by the Committee, may be obtained by sending the sum of 25c for the October number of the American Bar Association Journal, 209 LaSalle St., Chicago. Briefly summarized, the outline presents the following:

1. Every person charged with felony to be immediately taken before a magistrate, informed of his rights, given opportunity to make public statement.
2. Prosecution by indictment or information, naming or stating offense, bill of particulars for good cause shown.
3. Bail to be commensurate with crime and criminal record of defendant; examination of bondsmen under oath, false statements making

them liable for perjury; declaration of forfeiture to stand as final judgment upon which execution may issue unless defendant is produced in ten days.

4. Defendant shall be represented by counsel; Judge to keep a list; Bar Associations to co-operate.

5. State to have same right to secure disqualification of Judge as defendant.

6. Jurors to be citizens, able to read and write, never convicted of felony; reading of case or formation of opinion not to disqualify juror if Judge believes he can render a fair and impartial verdict; no reversal because juror was not qualified.

7. State and defendant to have same number of Peremptory Challenges.

8. Defendants jointly charged to be tried jointly unless Judge orders separate trial in interests of justice.

9. Failure of defendant to testify may be commented on by Judge and counsel.

10. Testimony permitted on deposition provided it was given in presence of other party with privilege of cross-examination; such depositions may be taken in advance of trial upon showing that witness is likely to leave jurisdiction.

11. Presumption of innocence shall only extend to the placing of burden of proof on the state.

12. Judge should have right to comment on evidence; failure to instruct on point of law shall not be subject of reversal unless requested by defendant; instructions and comment to be recorded.

13. Where death penalty may be imposed, verdict shall be unanimous; other felony cases, a five-sixth verdict sufficient; in misdemeanor cases jury shall be composed of six and five may convict; jury trial may be waived by defendant; jury shall decide question of guilt only; defendant's criminal record shall be ascertained before sentence, and Judge may seek information as to mental condition.

14. On appeal, in addition to issues raised by defendant, Court shall pass on rulings adverse to State; State may also appeal except on verdict of not guilty; "On hearing of appeal a judgment of conviction shall not be reversed on ground of misdirection of the jury or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the appellate court, after an examination of the record before the court, it shall appear that the error complained of has resulted in a miscarriage of justice." (Note statement of a practicing attorney elsewhere in this issue, on this particular quoted point.)

15. Appellate court may call witnesses or receive affidavits re disputed questions of fact relating to procedure, or may call on trial court to examine and correct statement; punishment may be reduced without remanding for new trial; in capital cases record must be reviewed, and counsel supplied for indigent defendants, same to be paid by county.

16. On new trial defendant shall be subject to original charge, though first conviction was for lesser offense.

17. Before pardon or parole prosecuting officer shall have reasonable notice and opportunity to appear and be heard; public statement of reason shall be made five days before parole or pardon becomes effective.

18. Defendant shall remain in custody on appeal unless in opinion of Court there is reasonable ground for appeal; appellate court shall also have power to issue such certificate, on application.

19. (a) Plea of insanity shall be presented ten days before trial; (b) If defendant appears to the court, or is claimed, to be insane at time of trial he shall not be tried but confined in a proper institution; if later found sane, he shall be tried, without prejudice by lapse of time; (c) If insanity at time of commission of offense is claimed Judge shall call qualified experts, not exceeding three, and shall present names and addresses of experts to both sides, but this shall not preclude calling of other experts by either side; (d) If jury finds defendant was insane at time of an act or omission, but did the act or made the omission, it shall return a special verdict "that the accused did the act or made the omission but was not guilty of the crime charged by reason of his insanity"; (e) If such special verdict is found, the Court shall immediately order inquisition to determine if defendant is insane and a menace to public safety; if found sane he shall be discharged, if not, he shall be committed to proper institution.

20. No dismissal after indictment or information except on written statement of prosecutor, giving reasons; Court may refuse to dismiss or order further investigation, and may appoint special prosecutor.

APPEALS IN CRIMINAL CASES

A prominent practitioner in the northern part of the state, in a private letter to the Secretary, expressed himself with such force and clearness in regard to the recommendations of the Missouri Survey Committee (published last month) that his remarks are printed, notwithstanding the designated private nature of the communication. They relate to the portion of the report which advocated no reversal except when it appeared that there had been a miscarriage of justice, and are, in part, as follows:

"It would appear to me that if competent testimony offered by defendant is ruled out and incompetent testimony admitted and the jury misdirected on questions of law that, manifestly, there has been a miscarriage of justice. In other words, that the defendant has been deprived of a legal trial before a jury. If the appellate court is allowed to guess what the jury would have done if they had had before them competent testimony that was ruled out and had been properly instructed on the law of the case, the conviction rests not on the verdict of a jury but on pure guess of the members of the appellate court. A jury trial means, if it means anything, a trial before a jury free from erroneous

instructions on the law and all proper testimony admitted and improper rejected.

"The remedy for error of a trial court is not to place on an appellate court the burden of a trial de novo in a criminal case. A trial de novo in the appellate court deprives a defendant of his right to a jury trial. When the appellate court ceases to be a court of error and becomes one to determine whether or not, if the jury had been properly instructed in the law of the case and improper testimony ruled out and competent testimony admitted a verdict of guilty would nevertheless have been returned, it comes mighty close to a trial de novo in the appellate court. The remedy is (1) adequate salaries for trial judges; (2) nomination of candidates for the bench in judicial conventions; (3) sufficient judges to handle the work without undue haste."

JUDICIAL COUNCIL LEGISLATION

President McIntyre has announced the appointment of the following members of the Bar to confer with the Judges on the form of the bill to be presented to the Legislature for the establishment of a Judicial Council: C. L. Young, Bismarck, Chairman; A. W. Cupler, Fargo; W. F. Burnett, Fargo; W. H. Stutsman, Mandan; and Alfred Zuger, Bismarck.

Copies of all Judicial Council acts in force in other states are being distributed to the members of this committee and the Supreme and District Court Judges, and a joint meeting of the Committee and the Judges will be held at Bismarck on or about the 30th of November.

Chief Justice Christianson's plans for this meeting include the presence of Dr. Hickson, the Chicago expert to whom Judge Olson so frequently referred during his attendance at the annual meeting, which indicates quite clearly that whatever is done is going to be done with the view of covering the whole field of the administration of criminal justice.

LOCAL STATE COUNCILS

The Vice-President and members of the local council of the American Bar Association for the State of North Dakota have been announced as follows:

C. L. Young, vice-president and chairman, Bismarck;
John Knauf, Jamestown;
W. A. McIntyre, Grand Forks;
E. B. Goss, Minot;
L. R. Nostdal, Rugby.

WORKMEN'S COMPENSATION DECISIONS

A physician's testimony that disease might have resulted from the employment may be considered to corroborate other testimony, but is insufficient alone to warrant an award.—Madore vs. New Departure Mfg. Co., 134 Atl. 259 (Conn. July, 1926).