



2001

## Proceedings Of The One Hundred First Annual Meeting Of The North Dakota State Bar Association

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

OFFICERS

DANIEL J. CROTHERS ..... President  
GARY LEE ..... President Elect  
TIMOTHY HILL ..... Secretary-Treasurer  
LESTER H. LOBLE II ..... Immediate Past President  
CHRISTINE HOGAN ..... Executive Director

PROCEEDINGS

June 14, 2001

PRESIDENT LOBLE: It is a little after 3:15 and I would like to call the 2001 Annual Meeting of the State Bar Association of North Dakota to order.

Ladies and gentlemen, will you please stand? If any of you have a hat, would you remove it? The Presentation of the Colors by the North Dakota 41st Air Force Junior R.O.T.C. commanded by Cadet Captain James Conyers, accompanied by First Lieutenant Zachary Johnson, Cadet Chief Master Sergeant Donald Clemson, Cadet Technical Sergeant Maggie Jordahl.

Please join me in Pledge of Allegiance.

Thank you. Let's give them a little round of applause.  
(APPLAUSE)

PRESIDENT LOBLE: A few housekeeping measures. As is the tradition, Ralph Erickson will be parliamentarian, and the proctors for the counting of the ballots will be Allen Hoberg, Dave Peterson, Paul Richard and Mo Holman. As you know, we are for the first time this year having our voting by absentee as well as in person.

At this time I would like to call upon Steve McCullough to welcome everybody to Fargo. As Steve comes to the front, I would like to take a moment to express my appreciation and gratitude to everyone in the local committee, including Steve and Bernie Reynolds, Jack Marcil, Phil Johnson, Mike Williams, Brenda Foyt and Anna Frissell. This is a big job and it takes a tremendous amount of time and energy, but we surely appreciate your willingness to help. (APPLAUSE)

MR. STEVE McCULLOUGH: I won't take a long time. I didn't do anything. In fact, this is the sum and substance of what I am doing. Bernie and Jack and Phil and all the other people, they did all the real

work. Welcome to Fargo. We are glad to have you. We wish we could have you every year but we don't. I am sorry we didn't have better weather for you for the outside events but, oh, well, that happens. The Red Hawks game didn't work out. That happens. We are glad you can all be here. Welcome. (APPLAUSE)

MR. DANIEL CROTHERS: Good afternoon. As a first matter, there are annual meeting materials over here on the chair up front. If anybody needs some, let us know and come up and get a pile or we can distribute them. Does anybody need them? Can a couple of you come back and get those?

Ladies and gentlemen, it is my profound pleasure to introduce your president, Les Loble. This is his time to address the membership but I wish to say a few words first. Mr. Loble has served this Association with distinction over the last two years; the first year as president-elect, the second as president, both years on the Board of Governors. As you know that takes a tremendous amount of time and I want to thank him for it.

Les comes to us from Helena, Montana where he was raised with a family of lawyer and judges. He practiced in the family law firm first until moving to Bismarck to become vice-president and general counsel of MDUE Sources Group. Not only has Les served his employer well and this Association with distinction, Les was recognized in 1999 by 11,000 of his corporate peers when he was the recipient of the Excellence Award given by the American Corporate Counsel Association. And unlike some of us in this room, Les has a life outside of work. Among other things, Les has been instrumental in establishing a sheltered workshop for the developmental disabled. He is an emergency medical technician. He is a licensed Montana outfitter and leads week long backpacking trips into the Montana outback. He has done much more, but this introduction is about to get longer than Les's speech. With that and no further ado, please welcome Mr. Les Loble. (APPLAUSE)

PRESIDENT LOBLE: Thanks, Dan. Chief Justice VandeWalle, members of the Supreme and District Courts, judges, Association members, welcome.

I thank you for the opportunity I have had serving as your President. As Dan said, my wife, Terye, and I arrived with carpetbags in hand fourteen years ago from that land of sheep and nuts the west. We didn't know what awaited us. All I knew I was leaving the family law firm behind. Terye and I had both been born and raised in Helena and our family stretched back literally generations, but as anybody from North Dakota could have told us, we were welcomed and welcomed with

warmth. Terye and I agreed years ago that this was the best decision we ever made and the best move we could have made.

Last Sunday, I decided I had become a true North Dakotan when I read former Lieutenant Governor Ohmdahl's column in the Bismarck Tribune. He said that the U.S. Commerce Commission was investigating whether or not it was a violation of the constitution for Montanans to be so insulting to our state. He said living next door to Montana was insult enough, and I thought, yes!

Two things struck me when I became active in Bar Association activities fourteen years ago. The first is the refreshingly high level of participation in bar activities by the North Dakota Supreme Court and trial courts of this state. The bench and bar relationship is much better than the states to the west. The second thing I noticed was the contrast in arguments before the Montana Supreme Court on the one hand and the North Dakota Supreme Court on the other. The Montana Supreme Court was so dead you wondered if there was life behind that bench. The North Dakota Supreme Court was so alive that you wondered if you should wear a flak vest. Both courts have moved from these extremes and I believe to the improvement of both.

Because I moved from private practice to an in-house position, I did not have the chance for professional interaction with North Dakota bar members. That is why I particularly enjoyed my past year when I have traveled to Williston, Dickinson, Devils Lake, Fargo, Lamoure, Grand Forks, and Bismarck and have met so many of you.

As I complete my term I would like to give you a few statistics of the extraordinary level of participation in bar activities by North Dakota lawyers. We have about 1,860 members of the bar. We have twenty committees and eight sections. Of those twenty committees and eight sections there are 631 positions. In other words, about one-third of our membership is committed to bar activities. I think that is a remarkable testament to the commitment of North Dakota lawyers to their profession. I don't have the same kind of hard statistics on our service to the public, but at the lunch today we saw seven outstanding examples of lawyers who give public service to their communities. Wherever you go, whether it is to your church, your service club, your children's schools, programs for homeless or disadvantaged, you find members of our bar serving in unpaid positions. I believe that our profession contributes more in unpaid time to these types of activities than any other profession. One of my fantasies was, and I got this idea from a meeting I was at a couple weeks ago in Medora, that I mentioned if our cities having full-page newspaper ad at the top of which says, "This is what North Dakota lawyers do for you" and then listing every

association and activity that a lawyer serves on, and I think it would be an impressive list and impressive testament to what we do in our communities.

I always give talks to fifth graders every Law Day in Bismarck, and I just generally pick a school at random at which I am going to talk. And after I pick my school—I was running with Dan Kuntz from Bismarck. Dan Kuntz, again public service, serves on the school board at Bismarck, and I mentioned which school I was going to speak at and Dan said, that's probably our toughest school. That particular school has the highest level of poverty among the population it serves. The population it serves is the most transient in our community. It has the highest level of minority students. When I went there, I spoke, and all I can say is if those well-mannered highly intelligent youngsters are the worst that Bismarck and North Dakota have to offer, we can be mighty proud of that town and our state generally.

As I mentioned in my last bar column, the happenings in my term, for the first time in ten years, the president of our bar was the chancellor of the Jack Rabbit Bar Association. I love the way chancellors roll so easily off the tongue. The last one was Dewey Kautzman, but way back in the history of the Jack Rabbit Bar Association my father was chancellor, so it was nice to be the second generation. The Jack Rabbit Bar Association is a group of small bars that comes from states in which there are jack rabbits. It's—it was held in Medora, and it is an interesting experience because unlike the states of California, Oregon, and Washington that might be in the western states bar conferences, these bar associations are small like ours, and it is interesting to get together with the presidents and president-elects and other members of those bars to see the problems they have, which are much like ours, and how they are facing them.

Another thing that happened during my term, which I can't take credit for, is that the legislature wisely increased the judges' and justices' salaries. In Bismarck we successfully hosted a Meet Your Judges public forum at which we had a member of the Supreme Court, member of the federal district court and member of the state district court, a city judge and a tribal court judge in a forum in which about 250 people were able to ask whatever questions they liked of what judges do. I am told that Fargo, while unable to have done that for the Law Day celebration, is going to do it later this year.

Our Executive Director, Sandi Tabor, left after eight years of excellent service to the bar and started a new career with our new Attorney General Wayne Stenehjem as his chief of staff. The bar then hired Christine Hogan, a trial lawyer from Bismarck, to take Sandi's place.

You can see how well at first crack out of the box it is that the transition has been made and how well this particular function has been run. I can tell you that Christine spends a lot of time on your bar activities. The reason I know that is because Christine and her husband, Larry, and I are neighbors and they live about four, five doors down, and during her—since she has been with us since January I haven't any compunction of calling her at home, and when I call her at home they simply say she is at the office.

Under Christine substantial enhancements have been made to our website and production of the Gavel and creation of those publications has been moved in-house. And as I said in my last Gavel article, the stock market has moved back into bull territory and I take credit for that as well!

It has been my pleasure to serve with your new president, Dan Crothers. Dan is a focused and intelligent man who is going to serve you well. I don't know how many of you are car buffs or watch on television where they have those drag racers that are basically huge engines on wheels and they, of course, have only ever one quarter mile to achieve speeds of 200 or 300 miles an hour. As they come to the line with these roaring high-powered machines, the drivers deliberately spin those great big racing slicks to get them hot so they have a lot of traction. For about the past month I have been hearing the Dan Crothers racing slicks spinning in traction so he can be a quick off the mark. Enjoy the annual meeting and tonight's banquet and continue to go forth and do good works. (APPLAUSE)

**PRESIDENT LOBLE:** Thank you. As I mentioned and as everybody in this room knows, Sandi Tabor served our organization with honor and integrity for eight years. Today we would like to recognize her and ask her to come forward. Sandi, you are way in the back so you better make your way forward, and we would like to give her a special plaque for her dedicated service to this Association as Executive Director. (Presentation)

**PRESIDENT LOBLE:** Before I give Sandi the opportunity to talk, I am going to tell you something. When she was still Executive Director and I wanted her picture to be in the Gavel, she made sure it didn't. So we had to wait until afterwards and got control of the publication and, of course, the final thing is we have a picture of Sandi. On this plaque—let me read it to you. “Sandi Tabor, Executive Director, State Bar Association, North Dakota, 1992 to 2000. Sandi Tabor's years as Executive Director of the State Bar Association will, I predict, come to be known as the Tabor era, an era that will serve as a benchmark by which we will measure the quality of future bar executives. We are a better association,

a better profession because of her efforts—Jerry VandeWalle. For Sandi Tabor’s efforts the association is well positioned to deal with the future issues that will challenge the profession—Paul Richard, who was our last president. The association and all of its members have been extraordinarily well served by Sandi Tabor,” and that is my quote.

Sandi, if you would like to say something, the podium is yours.

MS. SANDI TABOR: Well, I am touched and honored and humbled, and contrary to what Wayne just said and Jim Hill said, I am actually surprised. You know what, the Bar Association has meant a great deal to me and I left it with great excitement because I knew that I was entering a new phase of my life and given a new opportunity, but I also recognized that that opportunity was given to me by all the people that I worked with at the Bar Association and all the doors that they opened for me. So thank you very much. And for all of you who are wondering, I love my new job!

Thank you. (APPLAUSE)

PRESIDENT LOBLE: During my term as president, I have had occasion on several different times to meet with the Chief Justice VandeWalle. As I said, the level of bench and bar relations is superb in my belief and I have to say that the door was always open. He always had time for me and I was also graciously received. And now is the time for Chief Justice VandeWalle to deliver the State of the Judiciary message. (APPLAUSE)

CHIEF JUSTICE VANDEWALLE: Thank you, President Loble, and officers of the State Bar Association and fellow members of the North Dakota State Bar Association. Thank you for again giving me the privilege of speaking with you about the state of the judiciary.

As has been my practice, I wrote a message and it’s reproduced with reports in a booklet that will be handed out at the end of the meeting. I am not going to read that message to you. I ask that you do read it and particularly the reports that are in it.

I do have some brief comments to share with you, however. There is a not so flattering old Russian proverb that says, “Tell God the truth but give the judges money.” Well, I assumed the legislators tell God the truth. They did give the judges the money this year. (APPLAUSE)

CHIEF JUSTICE VANDEWALLE: And I—that is thanks in great part to the support of the State Bar Association. It kicked off a year ago with Ralph—Judge Erickson’s report, your resolution and the activity of many of the members. That hard work, Ralph, did pay off, and because of his exhortation, the efforts of the judges themselves, I do thank all of you, and I want to thank particularly Les and Chris and Sandi and two members of this Association that served in different capacities but are

members of this Association, Senator David Nething, the chair of the Appropriations Committee, and then Senator Wayne Stenehjem, now Attorney General Wayne Stenehjem, who by the way gave Sandi the best job that there ever could be. I held it at one time. No wonder she likes it so well. And Wayne gave us the opportunity to start it off with a hearing before his committee, and I really think it did snowball with that. And I do thank you for your efforts.

A little report on what's happening. The Clerk of Court—we assumed the Clerks of Court from eleven counties on the 1st of April. It is on track.

The legislature really was very good to the judges this year and to the judiciary, not only in salaries; they did not cut our budget except in the area of restitution which was—is something we are going to be studying anyhow. They held us at the same level on that so we can handle it. But they were very good to us. They did fund the Clerks of Court for the next biennium, and I look for a very successful takeover, if you will—I hate to use that word—but takeover of the Clerks of Court. Restitution will remain the same; in the counties as it is now. It is going to be studied this summer.

Drug courts are up and running. The teen court evaluation, and I read it just before I came to Fargo, Dr. Kevin Thompson is doing it. Justice Maring has been spearheading that effort. The evaluation report looks excellent. The recidivism rate is considerably less than the control group they are comparing it against. Adult court, which is operating in Bismarck, we have not yet seen the evaluation. It hasn't been running that long. Antidotal evidence, however, is very positive.

As you know, I have told you before, I think we need to expand the drug courts. I have been worried about judge time and whether we have the judicial resources to staff those drug courts. Perhaps I need not worry as much as I have been about it because the truth of the matter is that our case filings are down. They are not down substantially but they are down, both at the trial court level and at the Supreme Court level, and those case filings statistics are in the report that will be handed out to you.

What else has been going on? ADR took a great portion of the judge's time, Supreme Court Justices' time this past year. We did adopt Rules 8.8 and 8.9 which hopefully will accommodate your major concerns as well as ours. They provide that court-sponsored settlement conferences and domestic relations mediation are the primary form of ADR offered by the trial courts. The rules encourage the use of the private market. They establish a sliding fee scale applied to court-sponsored mediation and domestic relations cases. The rules also



establish a roster of neutrals for civil arbitration and mediation and domestic relations mediation from which to select. And those of you, if some of you are interested in on that roster, please contact Keith Nelson, the State Court Administrator.

Finally, the ADR rules establish a joint committee with the bar and the court. That committee has been appointed and it is chaired by Becky Thiem.

We have also adopted some other rules. 8.4 of the Rules of Professional Conduct states that it is professional misconduct for a lawyer to knowingly manifest the words or conduct in the course of representing a client bias or prejudice based upon race, sex, religion, national origin, disability, age or sexual orientation except when those words are legitimate advocacy because these are issues in the proceedings. The Gender Fairness Implementation Committee have helped us focus on our need to improve in these areas. We have improved. We can and we must do better. We still are seeing examples of it. We are hearing antidotal stories of it. We are seeing some written examples of it and briefs filed with the Court, and we still are hearing it sometimes, not often, but occasionally in oral argument. The rule, I think, underscores the concern with which the Court views its activity.

Another rule that drew considerable comment, and we have not acted on, is Rule 7.3 which would govern direct contact with a client. And we had a great response on this rule, both pro and con; mostly con, I might add. The Court has determined to wait until the Ethics 2000 Commission of the ABA, chaired by Chief Justice Norm Veasey of Delaware, has come out with their final report and final action by the House of Delegates, and we want to look at what they have done, and we want to look at the resource that has gone into this area.

And, finally, Administrative Rule 44 which establishes an informal, confidential, non-confrontational and educational method for addressing complaints or concerns about judges and judicial employees of the state judicial system, this has been a longtime goal of mine. It has been a longtime goal of some of the members of the bar. Judge Hagerty will be in charge that committee, and it will be—we still have one lay member to appoint. And as soon as that lay member is appointed, that committee will become operational.

Other things I think this group needs to be concerned about, and I know you will be hearing about it later, and that's multi-jurisdictional practice. It continues to be a big, big issue. In February I spoke before the Multi-Jurisdictional Practice Commission in San Diego. I spoke not in the capacity as Chief Justice of the State of North Dakota or as the President of the Conference of Chief Justices but rather as Chair-elect of

the Council on Legal Education. The questions were interesting. Although I told them I was speaking only in the capacity as Council Chair-elect, I got some questions that permitted me the opportunity to emphasize some of the concerns that I think the smaller states such as North Dakota have concerning the viability of the bar association, the ability to finance the disciplinary system and some of those issues which those people that are on that commission that are concerned with international law don't even think about when they are advocating free practice across the jurisdiction. As most of you know, I am—will be ending this year my term as President of the Conference of Chief Justices. It has been a great ride. It has been an opportunity to represent North Dakota and talk a little bit about North Dakota. There is—it is some work but a lot of perks. I sat by the Chief Justice Rehnquist at a dinner last fall and he immediately started to talk to me about Judge Burdick and Frank Jestrab and the Uniform Laws Commission. He has a good memory. I also was privileged to speak at the ICM graduation, Institute for Court Management graduation, at the Supreme Court a couple weeks ago. Justice O'Conner was in the audience. She talks to them a little bit, and contrary to the advice of my colleagues, I did tell her the butthead joke. She took it very well, and those of you from Bismarck know what it is about.

On August 1st of this year our—August 2nd I will assume the Chair of the Council on Legal Education, and that's the group that Dean Davis was talking to you about this morning. That is an accreditation agency of the ABA. I will also tell you right offhand, right off the bat, that we have very, very strict rules on recusal, so I am totally shielded from anything to do with the University of North Dakota Law School because I am a graduate of that law school.

I want to thank you for your support of the judicial system, not only for the judges' salaries but more importantly for your efforts on the court committees, the bar committees and the joint committees as well as the disciplinary committee and the inquiry committees. You contributed a tremendous amount of time that is not compensated in dollars. I hope there is other compensation. We often forget to thank you for those efforts and we may at times appear ungrateful and even adversarial. We are not. We are appreciative. Without your efforts, efforts over and above your representation of clients, this judicial system of ours simply would not work as well as it is. And I thank you. (APPLAUSE)

PRESIDENT LOBLE: Thank you, Chief Justice VandeWalle.

Every year the president has the honor of and pleasure, as a matter of fact, of naming the Outstanding Committee Chair. This year I am very pleased to recognize and nominate LaRoy Baird from Bismarck for

his service on the Volunteer Lawyer and Lawyer Referral Committee. Because I practice in Bismarck I have known LaRoy for several years. Since he served as Chair, I am informed that there has not been one meeting where something significant for the Volunteer Lawyer program or the reduced fee program has not been accomplished. The committee continues to work on drafting written guidelines and policies for the priority cases and LaRoy has been diligent in working towards that goal. As Chair, LaRoy not only keeps the meetings on track, but he makes it enjoyable for his committee members to serve on the committee. I learned that from Cheryl Tryhus who serves as staff to the committee. LaRoy does much more than just serve. He is also an active participant in the Volunteer Lawyer Program. He serves our association and public well by accepting pro bono and reduce fee cases. Unfortunately, LaRoy cannot be here today because our colleague in Dickinson, Dave Senn, suffered a massive stroke and LaRoy is in Dickinson with his friend, helping Dave, but I would like us all to give a round of appreciation for LaRoy as Outstanding Committee Chair. (APPLAUSE)

PRESIDENT LOBLE: Community service comes in many forms. The Association is very proud of its efforts of the Volunteer Lawyer Program and all of the individuals who devote hundreds of hours providing free legal time to those who otherwise would not be able to afford our services. Every year we recognize a group of individuals who donated an extraordinary amount of time in pro bono cases. This year four individuals donated over 100 hours on pro bono cases. I am not sure if all four are here or not, but as I read your name, if you are here, would you please come up? Duane Schurman, Kristen Pettit, Doug Sletten and Gary Ramsey. (APPLAUSE)

PRESIDENT LOBLE: In addition to these individuals, we have three more individuals who have gone really above and beyond. Robert Hoy volunteered 118 1/2 hours. Izzy Robertson and Mel Webster each donated 121 hours. Are any of those individuals with us here today? Would you come forward, please. (APPLAUSE)

PRESIDENT LOBLE: Thank you, Mel. We will now hear the Financial Report from our Treasurer, Grant Shaft.

MR. GRANT SHAFT: For the benefit of the members who are attending their first assembly, if you want to slip out for a break, now is your chance!

This is the financial report for the year 2000-2001. Before I begin my report, I would like to point out that a copy of the Gavel article concerning the 2001 budget and 2000 audit are located behind the general assembly tab in your Annual Meeting booklets.

The Board of Governors was pleased with the findings of the 2000 audits which gave us a clean opinion on all statements. I am happy to report that we continue to avoid spending more money than we generated, and I understand that's a good thing. The 2000 management letter contained the annual note regarding the small size of the office staff; however, the auditor assures us that the staff is doing everything possible to segregate the accounting functions.

The 2000 audit reflected year-end assets of \$648,265, including \$297,974 in restricted cash assets, \$35,356 in equipment, and inventory of \$16,049. The restricted cash represents money held by the Association for the sections, the volunteer lawyer program grant, lawyer discipline, client protection fund, and other public education grants and the CLE Commission.

Our overall fund balance as of December 31st, 2000 was \$597,234, \$299,260 of which were unrestricted funds and \$297,974 of which represented restricted funds. The unrestricted fund balance, or the Association's general fund, gained approximately \$30,388 in the year 2000 which is consistent with figures from the last few years, although a rebate was paid in early 2000 which reduced last year's net gain to \$4,000.

During the year 2000 the Association generated \$527,755 in unrestricted revenues and \$305,256 in restricted revenues, for a total of \$833,011, which is up slightly from last year. At the end of 2000 the lawyer discipline account had a balance of \$43,310. It is expected that much of that fund will be spent by this time next year. The unrestricted portions of the license fees in the year 2000 equaled \$300,513, or 57 percent of the total unrestricted revenues.

Our total expenditures of \$774,227 included administrative expenses of \$498,817; disciplinary expenses of \$130,998. Included in the administrative expenses were CLE seminar costs and office overhead. The disciplinary expenses do not include the cost associated with the inquiry committees.

With that brief overview of the 2000 audit, I would like to now turn our attention to the 2001 budget. Our overall projected revenues for 2001 are \$798,285, which is one percent than the 2000 budget. Reduction in the projection is attributable to the decrease in expected CLE income and in grant funding for special programs. Unrestricted license fee revenues represent thirty-seven percent of this figure. The portion of the license fees restricted to the disciplinary program is projected to total \$114,000 for 2001. The client protection fund will also receive restricted license fee monies of \$36,000. Other sources of revenue include CLE seminars, the annual meeting, and the volunteer lawyers program.

Our total projected expenses for 2001 are \$785,455, a twelve percent increase over the 2000 budget. In addition to salaries and employment taxes, other expenses included in this projection are expenditures associated with the operation of the CLE seminars, the annual meeting, and the volunteer lawyer program. Our goal is to insure that these programs are self-funding. If, however, we continue to seek budget surpluses, the Board is considering the possibility of providing CLE to our membership at a lower cost even if that means the CLE programs may not be entirely self-funding.

The Board is pleased with our operations to date this year, and we hope to be able to continue to present favorable financial reports in the years to come. Thank you. (APPLAUSE)

PRESIDENT LOBLE: The next item on the agenda is the Foundation report, but before we take that up, I think it would be appropriate for us to take a moment to remember our colleagues who have passed away since this time last year. So I'll ask you all to please rise.

Since we last met, the following members of our Association have passed away: William Paulson, Alan Larivee, Orville Schulz, James Lamb, John Amundson, Judge Eugene Burdick, Alan Warcup, Tom Smith, Judge Douglas Heen, John Schneider, Robert Johnson, Harold Anderson and Arley Bjella.

I would like to repeat 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—good night, old friend, good night, good night." Thank you. Will you please be seated?

Next on the agenda I would like you to welcome the president of the North Dakota Bar Foundation, Mary Maichel Guler.

MS. MARY MAICHEL GULER: Thank you, Mr. President.

The North Dakota Bar Foundation was formed as a non-profit corporation to fill two roles. Our first role is to administer the IOLTA program, the Interest on Lawyers Trust Account program. The funds collected in this program are used to first provide support for civil legal services for the poor; second, to provide public education about the law; and third, to improve the administration of justice.

As of December 31, 2000, there were 407 IOLTA accounts in eighty-eight financial institutions across North Dakota. In 2000 the program generated \$131,572.54 in net IOLTA revenue, which was up from \$118,970 in 1999. One significant development that I have to report is a decision by US Bank to waive its maintenance fees on its lawyer trust accounts. And because US Bank holds approximately percent of these

accounts in our state, we project that this decision will result in an additional—about an additional \$2,000 each year for the IOLTA program.

How were the funds from the IOLTA program distributed in 2000? Legal Assistance of North Dakota received the lion's share. They received \$84,000. The Volunteer Lawyer Program received \$44,540. The Migrant Legal Services received \$3,500; for a total of \$132,040 being distributed to legal service providers.

In addition, we distributed a total of \$16,219 for other programs, including the Statewide Planning Process, law-related education conference, publishing of the "Graduating Into an Adult World" brochure that is distributed to seniors in high school, and the People's Law School which was held at four universities across our state and was broadcast by video from NDSU to Williston this year.

You may also be aware that there is a lawsuit in Texas challenging the IOLTA program. The assertion is that the Texas program constitutes a taking of private property for public use without just compensation which is a violation of the Fifth Amendment. The U.S. District Court has dismissed all of the plaintiffs' claims with prejudice finding that no taking occurred and that the Texas IOLTA program did not violate the plaintiffs' First Amendment rights.

The plaintiffs have appealed the District Court's decision, and several groups, including the American Bar Association, have filed amicus briefs in support of the Texas IOLTA program. On February 6, 2000, the Fifth Circuit Court of Appeals heard oral arguments, and the case is now pending a decision. All states are anxiously awaiting the outcome of this decision, and we will continue to keep you posted on any new developments.

As I mentioned at the beginning of my speech, the Bar Foundation was formed to fulfill two roles, the first being the administration of the IOLTA program. The second role we fulfill is that of a public service function. In this role we use the money that we raise from our membership dues and from our silent auction to try and accomplish three things: First, to recognize and support programs that improve the level of legal education and lawyer standards; second, to protect and preserve North Dakota legal history; and, third, to encourage public service by lawyers and those involved with the justice system.

Since the Bar Foundation was formed, we have saved a modest amount of the funds that we collect each year from our membership dues and silent auction and other fund raising events which we add to an endowment fund that we have gradually built up over all these years. For example, during the year 2000, of the monies we collected from our membership dues and our silent auction, we gave away eight-nine

percent of those funds in the form of grants. The other eleven percent we used to pay our expenses, and then the balance left over was added to our endowment fund.

Our goal is to grow our endowment fund, and eventually we would like to use the net income that it generates to help fund some of our grants and programs.

The Board of Directors took a significant step in developing and adopting a long-term investment strategy for this endowment fund at our December 2000 meeting. Up until that time we have invested our endowment money in savings accounts and certificates of deposit. But in December, after analyzing responses to a request for bids from investment companies, the Board decided to invest \$125,000 of its endowment funds with Edwards Jones. The remainder of the Bar Foundation monies, which includes IOLTA monies, will remain invested in checking, savings accounts and certificates of deposit.

As I have explained, the Bar Foundation has consistently distributed most of the funds it raises every year, and some of the funds that we have given out are contained in our membership brochure which will be available at our silent auction this evening. You are welcome to take a look at that for some examples, but there is one program that I wanted to bring to your attention, and that is a program that was developed this year for Law Day by Alice Senechal and Tara Muhlhauser. They developed a set of curricula that was targeted to middle school and junior high school students, and it was designed to inform the students about the juvenile justice system. This curricula is available to local bar associations, and we want to encourage each local bar association to apply for funding from the Bar Foundation to put on these educational programs in our schools. And, remember, this project doesn't have to wait for a Law Day celebration. It would be an appropriate project at any time during the school year for your local bar. Also, if any of your local bar associations have any other program that they would like to sponsor, please apply for a grant.

I want to touch on membership. During these past years we have been fortunate to draw the support of 236 members, and we would like to keep increasing that number. If you are not a member, we would ask that you join. We have various membership levels ranging from \$25 a year to \$500 per year, and, again, they are outlined in that membership brochure. If you are nearing the end of making installment payments toward one of our membership categories, we ask that you continue sending your annual donation to the Foundation and we will simply move you up into the next giving category.

Aside from our membership dues, our other big source of support is our silent auction which will be held tonight from 6:30 to 7:30 in the Sterling Room here at the Holiday Inn. Please make it a point to attend this event and don't be shy about bidding. It is a really fun event.

Finally, I would like to thank my fellow board members and recognize them today, many of whom are here: Dan Crothers, Jeremy Davis, Gerald Galloway, Todd Haggart, Mike Halpern, J. Phillip Johnson, Les Loble, Jack McDonald, Lolita Romanick, Robert Thomas, and Lisa Wheeler.

Also I want to extend a special thanks to Christine Hogan who is our Secretary-Treasurer and keeps our Foundation running smoothly. Thank you. (APPLAUSE)

PRESIDENT LOBLE: Thanks, Mary. As she said, attend the silent auction and bid high.

We are now at the resolution section of the agenda. There will not be a joint—a report on the Joint ADR Committee because Ms. Thiem, the chairperson, could not be here. All the resolutions are in your general assembly book and extra copies at the door, I believe, have been handed out.

One procedural point as in the past years is a matter of courtesy for the benefit of our court reporter, please state your name for the record when you make a motion or speak regarding an issue. Also before we debate a resolution, I will call for a motion of action on the resolution, so please be prepared to bring the motion to the floor.

At this time I will entertain a motion to dispense with the reading of all of the resolutions, including Resolutions 2, 3, and 4 which thank the sponsors, exhibitors, and local committee members. Could I have a motion?

MR. JAMES HILL: Move it.

PRESIDENT LOBLE: So moved by James Hill.

PRESIDENT LOBLE: Do I have a second?

MR. DEL ROLFSON: Second.

PRESIDENT LOBLE: Second; Del Rolfson.

Thank you. I will call for a vote on resolutions 2, 3, and 4 if there is no discussion. All those in favor, say "aye." Opposed? No.

The motions have passed. The only substantive motion this year relates to multi-jurisdictional practice. You will find it in your booklets as Resolution 01-01. Is there a motion on that resolution?

MR. HILL: Move it be accepted. James Hill.

PRESIDENT LOBLE: Do I have a second?

MR. JEREMY DAVIS: Second.

PRESIDENT LOBLE: Seconded by Jerry Davis.



Is there any discussion on the motion. Mr. Crothers?

MR. CROTHERS: President, I would like to speak just briefly on this motion and more by way of explanation. Chief Justice VandeWalle has told us the multi-jurisdictional practice issue is among us. It is being discussed at literally every level of the organized bar, and it is now time for North Dakota to become involved in that process in a visible manner. Thus far it has been discussed at the Bar Association level. We need now to take it to the membership through a task force, and so I stand in support of the motion. The idea is that the task force will look like this. ABA Commission is now in the final process of conducting hearings. By November of 2001 the ABA Commission on the multi-jurisdictional practice will be issuing a preliminary report. That report will be discussed at 2002 mid-year meeting, and somewhere in the spring of 2002, the ABA task force will be issuing its final which will be considered by the House of Delegates of the ABA at its 2002 Annual Meeting.

In order for us to participate in this process in a meaningful and official manner, we need to get our task force, have them study the issue, hopefully come to a resolution of the position of this Association. We want to appoint the task force, have it study the issue, gain input from you, the membership, and report to the Board of Governors for the spring of 2002 so we can come back to the Annual Meeting in 2002 with a resolution and final report of the task force for approval up or down by the membership. That is what this is directed at. And I ask your support of the resolution.

PRESIDENT LOBLE: Thank you, Mr. Crothers. Seeing no further discussion on the motion, all those in favor say "aye." Opposed? No.

We will now conduct the election for president-elect and secretary-treasurer. This year we are operating for the first time under our new absentee ballot procedure for election of officers. We will not be having open nominations from the floor except for those candidates who have been nominated because they filed signed petitions by the deadlines. We will have short nominating speeches for those two candidates who filed petitions for the office of president-elect: Gary Lee and Grant Shaft.

I will tell you that the absentee ballots which were received at the Bar Association headquarters were brought here and will be counted with the other ballots which will be voted in this room in a few minutes and the proctors will count all sets of ballots. Obviously if you've sent in an absentee ballot, you don't get to vote again today. The chair recognizes Orlin Backes.

MR. ORLIN BACKES: Was I supposed to nominate?

PRESIDENT LOBLE: Do I have the wrong—

MR. BACKES: I am happy to nominate.

PRESIDENT LOBLE: Was it Dick Olson? Sorry.

MR. RICHARD OLSON: Usually I am confused with Dick Olson from Grand Forks, so—confusion as to who I am, I guess, kind of reigns.

In any event, Mr. President, I am pleased to be here to nominate Gary Lee for president-elect. One interesting fact about Gary Lee is that he was a former varsity swimmer when attending UND, and if you know Gary, you would find that unusual today.

Gary graduated from UND, both in the undergraduate and law school level. He has got a family consisting of his wife, Margaret, his son, Charlie. In 1980, Gary was admitted to the bar of North Dakota, joined the Attorney General's Office, and apparently he didn't think that was the most wonderful job in the state because two years later he went into private practice in Minot. And he has been in private practice since 1982. As an attorney, Gary's forte, his desire, is to be in the courtroom. If you have been in the courtroom on the other side of Gary, you will know he is well prepared. He does his arguments well. He is a gentleman as he does his job. One of the concerns I have as a partner of his, he is kind of—he does all types of cases. He does—he defends a lot of people I don't like coming into our office, but then a lot of his clientele doesn't get to our office because they are in jail when he starts with them and thankfully most of them stay there later on.

Gary not only does criminal law. He does family law, domestic relations. Once in a while we hear the door slam in our office. He does all types of tort law. He does both sides, the plaintiff side, the defense side. As a bar member and as an occasional courtroom participant, I think it is good to have a president-elect who is familiar with the courtroom and the problems we lawyers face in the courtroom. Gary has been in all courts in our state, and I mean all; all the way from the municipal courts to the state district courts to the federal courts. He has been to the tribal courts, and he has got interesting stories to tell about those appearances. He has been to St. Paul to the Eighth Circuit. He has been an active litigator. Gary has also been active in bar activities, including the CLE Commission for more than six years. He has been involved in the Client Protection Fund and the Board of Governors.

What's interesting is in both Gary's pursuing the Board of Governors—and that is sort of the wrong word because a number of lawyers in our district came to Gary and asked him to pursue that spot of the Board of Governors, and the same thing happened again this spring. A number of lawyers came to Gary and requested that he run for president-elect. He is—I guess we could call him a reluctant candidate, and I think we want someone who will serve us well but not necessarily someone that wants to serve just for the sake of having that job one time.

Gary knows the problems we face as lawyers in the courtroom. He knows problems that we face as private practitioners. As we talked about the multi-jurisdictional issue, disciplinary issues and other issues, it seems like the private lawyer in the private firm, sometimes we feel we are almost extinct animals or they want to make us extinct. Gary knows the problems in keeping law firms viable. Gary is a good listener. He is a hard worker. He will work to address our issues aggressively. Please elect Gary president-elect of our bar. Thank you. (APPLAUSE)

PRESIDENT LOBLE: Thanks, Dick. And I know I am right this time because I happened to discuss with Phil Johnson that he is going to give the nomination for Mr. Grant Shaft. Phil, please.

MR. JOHNSON: Did you have anything else you want to say, Orlin?

Good afternoon.

I want to welcome all of you here to Fargo, the land of the monsoons, and I am pleased to rise to place in nomination the of Grant Shaft who would be the 102nd president of the State Bar Association of North Dakota.

We don't have very many families in North Dakota that have three generations of lawyers. The Shaft family is one of the few. Not many of you would remember Harold Shaft, but I have enough gray hair so that I do have some distinct memories. Harold graduated from UND School of Law in 1921. He practiced law with Usher Burdick who would become United States Congressman. He moved to Grand Forks and practiced law then with a former Congressman O. B. Burtness. Harold became a fellow of the American College of Trial Lawyers, served in the ABA House of Delegates and became North Dakota's first member of the ABA Board of Governors. Harold's son, John, graduated from UND Law School in 1952, entered practice with his father and Paul Benson who would later become United States District Judge.

John Shaft was a dedicated member of the Real Property, Probate and Trust section and became a fellow of the American College of Trust and Estate Council. So Grant Shaft is the third generation of lawyer servants and dedicated public servants in North Dakota, and he has followed the family's tradition of professional service. He was a little better informed than his predecessors in that he went to Arizona State University for his undergraduate degree. In case you haven't noticed, the weather is somewhat better down there. But he graduated from UND School of Law, and after graduation from law school Grant served in the North Dakota legislature from 1986 to 1990. No doubt he set the precedent for the excellent reception our judges have received more recently in the legislature. I believe—isn't that true?

MR. SHAFT: That's true.

MR. JOHNSON: Grant presently serves as Secretary-Treasurer of our State Bar Association and a member of the Board of Governors. He has served on the CLE Committee, the Client Protection Fund and the legislature committees of the State Bar and also has served as Chair of the Real Property Probate and Trust Section, one of the few really solvent sections in the State Bar Association.

So I submit that Grant has both the heritage and the personal commitment to serve our bar association very effectively, and I urge your vote in support for Grant Shaft as president-elect of the State Bar Association of North Dakota. Thank you. (APPLAUSE)

PRESIDENT LOBLE: Thank you, Phil.

Could my four proctors come up here and get the ballots and hand them out, please? And as soon as they are voted, we will give to the proctors the absentee ballots which were retained at the SBAND office, and then they can go out in the hall and count the votes.

Has everybody voted? The proctors will count the votes.

This is the first year we have skipped the seconding speeches, and I was thinking of you for those of you here last year, or when I was nominated, between Jim Hill and our seconder, I thought I was going to be the first one that was going to lose an uncontested election, but you know Dick Olson did a pretty good job of walking both sides of the street, I thought, since there was only one of them!

We have one more vote, one more office to fill, and that is the office of the Secretary-Treasurer. And I got to find my place. We are not accepting floor nominations for the office of Secretary-Treasurer except for the one whose petition was filed. We have one candidate and that was Mr. Tim Hill. The Chair recognizes Steve McCullough to nominate Mr. Hill.

MR. McCULLOUGH: I'll be real short again since this is uncontested. I just wanted to tell you I have known Tim Hill since we both graduated from UND in the eighties and we were both a lot thinner and he had a lot more hair. He will make a great Secretary-Treasurer, and for you guys out west that don't know Tim, what I can tell you is he is no Jim Hill! (APPLAUSE)

MR. McCULLOUGH: I would place the name of Tim Hill for the nomination of Secretary-Treasurer.

PRESIDENT LOBLE: Thanks, Steve, since no other person filed for the position of Secretary-Treasurer, nominations are now closed. And since we only have one person nominated for that office, I will entertain the motion to suspend the rules and elect Tim Hill by

unanimous acclamation for the office of Secretary-Treasurer. May I have a motion, please?

MR. DAVIS: So moved.

PRESIDENT LOBLE: Who was that?

MR. DAVIS: Jeremy Davis.

MR. ROLFSON: Second.

PRESIDENT LOBLE: All those in favor say "aye." Opposed? No. Tim, congratulations. (APPLAUSE)

PRESIDENT LOBLE: While we are waiting for the ballot counting to be finished, it is my pleasure to turn the non-existent gavel over to Dan Crothers and let his broad shoulders undertake the next year's work.

Thank you, Dan. (APPLAUSE)

MR. CROTHERS: Thank you. Usually the incoming president speaks when everything is done and people are leaning on their chairs heading towards the door. I have the privilege of waiting for the ballots to be counted for the president-elect, so everybody shouldn't be on the edge of the chairs. However, I won't abuse it.

Mr. Chief Justice, Members of the Supreme Court, District Court judges, lawyers, colleagues, friends, thank you. Thank you for the honor of electing me your president. I look forward to serving in that capacity. I appreciate the time I have had working with Mr. Loble. He has been a gracious act to follow. I hope the spinning of my wheels and roaring of my engine have not been too loud in his ears. And I look forward to continuing working with him as past president and member of the Board of Governors. I stand before you probably as the only person I have seen take the podium today not claiming credit for getting the judges a raise, but we do have some other issues before us.

First of all, thank you to Les, thank you to Terye, his wife. They have been gracious hosts of the bar. They have dedicated time and effort. And so please join me in thanking the Lobles for their service. (APPLAUSE)

MR. CROTHERS: Secondly, please join me in thanking Christine Hogan and her staff for putting on this meeting and the service they do. (APPLAUSE)

MR. CROTHERS: I want to touch briefly on five issues. One is the multi-jurisdictional practice of law. I am not going to say anything more than I have other than to implore you to become educated about the issue. Chief justice first brought this up in his discussion last year. President Paul Richard brought it up in his discussion before the group last year. As I said earlier, we have been working at the Board of Governor level. We have been working at the staff level studying this issue and

compiling materials. It is now time for the membership to get into the game and we hope to use technology.

You might remember I said last year one of the things I want to do is help the association leverage technology to make information more readily available to the membership more quickly and more inexpensively. We hope to start doing that with a number of things, including multi-jurisdictional practice information. And it is not to say we are going on into competition with the Courts. Certainly Justice Sandstrom has a wonderful system but there are things we all recognize are not appropriate for the Court to be sponsoring at this stage, and this is one of them. So we are implementing technology, and that is Point No. 2.

We are upgrading our computer system. We are implementing software as we speak to allow for the mass distribution of e-mail to the membership. Up to this point we haven't had the capability. So like the Supreme Court, the Bar Association will be able to blast e-mails to all of those who wish to receive it. In the process we hope to be able to communicate with the membership more readily on what is available on the website which we are also improving by both design and function. And so through these processes we hope to be able to more effectively, more efficiently, more quickly, and more inexpensively communicate with the membership, and we are looking forward to rolling that out. Please use those resources. We are going to be communicating—the first part is likely to be a little clumsy, but we are going to be communicating with you, asking who wants to be receiving this information by this method. Ultimately we hope to distribute the Notepad electronically to those who wish to receive it. And certainly during the next legislative session we hope to be able to give legislative updates, daily, weekly, biweekly, however we need to get the information to you rather than getting published pages out and worrying about the delay between the time it is compiled and ultimately delivered through the mail. So we are looking at some interesting and exciting technological improvements and we ask you to work with us on that.

Third, we are in the process of creating a Government Lawyer section. We have heard complaints from government lawyers that they do not have their own place in the Association and they question whether it is worthwhile participating. We have heard those concerns and we are addressing them and you will hear more about that in person and, of course, on the web page.

Fourth, you have heard from the Chief Justice and others that there has been an ADR rule passed and that there is a Joint Committee of the bench and bar that will be handling implementation of that. Becky Thiem is the head of that. Unfortunately, she could not be here today to

tell us about what that committee anticipates doing, but that will be rolled out this year, and we ask that you participate in that discussion. Again, we will be communicating about that through the Gavel, the Notepad, and electronically.

Fifth and finally, the future of the Association. Obviously we are interested in it. Otherwise we would not be here. On every president's page that I publish this year, the bottom will contain my telephone number, my address and my e-mail address. Tell me what we are doing right. Tell me what we are doing wrong. Most importantly tell me what we are doing wrong. Tell me what can be improved, what can be changed to make this an Association that better delivers the needs of the membership. Tell that to Christine. Tell that to the members of the Board of Governors. Please communicate with us and let us know how we can serve you.

With that I thank you for the privilege of being your president. We are about to announce the vote total which I will hand the podium to President Loble for the totals. And my last statement is remember the Bar Foundation reception starting at 6:30 and banquet at 7:00. Thank you. (APPLAUSE)

PRESIDENT LOBLE: And you thought I was exaggerating about roaring engine and spinning tires, didn't you? It was a very close vote, but Gary Lee has been elected the president-elect. Gary. (APPLAUSE)

PRESIDENT LOBLE: You are welcome to come up and say a few words. The vote was 103 to 94.

PRESIDENT-ELECT LEE: I have nothing prepared to say, but as Justice Sandstrom, Justice VandeWalle, other members of the Supreme Court and any judge I appear in front of know, the fact that I have nothing to say has never stopped me from saying anything before!

I would like to thank my partner, Richard Olson, for his nominating speech. And it is true that I have some people spending a long time in certain penitentiaries. But anyway, really as I said, I have nothing really to say except that I have been on the Board of Governors now for two years. When I came on, Dan Greenwood was past president and Paul Richard was the president. This year Les was serving as the president and Dan is president-elect. All I can really say is that if I can serve the office of president with the grace and the ability and bring the office the dignity that those people have given it, I'll have done my job, and I hope to do that for you all. Thank you. (APPLAUSE)

MR. CROTHERS: Congratulations, Gary. With that we are adjourned.

(The General Assembly of the North Dakota Bar Association concluded at 4:15 P.M.)

I, LaVonne J. Richards, a Notary Public within and for the County of Clay and State of Minnesota, do hereby certify:

That said General Assembly consisting of sixty-one (61) pages of typewritten material, was taken down by me in Stenotype at the time and place therein named, and was thereafter reduced to computer-aided transcription 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 16th of August, 2001.

LaVONNE J. RICHARDS, RMR, CPE, CRR, Notary Public  
Clay County, Minnesota  
My Commission expires January 31, 2005.



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