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Proceedings of the One Hundred Seventh Annual Meeting of the North Dakota State Bar Association

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PROCEEDINGS OF THE ONE HUNDRED SEVENTH
ANNUAL MEETING OF THE NORTH DAKOTA
STATE BAR ASSOCIATION

OFFICERS

LAWRENCE E. KING..... President
DAVID L. PETERSEN President-Elect
MARK HANSON Secretary-Treasurer
MICHAEL J. WILLIAMS Immediate Past President
WILLIAM NEUMANN..... Executive Director

PROCEEDINGS

June 15, 2006

PRESIDENT MICHAEL J. WILLIAMS: I would like to call the 107th Annual Meeting of the State Bar Association of North Dakota to order.

Ladies and gentlemen, will you please stand and remove your hats for the presentation of the colors by the North Dakota 41st Air Force Junior ROTC under the direction of Chief Master Sergeant John Evans. The color guard is commanded by Cadet Second Lieutenant Matthew Riopelle, accompanied by Cadet Chief Master Sergeant Ashley Bolstad, Cadet Master Sergeant John Lunde, Cadet Staff Sergeant Jasmine Hoagenson, and the National Anthem being sung by Cameron MacKenzie. Please remain standing until the color guard has left the area.

Thank you very much. Please help me thank the color guard and Cameron MacKenzie.

For purposes of this meeting I have appointed Justice Dan Crothers to serve as the parliamentarian and he will at least try to help me keep the meeting on track.

I would first like to take just one moment to express my appreciation granted to everyone on the local committee. A tremendous amount of work has gone into making this meeting a success and the chair of the committee was Jane Dynes. Nancy Morris worked on the children's program, Christel Ambuehl and Leah Warner worked on the Spouse and Guests program. LaDonne Vik and Stacey Tjon worked on entertainment. Phil Johnson organized the second annual Judge O'Keefe tennis tournament. Monte Engel organized the bike ride. Tim O'Keefe and Joe Wetch worked on the

golf tournament. Margaret Lee and Diane Peterson worked on the bar foundation silent auction, which you will get to see tonight. It's going to be awesome. Planning our annual meeting is a huge job, taking a tremendous amount of time and energy and we appreciate the willingness to help and the success of their efforts.

PRESIDENT-ELECT KING: Good afternoon. It's my distinct pleasure to introduce Mike for his president's message this afternoon. Mike's obviously a partner in Maring Williams Law Firm and has practiced law for a long time. I really didn't know him real well before I had an opportunity to work with him on the board over the last several years. He's led this organization with dedication and determination. He has quietly and yet succinctly directed the organization through all of the issues that it's had to face in the last year, and then some. I have grown to respect him a great deal over the last year and more so and look forward to having his guidance over the next year as I take over as well. Join me in honoring Mike Williams.

PRESIDENT WILLIAMS: It's hard to believe that it's been a whole year since I was entrusted with the responsibility as president of our association. It's been a busy year. We've had lots and lots of things to do and lots of time has been required of all of us who worked for the association, so we have a tremendous amount of work to be done. And when I was preparing for this presidential address and I thought back to what are the memories that are going to stand out over the course of the last year, the theme of all of those memories has been one of thanks and gratitude. First of all, I want to thank you all for allowing me the privilege and honor of being president of the association over the past year. My partners have tolerated having me not around the office much. In fact, I think some of them enjoyed not having me around too much. But even with the amount of time that's been required, there never came a time when the bar work was a burden at all. It was always a joy.

Our association is involved in virtually every activity necessary in order to make our legal system work. It was really easy for me to devote time to this important work and it's been one of the most professionally satisfying years of my practice and I thank you.

In a lot of ways the year was routine and I'm thankful first to Sherry Moore. Sherry put out all the fires during her tenure so I didn't have to deal with them. She wasn't a complete success because one of her failures was [that] job of that, but I have tried.

Even though the year was routine in a lot of ways, it doesn't mean that we weren't busy or that the year was boring. It was anything but. What I'd

like to do is highlight some of the programs and some of the activities that we've been involved in—I think that affects all of us and our clients.

One of the highlights of the year is that our Lawyers Assistance Program is now fully operational. We have sheperded several attorneys through the program. You'll hear more on it later today, but I was on the Joint Committee of Attorney Standards when the Lawyers Assistan[ce] Program was presented as nothing more than an idea. And we sheperded it through the committee and we were able to watch it become a reality. And watching it become a reality has been tremendously exciting. The Lawyers Assistance Program holds the promise of helping lawyers across the state who might be struggling with addictions or mental health issues or other issues. It has the promise of helping both lawyers who might be struggling and preventing problems for consumers. I'm grateful to Leslie Oliver and the others who are currently working very hard on making this program a success.

A second issue that's taken a lot of time through our association has been the new rules of professional conduct. Our old rules really hadn't been updated since long before Al Gore invented the Internet, and a lot of times, a lot of time was required in order to make these rules practical and reasonable for the state of North Dakota. Many lawyers volunteered their time. It took several years in order to make these rules work for North Dakota, but three lawyers in particular who I'd like to thank are Alice Senechal, Sandy Tabor, and Jim Ganje. I'm very grateful for their work and we all owe them a debt of gratitude for the rules.

We also have three unique task forces that have been at work during the course of the year and each task force is going to result in legislation that is going to help both lawyers and our clients. The first is the Uniform Commercial Code Task Force and that was chaired by Lowell Bottrell. Their work is done. I'm grateful for that.

The second is Uniform Trust Code which is going to be a long work in progress. The trust code is being reworked from beginning to end. Bill Guy agreed to chair that and I'm grateful for his efforts. The Judicial Selection Task Force you first already heard about, and it involves a tremendous amount of work. Jack Marcil chaired it. Judge Steve McCullough did an enormous amount of work on that as well and I'm grateful for that effort. All of these will result in legislation that is going to make our world a better place for us and our clients.

In order to make our association work we have hundreds of volunteers. There are lots of committees and people who are generously devoting their time and energy to our work and they do that because they care and they care deeply. They care deeply about our system of justice, they care deeply

about our clients, and because they care, they donate the time necessary to make our system better for all of us. If you haven't volunteered yet, let me make my pitch: The notice will be going out soon. Volunteer, we need the help and it's a tremendously rewarding experience.

During the course of the year, I've had many, many opportunities to interact with lawyers and judges, and one of the things that I discovered about North Dakota is that we are relatively unique in a variety of ways. One of those is the relationship between the bench and the bar and at the end of this year, I found myself being very grateful and in particular for Chief Justice VandeWalle, who's been instrumental over the years in forging a positive and healthy relationship between our bench and bar.

In my travels to other states, I got to go to the bar conventions and Western States Bar and all the other stuff that they send us to and during my travels to other states I found out how unique North Dakota is and how unique the relationship is between the court system and our bar. There needs to be a healthy distance and there is, but the state of affairs in North Dakota is much better because of the healthy relationship there.

I'll get to say more on this later, but I'm also very appreciative to our board of directors and I know that for every board member we have somebody who comes from an area of the state where they're very committed to the goals of our association and to the interests of the lawyers in the state of North Dakota. I will address this a little more tonight, but at this point, I'm just going to mention that I'm very grateful to the board for the work done over the course of the year.

It is said that coming together is the beginning; keeping together is progress, but working together is success and our board was very successful this year. We worked very well together and I have a tremendous amount of admiration and respect for each member of the board and I thank you.

There is a lot of work that the board and I get credit for that we really don't have much to do with. We have bar blasts and gavels and the Volunteer Lawyer Program, and IOLTA program, keeping track of CLEs, managing our finances, coordinating committees and coordinating task force and all the other routine work that we do day-to-day that the association is required to do. And I don't know how many of you know what a great staff we have. I don't know if you realize how hard our staff works every day. But to Jeannie and Carrie and Justine and Madonna, I want to say thank you to you, because I have seen your work first-hand. I know the quality of your work, I know how hard you work and I know how dedicated you are to the association. Thank you.

And finally, I have to express my greatest appreciation to Mr. Bill. And I'm not quite sure how to say it, but I had the pleasure long ago of

appearing in front of Bill Neumann in district court and I thought he was just a great judge, even though the last case I appeared in front of him on went up to the Supreme Court twice and was reversed twice. The Supreme Court was wrong and Judge Neumann was correct. But I knew him as a judge and I also knew him as a justice and I thought he was just great in both of those positions, but I had no idea how exceptional he would be as our executive director. We're really lucky to have him. He has provided us with vision, sound advice, great management and he's dedicated; he's committed. I could go on and on, but I'm about to tell you that the best is yet to come. He's only been on the job a little more than a year and he's accomplished a tremendous amount. But he's a jewel for the association. And he represents us very well and it doesn't matter if he's in a meeting in Bottineau or at an ABA meeting in Boston, he represents us well and with class and we couldn't have done better. Thank you.

It's been said if you cannot do great things you should try and do small things in a great way. And our bar association, every day they're busy. And some days the association is doing great things, and other days they're doing small things, but they make sure every day those small things are done in a great way. I'd like to thank you for allowing me to be part of the association, leader of the association for the past year and for allowing me to be a part of all things both great and small that our association has accomplished. Thank you.

The next item on our agenda is the State of the Judiciary Address and in order to present that, I would like to introduce Chief Justice Gerry VandeWalle.

CHIEF JUSTICE VANDEWALLE: Thank you. Thank you. Thank you, Mike. Ladies and gentlemen of the North Dakota State Bar Association, I'm pleased to be here today to report on the state of the North Dakota Judiciary, and if my voice doesn't hold out I will leave the podium because you'll get it in writing with the report on the state of judiciary. To begin I want to thank the leadership of the bar association for their goodwill and cooperation in this past year. Mike Williams, our president, was a senior law student the year I came to the bench. We worked together at that time when he arranged the panel of judges to judge the regional moot court competition. I enjoyed working with him then and I still enjoy it all these years later. He and the Board of Governors and Bill Neumann, the Executive Director, have served our association well. I look forward to working with Larry King and the board and Bill in the year ahead.

Thirty years ago the citizens of North Dakota voted to amend Article VI of the North Dakota Constitution. The amendment created a uniform court system and gave the Supreme Court administrative authority over the

district courts and any lesser courts that may be established by law. What an act of great faith that was by the people of this state.

I'm going to take some time to talk with you about how we have handled that responsibility, but in order to fully understand the changes, I need to recall for you how things were. 1976, Gerald Ford was president, Jimmy Carter was president elect. The median income was \$12,686; stamps were 13 cents. The first Apple computers went on the market with a total of 157 computers sold that year. Leisure suits and cardigans were the style of the day for men. I still have mine. And for women it was polyester dresses and pantsuits. AM radio stations still outnumbered FM stations and the dial on our television sets only went up to 13.

It was the year of the bicentennial, the 200th anniversary of the Declaration of Independence. Despite the distrust of government, or maybe in spite of it, the nation was gripped by a patriotic fervor that would remain unmatched until the tragedy of 9-11. Nevertheless, 9-11 was a patriotism borne of sorrow. The patriotism of 1976 was borne of exuberance, a celebration that the pessimists who had proclaimed this upstart nation with its radical notions of democracy and federalism would not long survive, had been soundly proved wrong. We had survived depressions, wars and civil unrest. A president had been forced to resign and we had come face-to-face with the indignities and inequities we had perpetrated against our own citizens. Yet, we celebrated the bicentennial because along with the bad, we could still grasp the good. There was a determination that the wrongs of the past would be righted and that government could be made to live up to the ideals we so proudly proclaimed in the Declaration of Independence and the United States Constitution.

It was in that spirit that the people of North Dakota executed this great act of trust.

Since 1976, many changes have occurred within the judicial branch. Some of them have been of our own making and some of them have been made for us. Regardless of how they were initiated, we have risen to the challenge of implementing them, while never forgetting that the end result of any changes has to be improved judicial service for the people.

When the mantle of administrative supervision passed to the North Dakota Supreme Court, we were a multi-tiered system. There were municipal courts, county justices, county courts, county courts of increased jurisdiction, district courts, and the Supreme Court.

The number of courts, the jurisdictional confusion and the tangle of local court rules and practices are difficult, if not impossible, to imagine unless one practiced in it. Today we have the constitutional court to the Supreme Court and the district court and legislatively created municipal

courts. We have 78 municipal courts and many of them are served by law-trained judges. The simplification of the court structure and the rise of professionalism have done much to improve our citizens' respect and trust for our courts.

We cannot talk about the changes since 1976 without mentioning the reduction in judgeships. As of 2000, we are reduced to 42 district judges. We are feeling the squeeze as our case loads continue to rise. Our latest study shows significant judge shortages in Minot, Jamestown, Fargo, and Bismarck.

However, I do not believe the legislature will necessarily approve additional judgeships based on this study alone. Rather, we will have to illustrate [that] we have put our house in order and made the adjustments and accommodations necessary to make us efficient as the legislature has the right to reasonably expect. I do not intend to make a list or regale you with all the details, but some of the steps we have taken to become more efficient are interspersed in the discussion that follows.

We continue to face hard choices involving location of chambers. Just this year we moved the judgeship from Stanley to Minot. This is not a decision that was made lightly or in haste. However, the sheer number of cases being filed in Ward County, along with the desire to provide a juvenile drug court, required us to move the resources where the need is the greatest.

The caseload management committees in the districts are working on ways to adjust court calendaring practices and judge rotations to better utilize the resources we have. These changes directly impact the law. Your input on these changes and your cooperation in implementing them is essential to ensure that cases are handled timely.

Along with these changes have come changes in the rules and procedures of the court. Consistency and predictability are key factors in building trust in the judicial system. Individual justice for individual cases ought to, in fact, it must, mean that judges are free from any pressure to decide a case in a particular way. However, there is a distinction between rendering a just decision and the methods for bringing a case to court. While individual justice must prevail behind the courtroom doors, the path to those doors should be free from obstacles, well lit, and accessible to all who seek it. It is the purpose of court rules and procedures to insure that [it] is how the public finds it.

Our ongoing committee work, the work of the administrative counsel, and the recent administrative reorganization has this as their primary duty. Our committees could not do their work without the participation of the bar. I thank each of you for your commitment to this process. You give us your

time, your expertise, and your enthusiasm whenever you are called upon. I want you to know that it is very much appreciated.

Working with the members of the bar, we have implemented several rule changes over the course of this past year. We have authorized electronic filing. We have directed the courts to provide web based access to court records. We have provided greater protection for jury privacy. We have revised the Rules of Criminal Procedure. We have mandated greater use of alternative dispute resolution processes and we have created a single comprehensive rule for use of interactive video—where before there were separate orders by district. We are proud of these changes. We believe they will serve the bar and the public very well.

There are two other changes that deserve to be addressed separately. Those are the changes to the Rules of Professional Conduct and the Judicial Code of Conduct.

We have made changes to the Rules of Professional Conduct, the subject for tomorrow's CLE. This is always a difficult activity to undertake. It is our job to protect the interests of the public by prescribing right conduct and establishing standards of performance for the attorneys. We believe these changes were necessary to ensure that the profession continues to be held in the highest regard.

I know that by now all of you are familiar with the *Republican Party v. White*, the subject of yesterday morning's CLE. Given the decision in this case, North Dakota had no choice but to modify its Judicial Code of Conduct. You know by now that I'm very worried about the impact *Republican Party v. White* will have on the judiciary, not just in North Dakota, but also across the United States.

When judges are encouraged to consider politics and personal agendas alongside the law, when special interest groups begin to pour money into supporting judges who openly advocate their cause, when local judges become the targets of national organizations, not because of corruption or misapplication of the law, but simply for daring to apply the law, then an erosion of the trust in the courts, [that] the courts have worked so hard to earn, cannot be far behind. Already other states are seeing millions of dollar judicial races and attack ads sponsored by out of state interest groups. We sometimes lament that North Dakota is slow to respond to national trends. Let's hope that this is one that will pass us by completely. Our judicial races have been marked by civility, dignity, and respect for our opponents. I put my faith in you, the current members of judiciary and the bar, to continue to uphold those values.

I conclude my report today not by looking back to the past, but by looking forward to the future. I am pleased to announce that our Judicial

Planning Commission has been reactivated under the leadership of Justice Crothers. The commission will be studying the administration and operation of our court system and assessing the demands and expectations that court users, the public, the bar, and our sister branches of the government have of the judiciary. It will be evaluating our current level of services and it will be recommending both long- and short-term goals for our future. We are excited to begin these steps on a journey to improved court performance and accountability. We are committed to a judicial system of excellence and I know that with your continued support, we can make it happen.

Thank you for allowing me to appear before you today. I thoroughly enjoy mingling with lawyers. We are part of a proud and noble profession.

PRESIDENT WILLIAMS: Thank you Chief Justice VandeWalle. The next item of business is the Outstanding Chair Award and every year the president of the association has the honor and pleasure of naming the Outstanding Committee Chair. This year, for me at least, the decision was an easy one. When we were setting up the Judicial Additional Selection Task Force, I knew it was going to be an extremely difficult position to fill. On the task force, to start out with, it was a very difficult topic, the problems ran deep and the solutions were not obvious to anybody. On the task force, I was going to put all kinds of people from different walks of life. I actually made the courageous decision to combine lawyers and legislators on the same committee, and when I was looking for somebody to chair that committee, I immediately thought of Jack Marcil and when I called Jack I expected him to resist because, of course, he's very busy and has no time. On top of that, this would be another thankless job that would be difficult to do. And when I called Jack, Jack said, "Sure, I'd be happy to." I didn't have to twist his arm; I didn't have to beg, although with some other volunteers I did beg, but with Jack I never had to. He then took the task force and navigated through some very difficult issues—we'll present his report today—and did an incredible job and so for that, Jack, Outstanding Chair of the Year Award.

The next business item is the Pro Bono Award and those are given annually. Community service comes in many forms. Our association is very proud of the efforts of the Volunteer Lawyer Program and all the individuals who donate hundreds of hours providing free legal time to those who would not otherwise be able to afford our civil justice system. Every year we recognize those individuals who donate an extraordinary amount of time to pro bono cases. This year the top four attorneys contributing Volunteer Lawyer Programs were Bonnie Humphrey with 154 hours, Robert Keogh with 100 hours, Jan DeRemer with 95 hours, and Tony

Weiler with 56 hours. If you would all come to the podium, we have a small gift of appreciation for you.

The gift is actually a chair which allows them to sit and relax a little bit. With the Volunteer Lawyer Program I would be remiss if I also did not thank Terri Molander and Madonna Frier for the work they do every day with the Volunteer Lawyer Program. Terri and Madonna, thank you.

Our next item of business is the financial report and that will come from David Peterson, our secretary-treasurer. David.

DAVID PETERSON: Thank you, Mike. I do also want to second the thank you particularly to Jeannie and to Bill. They keep us on track on the financials and what a job they do.

In your book, following along, there is the section one financial report and this is the audit from 2005, and the part that I want to highlight is down in the second paragraph there. 2005 audit reflects year end assets of \$803,000, up from \$638,000 in 2004. In 2005, the association saw revenue of \$938,000 as opposed to \$805,000 in 2004. Incurred expenditures of \$786,000 as compared to \$855,000 in 2004, for a net increase of \$152,000 for a year end balance in 2005. Our unrestricted general fund assets as of December 31, 2005, were \$237,000 for total net assets in the amount of \$689,000, up from \$536,000 in 2004. What more can be said? That is a tremendous report and I'm very proud of our board and our staff and you when you gave us authority to increase our dues a bit to allow us to be in this enviable financial position.

Other than that, if any of you have reviewed that, I would entertain any questions that you have about that. We are doing some talking in the coming months about a good solid reserve position and how that should be determined. We are going to be talking about the proper application of the client protection fund and later in this meeting we are going to be talking about additional funds for judicial types of initiatives, et cetera. Do you have questions? Thank you very much.

PRESIDENT WILLIAMS: Thank you, David. I'd entertain a motion to receive the financial report. We have a motion. Do we have a second? Hearing any discussion? Hearing none, all in favor. Any opposed? Motion passes.

Our next item of business is the Lawyer Assistan[ce] Program report. Leslie Oliver Bakken. Is Leslie here?

Okay. We'll move on to our next item of business and that's Judicial Selection Task Force report. I would ask Jack Marcil to come forward.

JACK MARCIL: I have often wondered, how do I look up here? I mean, this is really fun. I was telling Mike earlier that if I went to

Hollywood, I couldn't find a better person to be the president of the organization. He is photogenic, no question about it.

On August 26, Mike asked me, he was very concerned about some issues with respect to the recent litigation invalidating certain ethical rules governing judges and judicial candidates, so Mike called me and asked me if I would do this, and I have known Mike for quite a while and I said yes, I will. And I actually really enjoyed working with the people that have been on this task force. It's been a lot of fun. He asked some specific things he wanted us to look at and we did. We've actually met a number of times and he wanted us to look at the role of the judicial branch and the importance of an independent judiciary, review the judicial selection process in North Dakota, and also look at these cases, *Republican Party, Minnesota v. White* and the *North Dakota Family Alliance v. Bader* and evaluate the options we might have in North Dakota, look at other states and see how they elect judges or how they appoint judges and make recommendations and make specific recommendations in North Dakota with respect to anything we think should be changed. So as a result of the work we did, this is all contained within the information you have, we want the State Bar Association to consider and adopt the resolution at this meeting setting forth this association's position on the extent to which the judicial candidate should make pledges, promises, or commitments to the voters and that's outlined in the form of Resolution Number 1. We also asked for governors to approve our report, which we want to submit to the Legislative Judicial Process Interim Committee. The Board of Governors actually did approve that on Tuesday. That is going to be submitted to the Legislative Judicial Process Interim Committee tomorrow in Bismarck. And we're asking the /SPWERPL judicial process committee to propose no immediate legislative changes as a result of the recent cases involved in judicial selection elections, and what we have asked the committee, we want them to continue the present I of the judicial process committee into the next biennium and to pursue a joint legislative state bar association public information and education program, including public forums around the state regarding judicial selection and the conduct of judicial elections. And that concludes my report, Mr. President.

PRESIDENT WILLIAMS: Thanks, Jack. I would entertain a motion to approve the Judicial Selection Task Force report. We have a motion. Do we have a second? We have a motion, a second. Any discussion? Hearing none, all in favor? Any opposed? Motion passes.

Next item of business is the bar foundation report. I would call on Jack McDonald.

JACK MCDONALD: Thank you very much, President Williams. I'm old enough; I don't care how I look anymore. The North Dakota Bar Foundation report is found in your annual meeting minutes material so I won't read it word for word, but I do know that the foundation has two goals: We do raise money and we also direct where the IOLTA funds go, two separate missions in effect.

So the first one, the update on the IOLTA funds, through December 31 of '05, we raised or we received \$89,716.97 from IOLTA funds and that's the interest on the lawyers reserve account. It may be necessary the IOLTA committee, you see on the second page of the report we did give out \$78,989.00 in various projects and awards. And so it does look along with operational expenses that they may have to dip into the reserve fund again. We never saw a reserve fund we didn't like, and we have a goal of getting that reserve fund down as much as we can, so we may have to dip into the reserve fund again in 2006.

There is a list of the awards that we made in the report, you can see.

I do want to thank the IOLTA committee. It's a separate committee from the bar foundation, like a subcommittee. John Petrik from Bismarck is the chairman, Lowell Bottrell from Fargo and Heidi Heitkamp from Mandan are the other attorney members and we have two citizens members, Larry Rolsson and Jill Gackle Denning from Garrison. And I thank them very much for their work with IOLTA.

The other part of the job of the bar foundation is make the awards for the bar foundation. This year we were fortunate enough to have approximately \$46,000, \$49,000, I'm sorry, and we made several awards. One of the things that I think the bar association has been most proud of is that we did establish the Randy Lee Chair for Professorships at University of North Dakota School of Law and we will continue to be funding that. We were told during our meeting about, the bar foundation meeting on Tuesday that the Randy Lee Chair Award is not funded to the same level as the other funded chairs at the law school, so I think in memory of Randy, we'd like to at least bring that up to the same level of the other chairs. So we are going to be going after and getting some funds for that.

The foundation also awarded scholarships to the top four first year law students and also to the outstanding law review article. And I want to thank the bar foundation because after 36 years I finally got to go to a law review banquet and I was able to give that award out. So it was nice to see what the law review looked like from inside. I told Dean LeBel that when I was in law school I was a part of the law school Navy. We just stayed at sea level, and so we didn't have any problems with the law review meetings.

Finally, I do want to do two last things. I do want to thank the members of the Bar Foundation Board of Directors, Ben Thomas, Bob Thomas, Lisa Wheeler, Jack Marcil, Mike Stefonowicz, Paul Richard, Lolita Romanick, and Mike Halpern and Gordy Schnell. We do have some *ex-officio* members, Mike Williams, Larry King and Dean LeBel. I want to thank them for their work.

And finally I would like to ask that you all make sure that you come to our main fundraiser, which is tonight, it's the silent auction, and want to remember that we're not looking for bargains or blue light specials tonight, so get in there and bid up those items because they're all going to go to the bar foundation. Thank you very much.

PRESIDENT WILLIAMS: Thank you, Mac. I would entertain a motion to receive the bar foundation report. We have a motion. Any second? Any discussion? Hearing none, all in favor? Any opposed? Motion passes.

Now the moment you have all been waiting for. The next item of business is resolutions and notices. The resolutions are contained in your packet. There are six. Three of them are resolutions of thanks and I would call on Lawrence King to read those for us.

LAWRENCE KING: Resolutions 4, 5 and 6. What do I look like up there with this sunburned head. Could land a plane coming in here, Resolution Number 4:

WHEREAS, members of the East Central Judicial District and others have put considerable time and effort in the planning and organizing the 2006 Annual Meeting of the State Bar Association of North Dakota, and

WHEREAS, those persons deserve special thanks for their efforts.

NOW THEREFORE, BE IT RESOLVED, that the State Bar Association of North Dakota extends a special thank you to those persons involved in the planning and organization of this Annual Meeting, particularly: members at large, Jane Dynes, Chair, for planning and overall coordination of a multitude of details; Beverly Adams, Crystel Ambuehl, Nancy Morris, Tim O'Keeffe, Stacy John, LaDonne Vik, Leah Warner, Joe Wetch, and Phil Johnson.

And to Margaret Lee, Diane Peterson, and the attorneys and law firms for sponsorships and donations to the North Dakota Bar Foundation silent auction, and to the Nilles Law Firm for financially sponsoring the North Dakota Bar Foundation reception.

Resolution Number 5:

WHEREAS, the businesses and organizations that graciously sponsor portions of the 2006 Annual Meeting and those that participated as exhibitors are:

Sponsors:

ABA Members Retirement Program
Alerus Financial
ALPS
Blue Cross Blue Shield of North Dakota
Botsford & Qualey Land Company
Cass County Bar Association
Eide Bailly, L.L.P.
Kranzler Kingsley/K2 Interactive
LexisNexis
Maring Williams Law Office
Media Productions
Nilles Law Firm
Norman Mark Court Reporting
North Dakota Bar Foundation with a grant from IOLTA
Serkland Law Firm
Starion Financial
United Printing/Spit'n Image
Vogel Law Firm

Exhibitors:

A.B.A. Members Retirement Program
Anne Carlsen Center for Children
American Arbitration Association
Attorneys Title Guarantee
Benefit Specialists
Commonwealth Law Book Company
Guardian & Protective Services
Kranzler Kingsley/K2 Interactive
Lewis and Clark Fort Mandan Foundation
SBAND Volunteer Lawyers Program
Thomas West

WHEREAS, without their participation and financial support, the 2006 Annual Meeting of the State Bar Association of North Dakota would not have been the success that it was.

BE IT FURTHER RESOLVED, that the above be thanked for their gracious support.

And Resolution Number 6:

WHEREAS, President Michael J. Williams and his wife Sherry Williams have served the State Bar Association of North Dakota during the past year at a great personal sacrifice to themselves and their families; and,

WHEREAS, the State Bar Association of North Dakota has been greatly improved and enriched due to their efforts.

NOW THEREFORE BE IT RESOLVED, that the State Bar Association of North Dakota commend President Mike and Sherry Williams for their dedicated efforts.

PRESIDENT WILLIAMS: Thank you, Lawrence. At this time I would entertain a motion to approve Resolutions 4, 5 and 6. We have a motion. And a second? Any discussion? Hearing none, all in favor? Any opposed? Motion carried.

We will now turn to Resolution Number 1 in your packet. In lieu of reading the resolution into the record, I would ask the court reporter be able to print the text of the resolution into our minutes.

RESOLVED: SBANDS POSITION REGARDING EXERCISE OF FREE SPEECH BY JUDICIAL CANDIDATES IS AS FOLLOWS:

On June 27, 2002, the United States Supreme Court issued its decision in the case of *Republican Party of Minnesota v. White*. The Supreme Court held unconstitutional a provision in the Minnesota Code of Judicial Conduct that prohibited a candidate for a judicial office from announcing her or his views on disputed legal or political issues. Simply stated, the Court found that such prohibition violated the free speech clause of the First Amendment. On March 21, 2005, the United States District Court for the District of North Dakota issued its decision in the case of *North Dakota Family Alliance, Inc. v. Bader*. Based upon the same reasoning as set forth in *Republican Party of Minnesota v. White*, the District Court held unconstitutional two provisions of the North Dakota Code of Judicial Conduct. The first provision prohibited a candidate for a judicial office from making pledges or promises of conduct in office other than the faithful and impartial performance of duties in the office. The second provision prohibited a candidate for a judicial office from making statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court. The District

Court's decision was not appealed and is final. Why had North Dakota enacted these provisions? Why does the State Bar Association of North Dakota (SBAND) still believe that it is appropriate to limit some speech by judicial candidates? The SBAND recognizes that a judicial candidate enjoys a right to free speech as does a candidate for any other office. However, judges occupy a unique position in our society, a society governed not by force, but by the "rule of law." Laws are enacted by the majority, but their interpretation and application rests with an independent and impartial judiciary. If you have ever looked at the statue of the Goddess of Justice, she is blindfolded to emphasize this very hallmark of our Courts—the just application of the law regardless of the personal biases of those sitting in judgment. This rule of law commands allegiance from society only if it commands respect, and it commands respect only if it is administered openly, with independence, integrity, and impartiality. Thus, judicial candidates, while free to speak, should speak in a manner befitting the attributes of independence, integrity, and impartiality that we expect of their office. As the largest organization of attorneys defending your individual liberties in this State, we urge you to require that any judicial candidates you support exercise their right of free speech responsibly, by considering whether their speech is consistent with the core purpose of the office sought. The core features of our judiciary are independence, integrity, and impartiality. A candidate for judicial office should make no pledges or promises regarding his or her conduct in office, other than to faithfully and impartially perform the required duties. A candidate should not make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court nor by words or conduct give any indication of personal bias or prejudice. A candidate should not misrepresent his or her identity, qualifications, or present position, nor those of an opponent. Exercise your political power and VOTE—and when you do vote, make sure the judicial candidate you support exemplifies those three hallmarks of justice: Independence, integrity, and impartiality.

The text is in your material and this is a result of the task force work conducted by Jack Marcil and reflects SBAND's position regarding the exercise of free speech by judicial candidates.

We have microphones, I believe, available in order to generate some discussion. I would entertain first the motion to approve. We have a motion to adopt Resolution 1. Do we have a second? A motion and a second. Any discussion? Anybody would like to speak for or against resolution one? Hearing none, all in favor? Any opposed? Motion carried.

RESOLUTION #2, RESOLUTION REQUESTING THE AMERICAN BAR ASSOCIATION TO DEVELOP A PROGRAM TO INCREASE PUBLIC UNDERSTANDING OF THE UNITED STATES GOVERNMENT,

WHEREAS, an American Bar Association 2005 public opinion poll found: (1) Barely half (55%) of Americans can correctly identify the three branches of government; and (2) less than half (48%) of Americans can correctly identify the meaning of the concept of the separation of powers; and (3) more than one-third of Americans (36%) are unable to correctly identify the principle of checks and balances; and (4) less than half (48%) of respondents correctly identified the role of the judiciary in the federal government.

WHEREAS, most states do not include civics or civics concepts in public school curricula; and,

WHEREAS, liberty and our democracy depend on a citizenry that understands and exercises its right to be self governing; and,

WHEREAS, all sixteen states of the Western States Bar Conference on March 25, 2006, agreed that educating citizens about their rights and duties in our democracy is an essential national focus;

NOW, THEREFORE, BE IT RESOLVED THAT: The State Bar Association of North Dakota urges the American Bar Association, in cooperation with the judiciary, state, and local bar associations and civic groups, to develop and implement an overall national strategic research-based framework of sustainable policies, programs, and strategies to address and improve (a) public understanding of our system of government; (b) the role of each branch of government, particularly the judiciary, plays in our democracy; (c) the significance of separation of powers, and the importance of the rule of law.

PRESIDENT WILLIAMS: Moving on to Resolution 2. Resolution 2 requests the A.B.A. to develop a program to increase public understanding of the United States Government. Basically this arises out of the Western States Bar Convention that I attended. The Western States Bar Convention, the Western States Bar Association has literally no authority. They don't have the authority to pass resolutions so the Western States Bar Association saw the need for public education, wanted to suggest to the A.B.A. that they should develop a comprehensive public education program for use in the

states and the Western States Bar Association voted unanimously to ask each participating state to return to their home state and have their whole bar pass this. This will then be passed on to the A.B.A. for ultimate approval at their next annual meeting.

With that background, anybody care to move adoption of Resolution 2? Motion to adopt Resolution 2. And a second. Any discussion? Motion carried.

RESOLUTION #3: SOUTH DAKOTA JUDICIAL ACCOUNT ABILITY,

WHEREAS, an initiated measure to amend the Constitution will be on the November 2006 ballot in the State of South Dakota referred to as the Judicial Accountability Initiative Law (J.A.I.L.); and,

WHEREAS, it is the position of the Board of Governors that this initiative, if passed, would adversely affect judicial fairness and the ability of the citizens of the State of South Dakota to obtain fair and unbiased justice from its court system; and,

WHEREAS, the Board is concerned that if the J.A.I.L. constitutional amendment is passed in South Dakota, a similar initiated measure may be introduced in North Dakota which would adversely affect judicial independence and the ability of the citizens of the State of North Dakota to obtain fair and unbiased justice from its court system, and

WHEREAS, a request has been made by the South Dakota Bar Association for monetary assistance in opposing the J.A.I.L. amendment and the Board believes it is appropriate to assist the South Dakota Bar Association in opposing that amendment.

NOW, THEREFORE, BE IT RESOLVED: The Board of Governors be authorized to distribute to the South Dakota Bar Association an amount of up to \$35,000 to be used by the South Dakota Bar Association to oppose the J.A.I.L. amendment.

PRESIDENT WILLIAMS: Resolution 3 deals with the South Dakota judicial accountability. I would ask at this point in time if Justice Crothers could address some background materials, concerning the judicial accountability as well as other related issues.

JUSTICE CROTHERS: Thank you, President Williams. I have been asked to come here today and explain and not advocate for this resolution. I simply want to provide you with some background. Some background to the background, I have spoken to the In Of Courts in Bismarck and I have

spoken to the In Of Courts in Fargo about this. That's why I have been identified as the person that has to come here.

The South Dakota J.A.I.L. amendment as it's called—by the way, they're marketing it down there as Amendment E. If you hear about Amendment E in South Dakota, it is what used to be the J.A.I.L. amendment. It is self-described as this: "The Judicial Accountability Initiative Law, J.A.I.L. and on their web site, they call it J.A.I.L. for judges. J.A.I.L. is a single issue national grass roots organization designed to end the rampant and pervasive judicial corruption in the legal system of the United States. J.A.I.L. recognizes this can be achieved only through making the judicial branch of government answerable and accountable to an entity other than itself." That's not my interpretation. That is a quotation from the national website.

The J.A.I.L. initiative, or the Amendment E proposal in South Dakota, seeks to achieve this goal by doing the following: They will create a grand jury of 13. That grand jury will have statewide jurisdiction and it will be empowered to hear complaints of perceived judicial conduct, will have the power to strip judges and other governmental officials of immunity from civil liability. This special grand jury will have the power to initiate criminal proceedings against a judge and other public officials and the grand jury will have the authority to the initiation of these proceedings to lead to the judges and other public officials to be removed from office if they have so-called three strikes. That's a very quick outline of the J.A.I.L. amendment.

Now on your tables, you may have seen as I have seen, an amended Resolution 3. My information is that there may be a motion to change, to modify the resolution, and presuming that that is coming forward, let me give you just a little bit of background of why there may be amendments to the resolution that's before the House to consider something going on in North Dakota. And in particular, I believe the proposed amendment will seek to deal with what's called the Family Law Reform Initiative. We don't have a copy of that before us today but if you want to see it is available on the Secretary of State's website. In a nutshell, the Family Law Reform Initiative would require all legal proceedings—as a way of background. This is not a constitutional amendment, this seeks to initiate statutory changes and create statutes. My understanding is that this petition is out circulating for signatures. The substantial difference between a statutory and constitutional initiative measure is the statutory initiative measures needs about 13,500 signatures as opposed to a constitutional amendment that would require double that. This is out for circulation. It would require all legal proceedings be gender neutral, which you will find

many of these things on their face are seemingly innocuous. It would require a jury trial for all actions involving any family right to children, home, or property. It would presume joint physical and legal custody in the event of a divorce in a child custody dispute. It would impose limits on child support and it has a number of other provisions, it goes on for two pages, about what might be done in the family law area.

As concerns us today and as concerns the resolution before the house, the Family Law Reform Initiative contains three provisions. I'm going to read them so that I'm not shading anything and I quote. "All rights for children, parents and married persons listed in the North Dakota Century Code shall be hereby enforceable as a private right of action against any person or governmental official or the state of North Dakota in either state or federal court against whomsoever denies these rights."

Another provision, and I quote, "Any state or local official or court or state funded agency who knowingly discriminates shall enjoy no immunity from either personal, criminal prosecution or civil suit and the statute of limitations on all such actions shall be six years."

Another provision in this initiative, and I quote. "Where child visitation or support is ordered, the courts and the states attorney must enforce it. Where they deliberately refuse to do so they shall enjoy no immunity from either prosecution or civil suit by the denied parent or affected child. Any state or local official found to have violated these rights shall be referred to the proper authority for proceedings to remove them from office."

Those are the two provisions that I believe will be discussed subsequently, and I thank you, Mr. President.

PRESIDENT WILLIAMS: Thank you, Justice Crothers. Before we proceed, I have one house cleaning measure. That is in lieu of reading Resolution 2 and Resolution 3 into the record because they're in your packet, I would ask the court reporter to put the text of each resolution preceding the discussion of each. Thank you.

So we have Resolution 3 on the floor. Is there a motion? So we have a motion to adopt Resolution 3. Is there a second? We have a motion and a second. Discussion? Mikes are available.

MR. MARING: Thank you, Mr. President. Resolution 3 was discussed by the Board of Governors some time ago because of a concern that it would, the J.A.I.L. amendment, would adversely affect judicial independence and that if South Dakota's action was successful—this mic sounds terrible to me. Does it sound all right to everybody else?

If the South Dakota J.A.I.L. amendment was enacted that North Dakota would be the next place that the people pushing that initiative would move. And the thought was at the request of the South Dakota Bar Association

that they wanted to help raise money to try to fight the amendment and to oppose it, and requests had been made on many fronts and one of them to us to help financially. Knowing that it is a departure in general from how the Bar Association usually spends its money, we considered the fact that it would be important for this resolution to become a resolution before the general assembly as compared to the Board of Governors simply making, taking an up or down, yes or no vote on this particular issue. And so that's why the resolution has come before the body of general assembly at this point.

Since we started talking about the J.A.I.L. initiative in this resolution, there has been a concern that the initiative that Justice Crothers was just talking about, the Family Reform Initiative, and the Shared Parenting Initiative in North Dakota, also have raised concerns about judicial independence and a tax on judicial independence from the standpoint of removing immunity for judges and others involved in the system and also from the standpoint of the many situations just being bad initiatives, and so a discussion has entailed and come forth from the members of the board about whether or not if we are going to consider some type of financial contribution to organizations that are involved in fighting what we consider to be a tax on judicial independence that we might well want to broaden the resolution so that it does not only involve the South Dakota J.A.I.L. amendment but also would involve these North Dakota initiatives if that was deemed appropriate by the Board of Governors, and so at this point, Mr. President, I'd like to propose an amendment to Resolution Number 3, and copies of that amendment, I believe, are on the tables here in the general assembly, and the amended Resolution Number 3 entitled Initiated Measures reads,

“WHEREAS, various initiated measures will be on the South Dakota ballot and may be on the North Dakota ballot in November of 2006; and,

WHEREAS, it is the concern of the Board of Governors that these initiatives, if passed, would adversely affect judicial fairness and the ability of citizens of the states of North Dakota and South Dakota to obtain fair and unbiased justice from its court systems; now,

THEREFORE, BE IT RESOLVED: The Board of Governors be authorized to spend an amount up to \$35,000 to be used to oppose these initiated measures.”

And at this time, Mr. President, I would move that resolution 3 be amended and substituted by amended resolution number 3.

PRESIDENT WILLIAMS: We have on the floor a motion to amend resolution 3. Is there a second? We have a second. Do we have any further discussions?

DAVID PETERSON: I rise in support of the amended resolution, but I also would like to just talk briefly about the financial aspect of this resolution. The resolution asks for a contribution from our association of \$35,000. Everyone asks where does that come from. You've heard our report earlier in the meeting concerning our 2005 enviable audit position. I would also say from the latest information we have through April 30th, our income projections, our actual income for 2006 above our budget was at that date \$24,000 ahead. Our expenses are down \$46,000 from what we had budgeted and so we have a net plus side to our budget for 2006 of approximately \$70,000 above and beyond what we have budgeted.

The point of my comments there are there are no existing expenses or planned expenses that will be jeopardized by one dollar by your approval of this amendment to the Resolution 3. I feel confident that the Board of Governors will properly allocate the funds that you authorize today, if you do.

A couple other comments about the Amendment E, or the J.A.I.L. initiative, that I thought I would bring to you, and I take this information mainly from a report, the *Nevada Bar Journal*, this amendment is being brought forward by a minister from California who has been a frequent unsuccessful litigator in the state and federal courts, and assistance with a star of a local KNPR radio show in southern California. The question was asked why didn't they do this [in] California, because they love amendments and initiated measures in California. The answer was they did try, but they could not get nearly enough signatures in California to get it on the ballot, so they found a state that requires about one fiftieth of the number of signatures to get this measure on the ballot and that turned out to be South Dakota. And so that's where they gathered the signatures, in South Dakota, to get it on their ballot this fall and Reverend, I'm sorry, Reverend Branston, the minister that initiated, has been quoted in several publications that said if we are successful in South Dakota, then we will seek other enlightened jurisdictions to bring this initiative in the future years. So I would state that I don't think our responsibility in this area stops at our borders. It is in South Dakota now. It could be in North Dakota tomorrow. Sometimes that argument has been used in connection with an unpopular war in the early 1960s, but this is different. We have, quoting another movie, "a clear and present danger" here. So I would urge passing of this as amended because when the board talked about it we thought we were just dealing with South Dakota. Now we have two very other initiatives in

North Dakota that I think need our attention and so I would urge passage of this amendment, Mr. President.

PRESIDENT WILLIAMS: Thank you. Further comments?

JAMES HILL: Mr. President, I stand somewhat reluctantly to oppose the resolution. First of all, I adamantly oppose the J.A.I.L. initiative, and Justice Crothers and I have had many conversations about it and how to attack it and how to focus on the issues. I'm equally disgusted with what's happening with the Shared Parenting initiative. The Board of Governors has focused on those. We are looking at those and we actually have a task force focused on what we can do with Shared Parenting initiative. We are looking at the possibility of joining a coalition of forces within the state to deal with that issue. We have a lot of resources that we can bring to the forefront here in North Dakota. But I fundamentally have a real problem with essentially allocating \$35,000 for potential movement to a fund in another state.

We stood before this general assembly not long ago to tell this assembly and its membership that we needed money for the programming in North Dakota to enhance what we were doing as an organized integrated bar association. We find ourselves in a very positive financial position much because of a change in our Executive Director and our leadership that he's shown to us. But the reality is we are down at least one level position in his office. He has been here slightly more than a year. We are going to see a lot of things happening in the next year or so. But I have a fundamental problem with getting money based on promises to this membership that we have a lot of programming, we needed a dues increase to facilitate and finance those issues and one year later we are going to move \$35,000 potentially to the state of South Dakota.

I have another fundamental problem with taking dollars and moving them through our system down to another state when I question whether what we have are now deemed to be state dollars as a matter of law. We have had some recent attorney general's opinion relating to open meetings and whether or not we become an entity under state law, which is required to have open meetings in the open meeting section of the law. And the Board of Governors has believed that, in fact, we do by virtue of the character of the money going in and coming out. I have a real concern as to whether or not we can take those dollars and send them across the border to another state that are, in fact, state funds.

I believe that we have to ground this with sound fiscal responsibility. We have to bind our actions with what we believe to be legally appropriate conduct and we have to ask ourselves if this \$35,000 is going to be the key or lynch pin to a South Dakota measure. The numbers in South Dakota

they're talking about are over a million dollars to fight this. They raised those funds already. \$35,000 is a nice gesture but I don't think it's going to be the swing vote in what's going to happen.

Finally, my last concern is we are going to see later this year, if the resolutions, if the initiative measures do get the required signatures, a Shared Parenting initiative. They are going to be on the ballot. We are going to be looking again to our association to see what kind of efforts we can bring to bear on that issue. I suspect that our incoming president, Mr. King, is going to be looking at task forces. They're going to focus on what we can bring to bear on this issue. It is going to be a costly venture just to bring the task force together. This is something I think is important for the focus of our attention, but I do not believe that this is the appropriate mechanism and I will vote against this resolution.

PRESIDENT WILLIAMS: Further discussion. Go ahead, Sandy.

SANDRA TABOR: Sandy Tabor. You know it's not often [that] Jim Hill and I agree on things, but this time I am standing up, first of all, with a question to either David or yourself about how you now plan to allocate the \$35,000. Originally, I mean, the amount of money hasn't changed so I am kind of wondering how much is going to go to South Dakota and how much is staying here? The reason I ask that question is exactly the point that Jim made. I happen to be working with the group and there are several of us in the room who are working on how to deal with the two new initiated measures which, as everybody knows, they're trying to get appropriate signatures on. If they do get those signatures this is going to be no easy task for this state and I am really kind of wondering how it is you're going to allocate this money, so they don't short ourselves and our own problem.

PRESIDENT WILLIAMS: Quick answer to that, Sandy, would be that the money would be allocated in the discretion of the board. The Board of Governors would sit down and make a calculated decision as to how that, up to 35, it may end being less, but how that would be allocated. That decision has not yet been made.

SANDRA TABOR: When does South Dakota want their money?

PRESIDENT WILLIAMS: South Dakota, my understanding, is they do not want it before July 1, and they would accept it any time then between July 1 and November 3, I believe.

SANDRA TABOR: So it's conceivable that you will be sending the money to South Dakota before we even know if they have enough signatures to put those two measures on the ballot in North Dakota.

PRESIDENT WILLIAMS: I doubt that.

SANDRA TABOR: You won't send it before?

PRESIDENT WILLIAMS: I can certainly speak for myself in that I would not recommend that we send any money before we determine what our needs are here. I believe that we'll know on the initiated petition sometime in August as to whether they will be on the ballot in North Dakota.

SANDRA TABOR: September 3.

PRESIDENT WILLIAMS: Is it September 3? I thought it was late August, but by September 3 we should know and at that point my expectation would be that the board would make a decision.

SANDRA TABOR: Well, I'm very concerned about sending money to South Dakota. I understand that they have their own issues, but we very well may have our own issues up here and I think at this point, prudent thing to do is keep our money in our state and worry about the problems that we're going to be facing shortly.

PRESIDENT WILLIAMS: Thank you. Further discussion? We had one over here.

PAUL LEBEL: Thank you, Mr. President. I rise in support of amended Resolution Number 3, and more specifically as support of the inclusion of South Dakota within the scope of the amendment. By curious coincidence, David Maring, Jim Hill and I are the same age. In spite of what we have in common, there are some important differences. Obviously, some of us have aged better than others. But a more informative difference may be that I grew up in the south in the 1950s and 1960s and during those years, there was an important struggle for recognition of the rights of all people. Those were not fights that were Alabama fights or Mississippi fights, they were American struggles. I think the initiative measure in South Dakota is the single greatest threat to the rule of law in this country today. It's not a South Dakota fight, it's an American fight, and I think SBAND would be proud to be identified as part of the effort to preserve the rule of law in this country as we know it. Thank you.

PRESIDENT WILLIAMS: Thank you, Dean LeBel.

MAUREEN HOLMAN: I also would like to support the motion to amend. I have some reluctance on the original resolution because of all the money going to South Dakota. However, for the second motion I think it's vitally important that we give the Board of Governors the ability to decide how they want to try best how to fight some of these initiated measures. I have spent some time looking at the family law initiative. It's frightening. But I'm also concerned about what's going on in South Dakota and having served on the Board of Governors, I know how they really tried desperately hard to do the right thing, so one time I will disagree with Sandy, which I don't often do. I would trust the Board of Governors to do a good job of assessing where the money should go. If we need all of it here, fine. If we

need to split it between the two states, I think I agree with Dean LeBel that's a real concern we should have as to what's going on in South Dakota. I would support amending the resolution to give the Board of Governors the option to do both.

PRESIDENT WILLIAMS: Thank you. Further discussion.

JASON VENDSEL: Jason Vendsel. And I am in opposition. I guess my first question, do we have to vote to get the amendment so we know what we are discussing?

PRESIDENT WILLIAMS: Initially the vote will be on whether to permit the amendment and then the second vote will be on the merits of the motion itself.

JASON VENDSEL: My vote will actually be different. Once we reach

—

PRESIDENT WILLIAMS: I'm not surprised.

JASON VENDSEL: I will vote in favor of the amendment, but then I will oppose passing the resolution ultimately. My concern, Dean LeBel indicated this, is America's fight and I don't disagree, this is very bad legislation. No one disagrees with that. But if it's America's fight, we have the American Bar Association; perhaps this group should pass a resolution encouraging the A.B.A. to get into this fight. If it's America's fight, which I agree, let's get America's bar association to do it. North Dakota's Bar Association is for the North Dakota foundation, and I'm very concerned about the precedent that could be created by giving money to other states for their fights.

There was a legislation in Florida a couple years ago I would be more than happy to spend SBAND's money to oppose. We didn't and I would thought it was inappropriate then, too. I think the precedent of sending money out state is bad. And I would oppose it.

PRESIDENT WILLIAMS: Thank you. Further discussion.

MAURICE MCCORMICK: Now I know why you think it's bad. On the resolution I have a question on North Dakota. This sounds to me like some person who was disappointed with their own domestic litigation and is now pushing through something and I'm wondering, in the past, have we just allocated money to oppose these type of measures in the bar association and then spend it, so that what we're proposing, at least in this amendment, is to continue that or is this something new?

PRESIDENT WILLIAMS: This is a new issue. I don't believe we have a precedent.

MAURICE MCCORMICK: There is a pause, sorry. Then I oppose the amendment because I don't think we have done anything and I didn't think we'd have done anything had those resolutions just been coming through

initiated measures for the type of statute that they're trying to amend and I think the people of North Dakota are going to see it for what it is. I think what is going on in South Dakota is a totally different issue. And that's an issue that they could have brought in North Dakota and it was somebody from California that's doing it. It's not generated from the state of South Dakota. That is something somebody from outside came into South Dakota, looked at a small state, said we can get a small number of people to sign this, we can get it on the ballot and we can pass it down there and go to other places. I think what's going on in South Dakota is our fight here in North Dakota. I think we ought to support giving them the money. Thank you.

PRESIDENT WILLIAMS: Further discussion before I entertain the question?

HERBERT MESCHKE: May I inquire. Can we put a limit on what the bar can spend in North Dakota in the event that eventually develops? It says up to. That seems to me that [it] is limiting what the bar, Board of Governors can do to oppose a North Dakota initiative.

DAVID MARING: I think that's correct that it would limit what the Board of Governors could do. Again, the reason why this was brought before the general assembly today is that we had not been involved in this type of contribution to opposing legislation, initiated or otherwise, or in the past. We thought it was such a significant issue, at least I have, to say we can now know there is a divided board on this issue, but even though the board was divided, the vote was to bring it before the general assembly so it could be discussed. And our concern is that if we said it was an unlimited amount that we would have opposition from people by not having some type of an upper boundary on it. Frankly, it probably would be better based on the fact that we don't know if these initiated measures are going to get on the North Dakota ballot or not. If they do, we are going to have to react before there is another general assembly meeting, and if our position is that we cannot allocate money as a board to something like this without having the permission of the general assembly, then it might make sense to remove the limit. There is a limit right now and that would limit our activities as I see it.

PRESIDENT WILLIAMS: Further discussion?

SANDRA TABOR: Just a point of clarification, Mr. President. Judge Hager and I were just talking about the constitutional initiated measure that occurred a few years ago which provides a safe harbor for judges who are appointed so they don't have to run for re-election immediately. I think to suggest an issue like this has never been brought before the membership is probably not quite correct. While we weren't opposing it, we certainly not

only supported it, but we supported it actively. In that initiated measure there were no limitations placed on the amount of money that the bar could spend on that in-state activity. So if that helps anyone. This type of thing has come before the membership before. We were supporting something rather than opposing it.

PRESIDENT WILLIAMS: I think, Sandy, your sense of history on that issue is probably better than mine, but as I recall there wasn't a direct financial contribution. We put energy and effort into the fight, isn't that correct?

SANDRA TABOR: There was no direct financial, there was, nobody got money, but that was because we were leading the charge and all the activity, all the expenses were expenses that were incurred by the association.

PRESIDENT WILLIAMS: As I understood the question, the precedent we were seeking was a contribution of a monetary contribution so I saw that as being slightly different. In any case, any further discussion. Mr. Wolf.

ALBERT WOLF: I'm not sure this is the smartest procedure that's being used here to accomplish what's being accomplished, what you're trying to accomplish. Right now, as the record stands, we have a Resolution 3 before the body with this proposed amendment. Resolution 3, I assume would favor the proposals that have been read about supporting the South Dakota move. I would think we should vote on that resolution and kill it and demonstrate a clear vote without getting involved in the conflicts of which way we are going to go with this thing, with how we oppose it or how we spend money. We should clearly defeat that resolution as it is there, been presented, and then deal with this proposal separately. It seems to me that we are getting three different things put together at one time here and it becomes confusing as to who you're going to vote for, and when and what your voting for. I think, frankly, I was going to say I think that vote against the original resolution although it doesn't really carry capital punishment without appeal, the way they're proposing that new law, so it's not all bad, I guess. The point is that I think that we should, I would propose, Mr. Chairman, that we would vote on the resolution as it originally was presented and kill that and demonstrate universally, hopefully everybody would vote against it so we would show we oppose that idea in South Dakota and the resolution in North Dakota and deal with how we're going to deal with it.

PRESIDENT WILLIAMS: Procedurally, we do have a motion to amend with a second on the floor. I would defer to our parliamentarian.

JUSTICE CROTHERS: The other issue, if we presume Mr. Wolf's suggestion, is the implication of the bylaws. My understanding, of course, the body can overrule whatever I come up with here, but my understanding is that any resolution brought before the annual meeting must be published some numbers of days before the annual meeting and so if the Resolution 3 is killed and not amended, I believe any subsequent resolution introduced at the session from the floor would not be properly before the body.

ALBERT WOLF: I anticipated that observation. I think in substance this resolution is so far beyond what the other one was, we are spending money and there was nothing in that resolution. It's a new resolution anyway. So I think that we are really creating something entirely new by wording the rules that would prevent us from presenting a new resolution now or by amending it so it's a new substance in the resolution as it really is.

ALEXANDER REICHERT: As I understand it, the board has the authority and the power to do anything we want on this, unless the amended resolution passes. The reason that we brought this before the body was because we were having some difficulty among the board deciding whether or not it was appropriate and, at least my strong feeling was [that] I wanted to get a sense of how our membership felt on spending this money. So unless the amendment passes, we are still free to spend \$10,000, \$20,000, \$70,000, depending on what the membership directs us to do. But if we are limited by the amended motion, then of course, we can't spend any more, which concerns me greatly, because as to the family law initiatives, I don't know how much we would have to spend and obviously we would look to our membership. You would be free to call us and talk to us and tell us what you think that we should spend, but I don't want to be in a position where we have spend \$50,000 and we can't do it, because we are limited by this amended resolution. Thank you.

PRESIDENT WILLIAMS: Thank you. Hearing no further discussion—we do have further discussion.

SHERRY MILLS MOORE: Here is my concern. On the initial Resolution 3, I was with Alex and the rest of the board and wanting to get the membership's input on whether or not we should send our money out of state to support the J.A.I.L. amendment. I do not want to be bound by the amended resolution when it comes to our in-state spending. Now they will be all grouped together. I do not want to see this amendment passed, because I do not want the board of governors to be restricted in what they can do on the Shared Parenting Family Law initiative work. It says expend, it doesn't say contribute. So in the one case, the J.A.I.L. amendment we're asking the membership if it's appropriate to contribute to another organization up to \$35,000. In the case of the Family Law initiative and the

Shared Parenting, this would restrict it to expend, so if we needed to send the chair of the subcommittee to Grand Forks to speak on a radio station, we wouldn't be able to do that. I don't want to see us tied in that manner so I'm going to vote against this amendment. Not because I don't want to be able to have the board spend money on dealing with that, but because I don't want us to be tied. Then I think the question is on number 3 and I want to know what the membership thinks about spending money in South Dakota. I don't like how they have been jumbled together.

PRESIDENT WILLIAMS: Several moments ago we had a question called and I will now call the question. The current vote is on the amendment and the current vote is simply to permit the amendment of Resolution 3. All in favor. All opposed. Mr. Parliamentarian.

JUSTICE CROTHERS: It can be done by hand or standing.

PRESIDENT WILLIAMS: Okay. How about all of those in favor do cart wheels and those that are opposed do flip flops. No. Perhaps what would be easiest for counting purposes is for those who are opposed, let's send you to the right to this side of the room. For those of you who are in favor move to my left. Okay. We can do that. All those who are in favor, I will need some help counting, all those who are in favor of the amendment please rise. And remain standing.

Thank you. Be seated. All those opposed to permitting the amendment, please rise. He voted twice, that's why I had to ask.

The motion is defeated. So the motion to amend is not permitted.

I do have one comment before we vote on the resolution itself and I understand that the resolution now is simply to permit a contribution to South Dakota, and as I understood most of the objections to the amendment on the merits were that we did not want funding from North Dakota to go out of the state. My concern is that now that we have defeated the amendment which would permit us to spend up to \$35,000 on the North Dakota initiative and the South Dakota J.A.I.L. program, the question would be for the board of directors and that is does the defeat of the amendment preclude us then from taking any action relative to the North Dakota initiative. The minutes should reflect an overwhelming no to the question that I have raised and I'm pleased with the answer.

LAWRENCE KING: Mr. President, I wanted to brief speak in favor of Resolution Number 3 in relation to South Dakota and I would echo Dean LeBel's comments. This is not simply a South Dakota issue that we can ignore. I mean, this is coming out of California and South Dakota is a test ground, and very likely we are the very next entity to have them try to push that. I think for us to artificially say this is a South Dakota border there, therefore it somehow doesn't affect us when it is a significant and

unbelievable attack on the judiciary I think is really closing our eyes to our responsibility in relation to it.

In addition, we can spend \$35,000 now and actually assist it. We are not going to have to spend a significant amount more when it comes to North Dakota.

I agree this is not going to make or break South Dakota's budget. It will assist them. They're actually trying to generate two million dollars to counter this. The suggestion was that well, the voters will figure this out. I tend to agree. However, the polling shows right now that that would pass in South Dakota on a three to one basis. If the public is educated about the actual affect on the judiciary, it would fail three to one. So they need to have this support in order to help facilitate the education of the public regarding the effect of it. I would urge support of Resolution Number 3.

PRESIDENT WILLIAMS: Any further discussion?

CHERYL BERGIAN: I am Cheryl Bergian and I finally figured out what concerns me about these initiated measures and that's that the process short circuits the ability of the decision-making people, in this case the voters, to become informed about the effect of the initiated measures and that's why the J.A.I.L. amendment is so concerning. It's because the people who are behind it will see it means something and we need the voices saying it really means something else. That's why I urge this body to contribute to the South Dakota effort to inform the voters so they really know what the effect of this initiated measure will be if it passes. Thank you.

MARK BRING: Mr. President, Mark Bring of Grand Forks. We heard from Jill Hill, Jim Hill, rather, a moment ago, and he raised a concern about whether or not funding to South Dakota is in fact legal and whether or not an attorney general opinion would be advisable and I'm wondering if there is an opportunity to request that at some point in time even if this resolution is approved today.

PRESIDENT WILLIAMS: I'm sure that there would be.

MR. BRING: As an organization, we shouldn't be doing something that wouldn't be permitted under North Dakota law and if we do pass the resolution, we possibly would have an opportunity to first seek an Attorney General opinion.

PRESIDENT WILLIAMS: I'm sure since the issue has now been raised before any contribution is made, legality of it would be fairly researched. Any other?

MR. MARING: Mr. President, in March of 2006, I was at a seminar in Phoenix and listened to Sandra Day O'Connor talk about judicial independence and the attacks on judicial independence and a gentleman named Mike Loos from Sioux Falls got up and during the question and answer

session and was saying, Justice O'Connor, we have this problem in South Dakota, we don't know how to deal with it. If the lawyers take a strong stand, the public might react against us. We don't know what to do. She stopped them. "Don't tell me that. You know what to do. Do what's right." That's what we have to do. Thank you.

PRESIDENT WILLIAMS: The question has been called. This is for a vote on the merits of Resolution 3. All those in favor. Opposed. Motion carried.

I'd like to point out one thing. This is an issue that's a very difficult one and difficult for our board. Because it was difficult for our board that's why we wanted to bring it to the general assembly and I personally appreciate greatly the way the differences were handled both in front of our board and here today. We showed a great professionalism and respect for each other on a very difficult issue and that's a tribute to all you here. Thank you.

The next item of business involves memorials. And it's appropriate at this time to take a moment to remember our colleagues and our colleagues who have died since this time last year and that's June of 2005 through June of 2006.

Our members are:

Gilbert Nessel

Mart Vogel

Floyd Forsgren

Donald Crothers

Jack Thorsen

Tom Conmy

Frank Foughty

Terry Devine

Jim Wentz

Dean Lenaberg

John Zuger

Wally Russell

Robert Brady

I would like to repeat just a few lines contained in the eulogy delivered by the late Matt Murphy in speaking of the passing of a country lawyer:

"Warm summer sun

Shine friendly here

Warm western wind

blow kindly here

Green sod above

Rest light, rest light

Good night, old friend
Good night, good night.”
(Brief moment of silence.)

Thank you. Our next item of business involves elections. We will now conduct the election for president-elect and A.B.A. delegate. We are operating under an absentee ballot procedure. We will not have open nominations from the floor except for those candidates who have in fact filed nomination petitions as required. We will have a short nominating speech for the candidate who filed a petition for the president-elect and A.B.A. delegate. At this time, the chair would recognize Sherry Mills Moore to nominate David Peterson as president-elect.

SHERRY MILLS MOORE: Thank you. I have the honor of nominating David Peterson for president-elect. David has been on the board as a member, as a district-elected member for several years and now is secretary-treasurer. What I'd like to tell you about David is that he is almost unique on the board in his calmness and his patience and his thoroughness. He's a voice that we need. The board usually meets on Saturday mornings and we start at 8:00 or 8:30 and by about 12:30, when we are getting to the last agenda items, people are starting to pack and starting to get their briefcases together and starting to look at their watches and checking out the sports schedule to get out the door and we get to the end of the agenda and David says, "um, um, just a minute, I have a few more things we need to go over." And he says remember that flurry of e-mail. Whatever happened on that and where are we on this and he's absolutely invaluable on the issues of financial matters. And maybe it's one other further comment on his character. He is, his daughter is buying a house in Colorado and recently she has been consulting with David on the documents she has been getting on the purchase agreements and she said after he had gone over them with great care to her mother, she said, "you know, when you talk to dad it's so helpful, but you have to retrain your brain to listen." And this is good for the association to have somebody who's that good a listener and that is that careful a person so I would nominate David Peterson.

PRESIDENT WILLIAMS: Thank you, Sherry. Is there a second? Any discussion? Hearing none, all in favor. Any opposed. Motion passes unanimously. Our congratulations to you, David. Our new president-elect.

Would you like the floor, point of personal privilege, or you can wait.

DAVID PETERSON: This won't be long. I want to personally thank Sherry for those very kind words and all of you for your confidence in me. You know when you join an organization like that, I had been on the ethics committee for nine years so I saw some of that and how professional those

debates took. And when you listen to these debates today, how professional it was. It makes us proud to be here and I appreciate your confidence in me. You won't be disappointed. Thank you.

PRESIDENT WILLIAMS: Thank you, David. Chair recognizes Becky Thiem to nominate Jim Hill for A.B.A. delegate. Becky.

REBECCA THIEM: Thank you, Mike. I am pleased to nominate Jim Hill, or Jill Hill, which we will start calling him from now on, as A.B.A. delegate. I'm also here to quash—and you can't see a thing from the podium. I don't know how you guys can stand it. I'm also here to quash an ugly rumor that's been circulating ever since Jim was nominated and received the Eighth Circuit Professionalism award for the Inns Of Courts. I know Judge Hagerty was involved in putting together that nominating process and received some lovely letters, which I was able to look at. But some of them were very strange. The comments that were received from a couple of people, which I won't name any names here, because I have to question maybe a little bit their professional ethics here, is that one of the qualities they liked about Jim and why he should be nominated for this award is he lost cases with such grace and dignity. We'll see how he does today. But I have to tell you that's not been my experience practicing with him for almost 25 years. Losing with grace and dignity, I have to give a little talking to a couple of those nominees.

What I can say about Jim and why he won that Eighth Circuit award, there is nobody who cares more about lawyers, cares about the bar association and you all know he's not an A.B.A. delegate because he wants to go rub shoulders with the mucky-mucks of the A.B.A., it's because he wants to represent North Dakota at the A.B.A. and he also wants to go to all those Board of Governors' meetings for some strange reason. He really cares about this association, so I am very pleased to nominate him. He's a great lawyer, a great partner and a great member of the bar association. So with that I nominate Jim Hill.

PRESIDENT WILLIAMS: Thank you, Becky. We have a second. Any discussion? All in favor of appointing Jill Hill, also known as Jim Hill as our A.B.A. delegate. Hearing none, motion carries unanimously.

At this time it gives me great pleasure to turn the gavel over to your new president. Lawrence King.

PRESIDENT KING: He really was wielding this well. All I want to say is Mike really has done an exceptional job this year. He leaves tremendous shoes for me to try and fill. All I can do is I will pledge to try my very best. With that, meeting adjourned.

NOTARY REPORTER'S CERTIFICATE

I, Douglas T. Ketcham, a Notary Public within and for the County of Cass and State of North Dakota,

DO HEREBY CERTIFY: That said business meeting, consisting of eighty-two (82) pages of typewritten materials, was taken down by me in Stenotype at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I FURTHER CERTIFY that I am neither related to any of the parties or counsel, nor interested in this matter directly or indirectly.

WITNESS my hand and seal this 5th day of July, 2006.

Douglas T. Ketcham, Notary Public
Fargo, North Dakota