



1998

Proceedings of the Ninety-Eighth Annual Meeting of the North Dakota State Bar Association

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PROCEEDINGS OF THE NINETY-EIGHTH ANNUAL MEETING
OF THE NORTH DAKOTA STATE BAR ASSOCIATION

OFFICERS

SARAH ANDREWS HERMAN President
DANN GREENWOOD President-Elect
STEVE A. JOHNSON Secretary-Treasurer
REBECCA S. THIEM Immediate Past President
SANDRA TABOR Executive Director

PROCEEDINGS

June 18, 1998

MADAM PRESIDENT: I would like to call the 1998 annual meeting of the State Bar Association of North Dakota to order. We will begin our meeting with the Presentation of the Colors by the Red River Junior ROTC Cadets. And the National Anthem will be sung by Mr. G. Paul Larson.

(PRESENTATION OF COLORS) (NATIONAL ANTHEM)

MADAM PRESIDENT: Please help me thank the cadets and Mr. Larson. (APPLAUSE)

MADAM PRESIDENT: Before I introduce the Local Committee, I would like to take care of some housekeeping matters. Since this meeting will be running on a tight schedule, Sharon Gallagher has graciously agreed to keep parliamentary procedure in line. Additionally, Sherry Moore, Penny Miller, Dave Maring, and Karen Braaten have all agreed to serve as election proctors.

At this time I would like to call upon Darrell Larson who will give a welcome from the Local Committee. Before he takes the podium, I would like to take a moment to express my appreciation and gratitude not only to Darrell but to the members of the Local Committee including Mike Daley, Sandy Dittus, Judge Joel Medd, Howard Swanson, and Joel Arnason. This is a big job. It takes lots of time, lots of energy, and they have done a wonderful job of putting together this meeting for us under less than ideal circumstances this year. And we appreciate their effort very much. And I want to say thanks very much to them for the effort that they have made. Thanks a lot. (APPLAUSE)

MR. LARSON: Good afternoon. We would like to welcome you to Grand Forks. We would like to thank you for holding the Bar Convention here this year as opposed to last year. It is not easy this year. It

would have been much more difficult last year. I would certainly like to thank the same committee that was mentioned. I would like to, for just a moment, run through a little bit of the past year in Grand Forks. Perhaps bring you up to date a little bit.

As you know, the winter of '96-'97, [was] difficult for North Dakota; blizzards, freezing livestock, and the like. [It was] especially brutal on Grand Forks in the spring. Forty-nine foot river crests were predicted, .5 million sandbags. We fought fairly desperately. When the crest eventually hit fifty-four feet, why, we were shocked, in effect.

One thing that I did learn that I will simply convey to you, if you're ever in a disaster, avoid tunnel vision. We were fighting the flood. Fire never occurred to me. Being on the fifth floor in an office with a law firm, the thought of a law firm burning wasn't something that crossed our minds. The reason I go through this is our offices burned. I'm with Camrud, Maddock, Olson & Larson. We are in the First National Bank building. And the Bar Association of North Dakota, we really want to thank from Grand Forks. They stepped forward. They helped with presentations. They helped with contributions. And by "they," I guess I mean all of you. And we were terribly grateful for that. It was really meaningful to us at that time. We haven't had an opportunity to formally thank the Bar before; and I would certainly like to do that now. (APPLAUSE) It was just so impressive. And I think we can be so proud of the organization, the way it was handled.

We are very thankful to have you here as I said. I would just like to mention that if you have driven around town at all you may still see, in low lying areas especially, still a little devastation. Weeds growing, houses to be torn down. But we are very excited for the return convention here in the future. We should have the Aurora built at that time, new corporate centers downtown, housing projects are on the way. So we are very optimistic at this point in time. We are going to keep working, and hopefully, when you come back the city will be better than ever. Again, thank you very much for being here this year. President Andrews, thank you very much for all of your work. (APPLAUSE)

MR. GREENWOOD: I found as the President-Elect, that they don't mete out to me a great deal to do yet. But I'm finding that that is increasing as I go. But one of the very enjoyable opportunities that they have allowed me is to introduce our next speaker. And that is our President, Sarah Andrews Herman. Doing that itself would be relatively simple. You all know who she is. She doesn't need a great deal of introduction. But they also allow me this opportunity to extend on behalf of not only myself, but the Association and each of you, our thanks for the excellent job that she has done over the course of the last two years.

Now I see by looking around the room that a great number of you have been actively involved in the Bar. Nevertheless, I will repeat for those of you that haven't, that notwithstanding the fact, that our Executive Director does an awful lot to make this Association tick, it still requires the participation of volunteers that come from the ranks. Now Sandi was one—excuse me, Sarah, was one person that was willing to do that. And approximately two years ago, or so, offered her services for our Association. And through that period of time, she has done an excellent job of shepherding our organization. Together with the assistance that Sandi has provided, she has done an excellent job. You will notice from the financial reports that we are solvent. We haven't run into any controversies that we haven't been able to handle in a fairly expeditious and efficient, acceptable fashion.

Sandi—excuse me, Sarah, is certainly deserving of our thanks and our respect. It is a job that requires a certain sacrifice not only to the professional end of our lives but also to the personal end. We have heard some discussion of the effect of the flood in Grand Forks, but as you all know, it also affected Fargo. And it affected Sarah's home. She put that personal difficulty aside and has continued to serve our Association through that personal difficulty. She has served as an ambassador both in and outside the state of North Dakota. She has brought respect and honor to this Association. And with that, I invite you to thank and welcome Sarah Andrews Herman. (APPLAUSE)

MADAM PRESIDENT: Thanks, Dann. Thank you all for being here. And thanks for letting me serve as your President for this year. I thought long and hard about what I could say in the next ten minutes. And part of the hard part was to get it narrowed down so that I could say what I wanted to say in ten. I came up with three topics that I want to talk to you about. First, it has been an extraordinary year, which I will subtitle "crisis in change." Second, strategies for coping. Subtitled "what I learned." And third, amazing things do happen. "Life goes on."

It has been an extraordinary year. For me personally, I knew that I was going to have to balance my life, my private practice, my family, with the responsibilities of being Bar President. And I was ready and excited to do that. My oldest was graduating, and I'm enough of a mom and I knew that was going to be tough too. But I was ready to do that. I was challenged at those prospects. But what I didn't realize is that there were some surprises in store for me. April 17 we lost the flood fight. I lost my house. Water to the ceiling of the first floor. Nothing to do for us but to move. And we moved to the lakes and commuted 120 miles a day. And did that. And then Doug decided to leave private practice

after twenty years. And that was an interesting change in our life. And then finally this February, when we kind of thought we had it all in control and life was going on and we knew what it was about and we were safe, 1998 was going to be a simple year, Doug required emergency open heart surgery. Lots of change. Lots of surprises. In the Bar Association lots of change. Lots of issues. Funding the disciplinary system has been a big issue, court unification, what to do about judicial evaluations. [There was] lots of disagreement about that. A constitutional amendment that we worked hard and succeeded on. IOLTA. A new surprise when we kind of thought we had all the problems we needed to deal with.

Those are the issues that are out there for the Bar Association right now. And they are issues that we are going to be dealing with and talking about today. So, it is very important that you're here. Because I think there are important issues; and we need your input. This is not something that your Bar leadership, that Sandi should be deciding, without your input. It has been an extraordinary year for me personally, for our Bar Association. Maybe they all are. But I can say that I have earned each one of these white hairs this year. They are all mine. I worked hard for them.

Topic two,—strategies for coping. I needed to figure that out this year. And I have got three that I would like to talk to you about really briefly, because I think they pertain to us as people and as lawyers. First, develop a vision. Don't just react. Set the pace, set the objectives and strategies of what you want to accomplish. Work hard and follow through. If you do it right, your vision will inspire you and allow you to do more and to muster more energy than you could ever imagine that you could have. Vision is a powerful motivator. Develop a vision. Two, keep your cool. Patience is not my best virtue. And I have learned that I can waste an enormous amount of time and energy accomplishing nothing by losing my cool. This is a work in progress for me. I am not there yet. Stay focused and calm. It is a lesson I'm trying to learn this year. Keep your cool. Third, simplify. Focus on what is important. I have decided that my flood house, which is where I'm still living, does not require housekeeping anymore. It is not important. Try to reach elegant, simple answers to complex questions. Not easy answers. This requires, at least for me, very hard work. It is not easy. Focus on the essentials of the problems. And if you can eliminate the peripheral distractions, the problem becomes no longer overwhelming and can be solved. Simplify.

Third topic,—amazing things can happen. Personally, I found a new and better house. It is great. I'm going to be okay. Doug loves

being general counsel. I'm enormously envious of the fact that he does not have to record time at all or bill clients. [I] wish I could say the same. His open heart surgery was a great success. He is feeling better than he has in years and he is swimming a mile every day. He is doing really well.

The Bar Association is doing wonderfully well as well. Financially, you need to know that when Les Torgeson left we were \$70,000 in the hole, a little more than that, and looking for a line of credit. We are now operating the bank with a good, healthy balance to spare. Sandi has done an extraordinary job of leading our Bar Association, of creating an effective team, an effective staff that can do a remarkable job. They have done lots of amazing things this year—more with less. She is doing lots more with less. The staff deserves our thanks and congratulations. Carol Vondrachek, Janet Richau, Deb Knuth, Brenda Lunder, and Connie Wetzell have all worked hard and long hours doing extraordinary things for all of us. It has taken vision, willingness to work extra, hard work for them to do the things that they have done for all of us this year.

Disciplinary issues. This is a work in progress. It is going well. We are putting together the parts of the puzzle. It is one of those amazing stories where everything sort of comes together over time. The Court is participating, the Disciplinary Board is participating, Joint Attorney Standards is participating, the Bar is participating, the Board of Governors is participating. It is a lot of work. And Sandi's kind of the center of putting those pieces together. She is an extraordinary person. And we are exceptionally lucky to have her as our Executive Director. She is not the sort of Executive Director who spends her time patting you on the back, although she will do that if you need it, and schmoozing you. Because that's not really who she is. She works hard. She pushes hard. She is, as her friend Sherry says, "Somewhat of an egg," with an exclamation point at the end. But the amazing thing is, she gets us to do more than we think we can do. And she does it in a way that makes us more effective than we imagine we could be.

Probably the best illustration that I can give you of that is the constitutional amendment. Now that came up this year. I'm the President. I should have been out there thinking we could get it done. I have to tell you that as we went forward on this I thought it was hopeless. We didn't have that much time. Sandi put together a plan. And she nagged, oh, there must have been thirty of us working on the project. She organized us, she got us to go talk to the board of editors of all the various papers, got us talking to service clubs, got us out there. Sent us sheets with information. And there were an awful lot of people who worked hard with Sandi nagging behind them and making sure they got the job done

that they promised to get done. They did it. It was extraordinary. I can't believe that we won by a seventy percent margin. Remarkably, we did. This has been a year of crisis and growth and enjoyment for me. I am ready, as Sandi says, to be dethroned. It is time. I want you to know how much I have enjoyed this year. The opportunity you gave me by letting me serve as your President. Many thanks for the opportunity. Many thanks for a wonderful year. (APPLAUSE)

MADAM PRESIDENT: It is my pleasure to introduce Justice Jerry VandeWalle. This has been one of the great things about being the President of the Bar Association. We are extraordinarily lucky to have a relationship with our Bench in this state that is remarkable. And Justice VandeWalle is right in the middle of that. He is someone that we know we can call on, and we do. And he talks to us and we talk to him very openly. And share ideas, share problems, share concerns, work together. It has been great. And I have enjoyed the opportunity to get to know him better. So thanks, Jerry, for that. And I would like to introduce him now to give the State of Judiciary Address. (APPLAUSE)

JUSTICE VANDEWALLE: Thank you very much. Thank you, Sarah. And good afternoon to all of you. You must have recognized by now that Sarah and I are somewhat kindred spirits. We did not communicate on our various—on our topics for the speech, but you notice I chose a statement from the Ohio Bar Association of 1967 that said, "Change just for the sake of change is not necessarily good, but change to adapt to a situation is survival. Adapt or lose." So you realize that all of us have been involved in a year of great change, and Sarah did a beautiful job of outlining what was going on not only in her life but in the life of the Bar Association and the legal profession in the State of North Dakota.

[The] first couple days of this week I was in Washington at a Federal State Jurisdiction Commission Committee meeting. The Chair is a Tenth Circuit Appellate Court judge. And he told us, and I think you may have heard this story before, but he said that one of the attorneys had told him that trying to get the judiciary to change is like trying to get a pig to sing. You should never try it for two reasons: number one; it is a waste of time, and number two; it annoys the pig. And I sometimes think that that may be where we are. But we are in change. I'm not going to read this speech to you. There are a few things I would like to highlight. Let me start by pointing out, the demographics of our state give me great concern. We met at the Summit Conference in Grand Forks in March. They come from the North Dakota State University Data Center, and they show a greater change than even I anticipated in

our rural areas in North Dakota. And we are going to have to be able to cope with the changes that the change in demographics bring.

When we started the court unification project we were required to cut the number of judges. By the end of this year, 1998, we will have forty-three judges. We currently have forty-four. Judge Berning's position will be vacated upon his retirement which leaves forty-three judges, and as you know, the magic number is forty-two. When I look at or think of unexpected things to happen, I must tell you that dealing with Judge Wright's vacancy was a very difficult problem.

Not only did we lose Judge Wright, we were faced with whether or not to fill his vacancy. We did not fill it. There was a nagging concern that somehow we didn't fill it because we didn't think Judge Wright was worth replacing. Believe me, he was. And I take this moment to recognize him. We are doing some other things in the judiciary that I would like to ask for your cooperation. And that is a jury utilization program. And we are doing a couple of things with regard to it. One of them, and it is money, although money is not the primary focus, but it is that we are trying to cut down on the number of jurors we call in. We have discovered over the years that jurors that are called in and are never used are not happy campers. They think that they have been, you know—they have been called in, we have disrupted their lives. So we are trying to cut down the number of jurors that are called in. And number two, and this is where you can give us some help, give us a couple days notice on these settlements so we don't have to call them at all if you're going to settle the cases. And we are going to be trying to work on that.

With regard to the clerk of court, very frankly, cutting the number of judges was simple compared to cutting—to trying to reform and reformulate the clerk of court. I want to set the record straight. I said it in a message and I will say it again, the judiciary did not ask to—for the current legislation. We did ask for a study to see whether we ought to be looking at bringing the clerk of court into the judicial system. Study resolution was passed, but so was some legislation that was placed in our appropriation bill that requires us to make a proposal to the legislature to bring the clerks of court into the judicial system. So even before the study was started, the decision had already been made by the legislature. That legislation was put into our bill after a conference committee. I think it was an attempt between the counties and the state to shift some of the cost of the judicial system to the state after the state took away the fees. But it created all kinds of problems. I understand you may hear more about that this afternoon. Sarah has already referred it to the Disciplinary Board. We are continuing to work on it. It is another problem that we didn't anticipate.

There are some bright spots on the horizon. Some bright spots that happened. One of them deals with juvenile court. We are starting a keys to intervention process that really looks at stopping the conduct before it starts and trying to identify some of the people. Justice Maring has been very interested in looking at a drug court which follows for the juveniles which follows the same kind of a concept. And we are going to be working on that program. One of the other things we have started doing is we started sharing resources among districts. The legislature likes the concept, I think it is a good idea. Our state isn't that large that we cannot share our personnel back and forth. And it has worked out very, very well.

The Gender Fairness Implementation Committee is well under way. The Joint Dispute Resolution Committee will be reporting. Since I have written this, the Family Law Committee has filed this report with the Court, and we will be acting on that. I wanted to thank Sandi and Sarah and the Board and the Association for the support they have given us. If Sarah didn't think the constitutional amendment would pass, I'm on record in an interview with the editor of the—a reporter for the Bismarck Tribune of saying that I didn't think it was going to pass. And I gave it lukewarm support. When I called to congratulate Sandi after this really overwhelming, it just didn't slip through. I mean, it was a smash, seventy plus percent. I said, I finally figured out it is reverse psychology. Tell them you don't want it and they will give it to you. I knew “doggone” well I shouldn't say that we really wanted this. And, seriously, it is an example of what happens when you put your minds together to do something. Not with a big splash, but with that steady, persistent work. I didn't realize this campaign was going on. Maybe I should have. But I was told later on that there were members, people that are sitting in front of me right now, out there talking to service clubs and doing all these things. And so you can really, really make an effort.

As Bill Goetz said this afternoon, or this noon at the luncheon, it takes someone that the legislature can rely on, and is confident in, and trusts to really get some things accomplished. Sandi's been able to do that. And part of it, a good deal of it, is Sandi's ability. But the rest of it comes, as Dann said, from the leadership of the Board of Governors and from the Association. If they were not behind Sandi, she couldn't do what she was doing; make no mistake. As I said in the closing, it is going to require all our talents, our cooperation, and our innovations to deal with the changes that we face in the future. I have no doubt that together we are going to be able to do it. Thank you for allowing me to address you. (APPLAUSE)

MADAM PRESIDENT: Thank you, Justice VandeWalle. Before we hear about the Association's financial status, I would like to take a moment at this time to remember those members who passed away during the year with a moment of silence. (SILENCE)

Now we will hear the financial report from our Treasurer, Steve Johnson.

MR. JOHNSON: Before I start my report, I would like to point out that copies of the Gavel article concerning the 1998 budget and the 1997 audit are located behind the General Assembly tab of your annual meeting materials.

The Board of Governors was pleased with the findings of the 1997 audit in which we received a clean opinion from the auditors on all statements. I am happy to report that we continued to avoid spending more money than we generated. The 1997 management letter did contain the regular note regarding the small size of the staff—the office staff. However, the auditor assures us that the staff is doing everything possible to segregate the accounting functions.

The 1997 audit reflected year-end assets of \$437,352, including \$189,836 in restricted cash assets, \$15,496 in equipment, and an inventory of \$12,863. The restricted cash represents money held by the Association for the sections, the Volunteer Lawyer Program grant, the Client Protection Fund, and the CLE Commission. In particular, \$11,046 of the IOLTA Volunteer Lawyer Program monies was accumulated from 1996 to 1997. This money will be refunded to the IOLTA program in 1998. Our overall fund balance at December 31, 1997, was \$389,946, \$200,110 of which were unrestricted funds and \$189,836 which represented restricted funds. The unrestricted fund balance, or the Association's general fund, gained approximately \$29,000 in 1997, due in large part to the continued refinement of our fiscal management policy. During the year, the Association generated \$542,008 in unrestricted revenues and \$119,374 in restricted fund revenues, for a total of \$661,382. A portion of this increase reflects the Client Protection Fund revenue of approximately \$36,212. License fees represented \$323,004 of the unrestricted revenues or sixty percent of the total revenues. Our total expenditures of \$612,889 included administrative expenses of \$407,170 and disciplinary expenses of \$42,247. Included in the administrative expenses were CLE seminar costs and the costs of office overhead. Disciplinary expenses included payment of \$36,000 to the Disciplinary Board and costs associated with the Inquiry Committees.

With that brief review of the 1997 audit, I would like to now turn our attention to the 1998 budget. Our overall projected revenues for 1998 are \$724,790. License fees represent fifty percent—fifty-seven per-

cent of this figure. Included in the license fees percentage is \$90,000 dedicated to pay the Discipline Program and \$36,000 dedicated to pay for the Client Protection Plan. Other sources of revenue include CLE seminars, the annual meeting, and the Volunteer Lawyers Program. Our total projected expenses for 1998 are \$717,627. 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 ensure that these three programs are self-funding. The Board is pleased with our operations to date this year, but we are continuing to review areas in which cost controls can be implemented. Hopefully, we will be able to continue to present good news in the future. Thank you.

MADAM PRESIDENT: Thank you, Steve. I would now like to call on Karen Braaten to give us an update on the North Dakota Bar Foundation. Karen.

MS. BRAATEN: Good afternoon. Nineteen ninety-nine marks the tenth anniversary of the North Dakota Bar Foundation. This annual meeting is serving as the Foundation's kickoff to our membership campaign. Our goal is to increase the number of members in the Foundation, and also increase the level of giving by those persons that are currently members.

The Foundation, which has been described as the charitable arm of our Bar Association, functions primarily on income received from memberships and also from donations. Why is it important to be a member of the Foundation? The Foundation supports a number of worthwhile programs and projects through the award of grants and financial assistance. Some of those programs and projects include scholarships to the University of North Dakota Law School, the Legal Secretary's Association, grants to lawyers and law firms in the Red River Valley that suffered flood damage this last spring, a grant to the Burdick Legal Education Center at the Federal Courthouse in Fargo to basically help with operating expenses. We have historically given a stipend for a Law Review article. And probably the newest and one of our most recent projects has been to award what we have called the North Dakota Bar Foundation Professorship of Law. The award consists of a financial stipend to a law professor at the University of North Dakota School of Law who has contributed significant time and talent to Bar Association activities. And I am pleased to announce, it has already been announced formally before, but our North Dakota Bar Foundation Professor of Law is Randy Lee. Randy. (APPLAUSE)

I haven't got my reading glasses on so I can hardly see. It is a little blurry right now. Randy has given just innumerable hours working on

committees for the Bar Association. A lot of his work has been in the area of ethics, professional responsibility. I don't know where we would have been without him. I worked on a number of these committees myself. We want to keep Randy here in North Dakota. And we are so fortunate to have a man of his caliber and his knowledge and expertise here with us and working on our committees through the Bar Association. I hope that when each of you are contacted this fall that you will consider, if you're not already a member, becoming a member of the Foundation. We have a number of levels of giving that will be explained to you. And those of you that are members and have been faithful members of the Foundation, please consider increasing your level of giving so that we can continue to support programs and projects such as these.

J. Philip Johnson is the chair of our IOLTA Committee. He reported yesterday at our annual meeting that he had good news and he had bad news. And I would like to report the same good news and even the bad news to you this afternoon. The good news is that this past year our income and deposits into our IOLTA program are up significantly. Our expenses are down. Bank service charges are going down at this time. And our contributions or our grants and donations that have been paid out have also increased. There is more money available right now in our IOLTA program for grants to be made, and more grants have been made this past year. For example, in 1998, a grant of \$58,900 was awarded to Legal Assistance of North Dakota. As opposed to 1997, the grant was \$52,900. Grants have also been given to Southern Minnesota Regional Legal Services, the Volunteer Lawyers Program, People's Law School, and a program called Graduating Into an Adult World.

The bad news is, of course, the decision that was reached by the Supreme Court on June 15, 1998. The Phillips decision. That decision involved a Texas interest on lawyers' trust accounts program. And basically, the United States Supreme Court held that the interest earned on client funds in IOLTA accounts constitutes the private property of the client. That is as far as the decision went. The Court did not decide whether or not those funds have been taken by the state but did remand the case to the lower court for this determination. That certainly does concern us. What is going to happen with our IOLTA program and the monies that are available for the wonderful projects that I just mentioned to you. I can assure you that the Foundation Board, along with the IOLTA Committee under Mr. Johnson's leadership, will keep a close watch on this case to determine what effect, if any, this will have on our IOLTA program. We can only hope that IOLTA will remain as it has been so that we can continue to be a source of additional funding for our legal service programs.

One final word, and on a lighter note, I would like to invite each and every one of you to the President's Reception this evening at 6:30 at the Westward Ho. It will run from 6:30 to 7:30. The Bar Foundation holds its annual silent auction. We have over twenty-four items that are up on the auction block. Please bring your checkbooks, and we will be serving hors d'oeuvres and champagne. Please come. Thank you.

MR. GREENWOOD: Thank you, Karen.

The current President of the American Bar Association, Jerome Shestack, has identified as one of the major emphasis of this year that of increasing professionalism in the practice. And he recognizes as a critical element of that the need for pro bono service. The incoming President of the American Bar Association has identified as one of his primary goals of this coming year to improve the image of lawyers in practice. And he has identified as a critical element of that goal the need for pro bono service. My purpose today is to recognize those truly professional people within our organization who have donated many of their hours to providing pro bono services for their clients. And, as a method of doing so, increasing access to the courts.

You will see by the insert to your convention materials, a list of the lawyers who have participated in the volunteer lawyer program. And I would urge you to look at that and show those people your appreciation. I would like in particular to recognize two of the attorneys on this list who are with us and who have donated fifty or more hours of their time to the service of those in need. People present today, I would ask that they come forward to receive a small token of our appreciation. Duane Shurman. (APPLAUSE) Mr. David Overboe. Doesn't appear as though he's here. Thank you. At this time, then, I would like to call upon Linda Catalano who is the Director of the Legal Assistance of North Dakota, which is another very important agency that has set about to provide access to the poor, and ask for her to explain to all of us how it is that they're going about to provide that assistance in these trying times. Linda.

MS. CATALANO: Thank you, Dann. Members of the Association, officers and staff of the Bar Association, members of the Judiciary. How are we doing it? We are just doing it. We have got a vision that legal services to the poor will continue in North Dakota with the cooperation and the coordination of both—of the judiciary, the private Bar, and the legal services organizations. The IOLTA decision was not a heartening decision to read or to hear about. But those of us in the legal services community have been hit with a number of such adverse types of circumstances in the past few years. And we are still here. We are still providing services and we are going through change much the same way

that Sarah talked about and Justice VandeWalle talked about it. And we are going to continue, with the help of the Bar and the judiciary, to work together to make sure these services continue.

One of the things the legal services programs want to tell you today is that we truly and deeply appreciate all the work of the pro bono attorneys. Thinking a little over ten years ago, I guess it was thirteen years ago, there wasn't even an organized pro bono program in the State of North Dakota. It has become the safety net for our safety net. And without it, legal services programs would truly be overwhelmed. And so we are determined to do what we can to help work through the IOLTA situation and continue the viable work of the Volunteer Lawyers Program. And I also want to acknowledge the work of the attorneys who do reduced fee work as well. It may not be totally pro bono, but it does make legal services, in maybe not so many emergency areas, available to people who otherwise wouldn't be able to receive them.

Legal Assistance of North Dakota, which is a state-wide program. for those of you who don't know, virtually a state-wide program, as part of its change and reorganization after our one-third cut in funds from the federal government, started on June 1 to implement what we call "centralized intake." We have had feedback from clerks, from service providers that it would be really nice just to have one toll-free number that they could tell people to call to try to get legal assistance. And so on June 1 we implemented that. And our centralized intake office is located in Minot. All of our cases, all of our calls, will go through that office. We had to implement a mechanized voice system in order to screen out some of the calls. We do intake every day now throughout the state, instead of like a Monday in one city and a Tuesday in another city. And all the advice is provided in Minot. Brochures are sent out.

The cases that can't be handled very quickly and easily through advice or a brief service are referred down to Bismarck and the cases are assigned throughout the state. And this way we are hoping to maximize the resources we have in the six legal staff left to service the entire rest of the State of North Dakota. And the cases that those staff will take are cases which need more work, which need more investigation. But we will keep the gateway, the access open, and hopefully, better than we have before. Change has not been one which a lot of our staff like because many of our staff are very dedicated to doing that initial intake and seeing the clients. And there has been some question about the approach. But I truly believe that if we are going to continue to provide services, and to provide quality services, and to provide access, more importantly, this is a step we needed to take.

One of the things the Joint Committee on Civil Legal Services is looking at, and I am working on, is having one state-wide toll-free number for all legal aid services. Whether you would need an attorney in New Town through North Dakota Legal Services, or one at UND Clinical Program Legal Aid, or Southern Minnesota Migrant Program, or through the Volunteer Lawyer Project. We would like to provide one toll-free number so that no matter where you are, who your friend is, whether you're an attorney, you're a clerk of court, service provider, this is the number you call. And from there we can make sure that we can forward you to the right place with the least resistance possible.

We do find a very large dropout rate from people who are calling. Usually, we find that the people who are the most persistent are the people with whom we usually don't provide services because their cases don't have merit or they're very emotional, or whatever. Usually, it is the true victims that aren't persistent enough to get through multiple levels of phone calls to get services. Lastly, we just received a grant from the Bremmer Foundation to provide some, excuse the term, "mop up" services for the flood disaster last year.

We have been given money to hire an attorney in Fargo and a part-time attorney in Grand Forks under Larry Spain's direction at the clinical program of the Law School, because there are lingering cases and lingering legal problems in particularly low income and Hispanic populations as a result of the flood. And we are going to try to make people realize that there are some services available, there are attorneys to work on those cases.

We have made contacts with service providers and state agencies that we are working with, and the in the Bar Association to let them know that these attorneys are working. The attorney in Fargo is Steve Emery and the attorney working in Grand Forks half-time is Nydia Gallego. So there is some information material, just a little brochure, a little bit about what the project is about. So if you have any people who are low income and are having any residual problems with the flood and you don't feel that you can handle that case for them, please let us know. As usual, we are targeting low income and disadvantaged people for these services. Thank you very much. (APPLAUSE)

MADAM PRESIDENT: The Joint Attorney Standards Committee has been working very hard during the last twelve months to define the role of the Association in the discipline process in light of the changes made to the funding of that process by our legislature. Here to discuss the Committee's activities is the Committee Chair, Dan Crothers.

MR. CROTHERS: Thank you, President Herman. Welcome to all. I'm keenly aware that some in the audience may not think that attorney

discipline is all that sexy and exciting so I will try and keep this as brief as I can. At the same time, the information that I have I think is important not only to this group and the Association, it is important to the judiciary, and ultimately I think it is important to the longevity of the Association. As has been alluded to by President Herman and the Chief Justice, the 1997 legislature met, and they changed how funding for lawyer discipline was to occur in the future. In 1997, the legislature went from a plan where the Bar Association paid \$72,000, to where the Bar Association paid considerably more. The remainder was paid out of the general fund. Part of that was for attorney discipline, part of that was for judicial conduct commission proceedings.

In the 1997 legislature, they opted to fund \$235,000, for the biennium. Now we're talking the two years of this disciplinary counsel's \$460,000 budget. In addition, that budget request was \$527,000. And so we started out with a significant decrease in the budget for the office and then a question of where the money was going to come from. Many of you will recall that at the annual meeting last year there was a dues increase approved. That dues increase was dedicated for payment of this additional cost of discipline. And that slight increase, in addition to some financial acrobatics that was done by your leadership by way of tapping into some unrestricted reserve funds, allowed the increase not to go too high. And so what happened in 1997 is that the Bar Association would pay for this biennium \$225,000, up from \$72,000. And the legislature also has basically put the lawyers on notice that after this biennium, it is unlikely that the legislature will fund, through the general fund any more attorney discipline. At the same time, they have suggested that they will most likely continue to fund judicial conduct commission proceedings right now to the tune of about \$100,000. So what we are looking at in current biennium dollars is that our fee, or our share of the fee, would go up to about \$360,000.

As a result of that coming out of the legislature, the North Dakota Supreme Court and the Board of Governors asked my committee, the Joint Attorney Standards Committee, to study the issue. They asked us to look at personnel, look at processes within the system, and come back and report to the Court, and report to the membership what might be done to make this a better, cheaper system. Both President Andrews Herman and the Chief Justice have talked about surprises. That was my surprise. When they asked me to be chair of this Committee, Sandi approached me and suggested that I could form a mental picture of a hot August day. Eighty, maybe ninety degrees. Humid. Big tree. Fat dog lying under that tree resting, hardly moving. That is the Chairmanship of this Committee that we need you to take over. Point three here was

my surprise. There is no tree. There is lots of sun. And there was a lot of work. So what I would like to do here briefly is go through and tell you what we did, because we looked at the disciplinary counsel office funding. We looked at their staffing. We looked at the operations of the entire system. We compared it to other states. We looked at our rules. We looked at our substantive proceedings, compared again, to other states and to the model rules from the ABA. And then at the end of my short presentation here today, I will tell you what we have done.

Here is an overview of what has been happening since 1991 at the bienniums. The budget, as you see, started out below \$350,000 in 1991-93. [It] went up significantly the next year. That was [when] the second attorney was added to the staff. And then went up a little bit higher in 1995. And then actually has come down in 1997-99. And the question is what happens next, obviously. Well, this chart shows where the money in the office is spent. And what the Attorney Standards Committee did is started with this and said, all right, let's look at where money might be saved. Where is it being spent? Where might it be saved? The blue section of this chart shows expenditures for salaries during the various time periods. The current biennium is on the far right. So, as you can see, the vast majority of the expenditures are salaries. And by comparison, if you actually look at the numbers, the red represents operating expenses for the office. And the top line that virtually disappears on the far right-hand-side is for equipment and other things like computers that might be added to the office.

So it didn't take a Wharton School of Finance person to tell us that there really wasn't much room in the equipment budget to squeeze. The operating expenses, when you think of what goes into that, the paper to run the office, the rent, the insurance, the copier operations, telephones, things like that, at \$62,000 a year for two years really isn't a fat operation either. And so we pretty well discarded them fairly early and focused on the personnel. The funding of salaries. We have a five-person office, I believe. Two attorneys. And the salary and benefit—four-person office? Sandi keeps me honest. Four-person office, salary and benefits, just under \$400,000 for the current budget. And really to make any impact, you would have to reduce it to a one-lawyer office because, I think everybody appreciates who runs an office. Support staff can make up for a lot of lost lawyer time. So we compared it. How are we doing for a two-lawyer office for two years. And the general conclusion was we are not doing too badly for that kind of overhead for two lawyers and two staff members for two years. And by the way, some of you, and I'm kind of preaching to the choir, because some of you,

probably most of you, have seen parts of this. I—and Sandi was in on a couple.

I went around to a number of local Bar Associations, presented these numbers, asked for input, and generally speaking, when we got to this number the conclusion was, that is not bad for operating two offices—or two lawyers in an office for two years. So just in terms of raw numbers it didn't look out of line. The question then became what were they doing and is there a requirement that the number of cases being handled and the type of proceedings that are required by our structure—is it reasonable to have two lawyers and two staff people. And again, the Committee concluded, yes. We could not do this to the same level of performance by having only one lawyer. And so this chart shows how some of the breakdown occurs within the office.

And then we looked at what share of the work and what share of the cost and allocations are split between the Disciplinary Board as opposed to judicial conduct. And again, the blue is the Disciplinary Board, the lawyer discipline, and the red is judicial conduct. On the left-hand-side of the screen you see the historical accounting, and on the right-hand-side of the screen you see the current biennium. And admittedly, those were earlier numbers, but I think they're holding fairly true. That these percentages tend to show what percentage of Vivian Berg's and Paul Jacobson's time is spent for disciplinary proceedings, Disciplinary Board proceedings, as opposed to judicial conduct. And so up to that point, our conclusion was the lawyers seemed to be doing the type of work they needed to, as compared to other states and as compared to the number of cases here and other states with similar populations. Our case numbers are not out of line. Our proceedings seem to be more or less where we need to have them. We didn't think that we could make or suggest drastic changes in that regard.

So then we started looking at the lawyers' share of expenses and how that sifted out with respect to other jurisdictions. When the legislature first acted, I think the reaction of the Bar was that this is unfair. The general fund has been paying this. It should continue to fund this. Everyone else must be operating the same way. In fact, when we checked into it, we found out that most other states, and, matter of fact, almost all other states had lawyers paying for their own discipline. And so at least the committee members went from feeling that this is terribly unreasonable to the fact that we may have been getting a pretty good ride for a long time, and apparently now the party's about over. And this chart shows the percentage of funding for the disciplinary counsel's office since 1991. And the blue represents the North Dakota general

fund and the red represents the State Bar Association contribution. And this chart changes the time frame.

The current biennium is the second check to the right. The far right is the 1999-2001 biennium, assuming everything stays the way it is now, but lawyer funding goes to zero. So what we went from, to look at it in a different chart, is the lawyers' share of expenses in 1995 is represented by the red there, and the 1997-99 it went to just under half. The red being State Bar funds, the \$72,000, and the pink being the dues increase we voted on last year. And again, the blue remaining the general fund. And again, using all the same numbers just to graphically show it, the next biennium, if we keep going down the track we are going down, it is going to look like this—where the membership will be paying all of the lawyer discipline allocation. And if lawyer discipline and judicial conduct stay together this will roughly be the contribution to disciplinary counsel's office.

And my last caveat I think is an important one. I think everyone on my Committee, at least, agrees that it is our preference to keep judicial conduct together with the Disciplinary Board and disciplinary counsel's office. There is an economy of scale there, and I think we all agree that there is a good thing to be had by having a person or persons with expertise in disciplinary matters. And so for those reasons we are trying to look at a structure that tends to keep those offices together. Because one being completely state funded and the other being privately funded, there certainly is an opportunity for them to go their separate ways. The Committee at this stage believes that would not be a good result.

And so what we did during the year is we reviewed the procedures that are being used. In other words, what is the structure of discipline. And then we looked at the cost as I have just showed you. And then we compared them to other states. And our conclusion by and large was that our procedures are relatively in line with the more progressive states and way ahead of other states which will remain nameless. We then—so the conclusion there was there is no wholesale structural fix that we can recommend that is going to make lawyer discipline significantly less expensive.

We then looked at some of the details of our system. We started out with the Inquiry Committees and looked at it in a wholesale fashion. Should we eliminate the disciplinary—the Inquiry Committees from the disciplinary system. And again, the information was approximately seventy-five or eighty percent of the complaints filed are taken care of at the Inquiry Committee level. In a given biennium, I believe we spend approximately \$30,000 at the inquiry level. And it seemed to me that when we are looking at \$30,000 there and a biennium budget of half a

million dollars, that would be a really poor way to save some money. So we left Inquiry Committees alone. With one exception. There is a recommendation ready to go to the court to split Inquiry East into northeast and southeast simply because of the problems that are being caused by having a bulk of lawyers in the east in two cities.

We then looked at the Disciplinary Board, and again, looked at it in the wholesale fashion. Should we recommend getting rid of the Disciplinary Board and putting something else in its place. There was one proposal, for instance, to say, okay, leave the Inquiry Committees there. If they find that there is a case that should go on formal proceedings, give it to the state's attorney of the county and let the state's attorney prosecute it in the district court. That would save on discipline. We didn't get real far with that. We didn't go far enough to ask the state's attorneys if they wanted to do that. I kind of think maybe they would have said no. But I'm just—I bring that up to illustrate what we looked at. It was wholesale change. Again, the conclusion was this is not a system that should be changed in a wholesale fashion.

With respect to the Disciplinary Board, there is a rule draft that's currently being worked on by the Committee that will take a step out of the disciplinary process, or at least we are studying whether it should. And if adopted by the Committee it will go to the Court and go to the Board of Governors. That would have reports from the hearing panel go directly to the Court rather than hearing panel—full Board, then the Court. But it is those sorts of things that are going to only incrementally reduce the cost of discipline, and in that respect, we are looking at the Board function to try speed up the process and make it a little more certain and predictable.

And then we looked at disciplinary counsel's office. And I have alluded to this. We looked at whether there could be a significant staff change. There was a proposal that perhaps the prosecutorial function of the office could be done by volunteers. And again, the Committee concluded that the two-lawyer system for the current caseload with North Dakota's current system was pretty close to what we needed. And then we looked at a host of other issues that I'm not going to take time to discuss now. But the final result, in looking at this, is there is some fine tuning going on for the Disciplinary Board and how that functions. And the significant conclusion is that there is a need for an oversight committee to have authority for the funding and the hiring of personnel issues with the disciplinary counsel's office. Right now if you read the North Dakota statutes, you will see that authority is loosely placed on the Bar Board. But the Bar Board hasn't had it since I have been involved in this process. If you read the rules, you will conclude that authority is vested

in the Disciplinary Board, but the Disciplinary Board in practice has not taken advantage of that or has not exerted that authority. In fact, most of the administrative work comes out of the court administrator's office, and Chief Justice Vandewalle has some very strong feelings on whether he wants that to continue. And so in place of the current uncertainty, the Joint Attorney Standards Committee this week finally approved the creation of an operations committee. The Board of Governors had a meeting yesterday, approved it, and the concept will be forwarded to the court in the near future.

The operations committee, again, will have responsibility for personnel and budgetary matters for the disciplinary counsel's office. It will be comprised of a member appointed by the Board of Governors of the Association, a member appointed by the Disciplinary Board to be a current or former member of the Board, and a member to be appointed by the Judicial Conduct Commission to be a current or former member of that Board. The committee will be staffed by the Executive Director of the Association. One of its ex officio members will be the court administrator's office or somebody there. And again, they will have final authority if the rule as prepared is adopted. It is this mechanism that all involved after this point concluded—will give disciplinary counsel's office significant autonomy. In other words, it will not be subject to the control or even whim of the Association. It won't be subject to the direct control of the Judicial Conduct Commission. It will not be subject—that office will not be subject to the direct control of the Board. Rather, a three-person committee will have that responsibility. And so we will, as an Association, hopefully, have some say in where the money is being spent, but not veto power.

Some of the ideas that were rejected by the committee were increasing the disciplinary counsel's authority to unilaterally act. That's something that's done in a number of other states to reduce the cost and reduce the input of other personnel. Because in North Dakota so much of this is done by volunteer personnel, and because in North Dakota I think we have a strong feeling that we want that very strong authority to unilaterally act—to be diffused into committees like the Inquiry Committees and the Disciplinary Board or at least a hearing body, the Joint Attorney Standards Committee did not recommend any changes to increase the disciplinary counsel's authority.

As I said before, we rejected the ideas of eliminating or significantly reducing the authority of the Inquiry Committee or the Board, and we also very quickly rejected the idea of sending all of the formal proceedings to the judiciary. And so what we have—and I do appreciate Sandi's efforts. There has been a lot of work by the committee members. There

are a number of the committee members here. I know Professor Lee is here. Karen Braaten is a committee member. I don't know if others are here. But a tremendous amount of time has been spent. Sandi has put in a tremendous amount of time, and so has Jim Ganje of the court. When all is said and done, we have met a lot and worked a lot this year and we have come to the conclusion our system is not broken. It is working but needs some fine tuning for the process. We have come up with a mechanism for overseeing disciplinary counsel's office. But at the same time, the biggest expense in that office is salaries, and we cannot in good conscience recommend a significant reduction in personnel there because of the caseloads. And so we have suggested and will be presenting to the Court soon, the concept of the operations committee to oversee the disciplinary counsel's office on a going forward basis. We drew that idea of operations committee out of the air. It came to my committee from a group loosely called the Jackson Hole Group. That's a group of individuals interested in Bar and discipline issues. The idea was somewhat refined in the committee. It is not something that, to my knowledge, exists in any other jurisdiction. So we are on our own. We are off the map in that regard. But we feel confident that under the circumstances it, while a compromise, is the best we can do, and it is our hope that through using it we are going to have sufficient accountability to the membership so that any future problems about funding increases can be brought to the membership and addressed by our representative on that committee.

President Herman, I thank you. That's an overview of what we have been doing. If there's anybody that has questions afterwards, I will be here for a while, and I will be at the proceedings this evening. Thank you. (APPLAUSE)

MADAM PRESIDENT: Thank you, Dann. We certainly appreciate your efforts and the efforts of your committee. I know you well enough to know that you wouldn't have been happy being a fat black dog sleeping under a big tree anyway.

MR. CROTHERS: No, I would have. Really.

MADAM PRESIDENT: Nineteen ninety-seven and 1998 have been marked by several key issues involving court consolidation. First, the weighted caseload study was released and we witnessed continuing downsizing in the judiciary from forty-six to forty-four. Then the even more controversial clerk of court study was released. This afternoon Steve Lies is here to present us with information on the clerk of court study. Steve.

MR. LIES: It is always nice to get back to Grand Forks. In Wahpeton, I don't get up here that often and it reminds me of my law

school days. And Sarah told me I couldn't tell any jokes, so I won't. But going back to law school days sort of reminds me of issues such as those, and of course, it has changed for all of us. And this last year, I have served for the Bar Association on the Advisory Committee regarding the Clerk of Court Consolidation Study. And it is a study that was not asked for, *per se*, by the Chief Justice or the Supreme Court. And it was handed to them with a directive basically that there be a reduction of judges, although you will not find that in the legislation itself—or excuse me, a reduction of clerks. It does not say that in the legislation. And there are currently representatives and senators I think who are doubting the wisdom of what they did based on comments made at a Judiciary Committee meeting in May of the Legislative Counsel Judiciary Committee. But there you can see what the performance standards were in coming to it, and its access, expedition, and timeliness, the quality, fairness, integrity, independence, accountability, public trust and confidence. Now that's the standard, but what's driving it is money. And money isn't mentioned, *per se*, but it is the only thing that's driving it. And what the proposal comes out with, I'm going to try and keep this short, for those of you that haven't seen it—how do we reduce this?

MADAM PRESIDENT: Need some help, Steve?

MR. LIES: The counties in red are the counties that are proposed, the twenty-three counties, to lose their clerks of court in the—what is called the plan. The ones in blue are not proposed, *per se*, to lose their clerks of court, but they are to be considered as possibilities in the second round of elimination of clerks of court. Obviously, that's a good part of the county. What is in black are the administrative court centers. In white, or with no markings, would remain with clerks of court. As I told you, this is pretty much money driven. And the court administrator's office did a study as best as they could to this point. And they calculated that if the county just stayed as they are the cost to the counties would be \$11.4 million—to fund the clerks. That was for the biennium now. What is interesting is if the state takes over the system with the elimination of those twenty-three counties, the cost is \$11.2 million. So you don't have to be a great mathematician to say where the savings [are]. You are talking less than two percent.

Our Chief Justice has been taken to task a great deal for the study by the clerks in particular. And I consider him an attorney since you have to be one to be the Chief Justice. And a lot of them blame the attorneys for the rain. I want you to know from Wahpeton, we did not cause the flood in Grand Forks. And I have been accused of that. But the fact of the matter is money is not saved. There will be no savings unless there is a second round. Where the savings is—the state's looking

at it, and this is politically driven. It is legislative. The counties are going to pay 11.4. The state's taken over, they want to minimize what they're going to pay, it's 11.2. So you're shifting dollars from the taxpayers from one pocket to another. Off of property tax onto income tax or sales tax. Wherever they're going to take the funds from to put into the Supreme Court's budget.

There are lots of people who think the study was underdone, and we don't blame the Court for that. They were called to come up with a plan to consolidate and put into their budget for this next session what it is going to cost. Several states have consolidated previously twenty years ahead of us including South Dakota and Minnesota. And in their consolidation they have retained all of their court administrators or clerks of court offices depending on the title that they have. Some have them funded from the states, some from local.

The only study that really addresses the issue that should have been addressed in this study—and that is the consequences of it. Particularly, the financial consequences were done by the State of Iowa. They did a study in 1995, and they have ninety-nine counties and ninety-nine clerks of court offices in Iowa, even though geographically they are eighty percent smaller. Now they have more population, but they also have a lot of rural areas. As do we. [In] their study, which was done by a professor at Iowa State University and an attorney who was a researcher there, they had three different alternate proposals on reductions. By twenty, and about fifty, and by about eighty clerks of court offices. Under all three proposals, they found that it actually cost money both to government and to the public to do the reduction. It was primarily such things as mileage. The deputy sheriff's got to be in another county, and he is the only one on duty, then you have got to have someone else on duty when this one is gone—the records retention. In any case, they canned the whole thing after that study came out and just added some judges. Believe it or not. In fact, I think it was like eleven judges. It was several judges that were added. They did what they called full—

JUSTICE MESCHKE: Judges or clerks of court?

MR. LIES: Judges. I won't read—can most of you read that in the back? I don't know if it got big enough. Okay. They discuss the possible effect of consolidation. Increase the cost for litigants, abstractors, banks, business owners, real estate agents, child support payments recipients, law enforcement, lawyers, municipalities, and state agencies. And there are a number of reasons for that. If you have got to go find out if there is a judgment against somebody and check it all out, where do you check it at? Because the proposal that is in the trial court centers proposal for records is that they go to an adjacent or a regional center. And

that's where the records would be maintained. Now, I know this morning Keith Nelson told us that initially now if this proposal were to go ahead they would keep the records where they are at and have a second set in the regional center. But the problem is the proposal calls for it to go, right up front, to go to the adjacent county or to a regional center. But now if you are in a district like the southeast where we have six judges and ten counties, and any one of those judges could be in any one of six counties of the ten on a given day but the record may be in the third county. It needs to be there, or at least parts of it—and having a clerk or somebody bringing it.

The judges aren't going to want to keep the files. There is just a real inherent problem with records. What are we going to do. There isn't an answer. And they address that and say there really isn't an answer. That's why as Judge I think it was Mettelmann commented in the judiciary meeting in May that this is really an idea rather than a plan. Because there is an awful lot of unknown. I termed it in one of the Advisory Committee meetings as a leap into darkness because we don't know what we are going to come down on. Because the consequences were never looked at. What happens to Small Claims Court. The proposal says we are going to continue to have court and hold court in all of the counties. But I think we would be extremely naive if we believed that if there is no clerk of court there that in a few years there is still going to be court held there. I don't think that is realistic. Maybe I am wrong, maybe I've become too cynical in my old age. But I just can't see that happening. Especially when the legislature keeps wanting to cut money.

Now, this is a cite from the North Dakota study that is taken from the Iowa study. Now, in the Iowa study they do make note that these may not apply to counties under 5,000. And most of the counties that we have slated for losing their clerks of court are under 5,000. But how that plays against the fact that they have got ninety-nine counties and they're eighty percent our size isn't factored in either. Because of the distance in travel, and what not, is going to be double here what they are potentially to start out with. And travel and time away was a big cost factor in looking at it. And they talk about redistribution of income, employment from rural counties through regional trial court centers. And it seems a little bit awkward in a time when the state is trying to get development into rural North Dakota for the state to be taking it out of the rural North Dakota. But that, to an extent, is what this is doing. And it could have some very drastic effects on the rural areas.

Now, if there isn't going to be any court in Sargent County, North Dakota, in Forman, and they go into either Wahpeton, or Valley City, or Fargo, or Jamestown, will there be an attorney living there? Likely not.

If they don't have an attorney, who is going to take care of the city? Who is going to take care of the county? Who is going to take care of the school district? Who is going to take care of somebody when they need a will or when they need a deed? They have to drive to Fargo, they have to drive to Wahpeton. And the consequences of this are pretty widespread if you look at eliminating thirty—or twenty-three clerks of court now and another fifteen in eighteen to twenty-four months. That is going to leave an awful lot of rural North Dakota with some drastic potential without any study ever having been done on what are the consequences if we do this.

Now, there has been a lot said that the court says we didn't want this proposal. It is not ours. There are legislators, some of who are attorneys, now saying, at least one or two have said, that the Supreme Court's driving this. And I have called it a baby so ugly nobody wants to claim to be the parent. At the hearing that was held in May, approximately fifteen people spoke against the proposal and nobody spoke in favor of it. Now there are people in favor of it, but they are not really coming out in the public, to this point in time. That is not to say that we don't need reform, that we don't need to cut costs. But the state shouldn't take over the clerks of court. I think we need to keep in mind the clerks of court in these counties now is the only daily contact these people have with the judicial system. And the legislature for the last couple of sessions has taken the attitude that the judicial system is not a branch of government but a department. We are a branch of government, including all the attorneys, because you're officers of the court. And that needs to be kept in mind. That the people are entitled to have judicial services and a presence.

And that, to an extent, sizes up what is going on. Nobody really knows. What is this plan? Why are we doing this? Is it going to do us any good? We don't know if it is going to do any good because it hasn't been studied. Now, the trial court center did look at a lot of criteria in what to look at in, both through and over, in determining to come up with this proposal. But the proposal started with an assumption. And that assumption is that we are going to consolidate because we have to consolidate because we are going to save money. Well, as it has been shown, \$200,000 is not a lot of money out of an \$11 million plus budget. That should not be the reason driving this. The assumption should not have been made that consolidation in and of itself is good. It may very well be good. But we don't know that, and it's one hell of a jump into the darkness to assume that it is. Especially when it is the only contact that a lot of people have with the court system.

We have to keep in mind that the court system is the buffer and the source of relief and remedy that the people have against both the executive and the legislative branch of government. And the legislative branch of government doesn't mean the North Dakota Legislature. It means cities, counties, water resource districts, school boards, townships. There are all kind of legislative bodies that we have cases involving citizens against. And it is the judicial system that is that buffer. And if people have to go an extra sixty or ninety miles to get it, can they afford—when we get into the banks and the realtors, the businesses that are shown in Iowa as a problem, can they afford to take a small claims court action sixty miles away for \$120? Does that mean that people can now start stiffing people on these small things because they are not going to effectively utilize it?

If the court system were to evaporate from the counties so that they had to go elsewhere, and I know that is not what the plan says—these trial court centers—but the only way that the plan will functionally work in the long haul is if we go to trial court centers. My position is if we are going to go to trial court centers, then let's do it through the front door. Let's debate that as an issue and look at that as a study and not nibble away, and then you end up with it by default. Because that is what this proposal very likely could lead to. Now, there are several of you that I recognize and know as trial lawyers, and I am not going to ramble on any longer as far as the presentation. I am willing to take a few questions if Sandi wishes.

MS. TABOR: Sure.

MR. LIES: I guess she says that is true. So those of us that try cases know that you run into those. And I think that sort of sizes up this issue. Regardless of how you feel about this, it is going to be years and potentially even a decade or two before we know what was best. It is kind of like some very difficult child custody decisions that the judges have. You don't know until they are adults, potentially, if you made the right decision or not. And we are not going to know here if we made the right decision or not. But the fact is we need a better basis for making the decision than what the trial court center had to deal with. Questions?

That means it was either an awfully poor talk or a very good one. I would like to think it was a good one. Thank you.

MADAM PRESIDENT: Thanks, Steve, for all your work on this issue. Another issue facing the Association is the judicial nominating poll. And the issue of whether or not the Association should continue the plebiscite or change the system by creating a committee to conduct the evaluation. This is a question which the Board of Governors debated at some length. Today we would like to have each option explained and

then hear from you so that we can make a decision. The Board is interested in knowing how the membership would like us to proceed on this issue. To discuss the present system is Dave Maring. Dave?

MR. MARING: Good afternoon. It is a little warm in here and so everybody just kind of shake your arms or do whatever you want just to keep yourself alive and well and awake. I think we could have used a little more air circulating in the room. But I will try to make my remarks brief, and I will try to cover some points that I think are important with respect to the present system.

What we are talking about is when we have a situation such as in Burleigh County where there are several people that were vying for the primary election so that two people would go on to the general election. And the Board of Governors talked about whether or not we should continue with the judicial candidate evaluation poll or scrap it in favor of a system where there would be a group of people that would interview the candidates, and then make recommendations that would be published as to who that group thought were the best candidates for the position to help the electorate make their decision. And I don't really have any problem with the concept of having some type of a committee set up to do some interviewing if that is the consensus of the Bar Association. But I don't think we should scrap the judicial candidate evaluation poll that we are presently conducting with each one of these races. I think we can do some fine tuning to it, and we have done some fine tuning to it. But I don't think we should scrap it.

We all know the criticisms. One of the criticisms is that people hate lawyers so if lawyers come out in favor of a candidate or come out in favor of something they are going to vote against it. I say that is not a valid criticism that we should pay a lot of attention to. I think we all know that. Although there are lawyer jokes and although there is criticism of the legal profession, the people that you come in contact with on a day-to-day basis with respect you, respect what you do, and listen to what your opinions are. And I think that people as a whole in the State of North Dakota will respond and listen to the results of a poll that is taken among the lawyers as to the lawyers' preference as to who would be a good judicial candidate or would be a good appointment for the governor to make when the governor is making an appointment. We also hear that there are lawyers that are voting on these judicial candidate evaluations who don't know the other lawyer. And that could happen. And that could be a problem. But there are places on the evaluation form for people to say if they don't know the candidate, they don't have enough experience to rate that candidate.

I believe in the honesty of our members of our Bar Association. I believe that when they don't have enough exposure to that particular candidate that they will say so. I don't think that is a valid criticism of the present system. Now, one of the fine tuning things that we have done with respect to the candidate evaluation poll is the way that the percentages are reported. In the past, there was a situation that could arise that if only twenty percent of the people who returned their ballots knew that candidate, voted that that person was well qualified or very qualified for the position, eighty percent said they didn't have enough experience to make a rating or to evaluate that candidate, the news organizations would report that twenty percent said this candidate was well qualified for the position. Now, you might have another candidate who was rated by fifty percent of the people and they have got a thirty percent favorable rating and that candidate got a twenty percent unfavorable rating, but the newspaper would report it that thirty percent said that candidate was well qualified. The problem is that the percentages weren't taking into consideration the people that did not rate the candidate at all because they didn't have enough exposure or experience with that person to do the rating. We have now adjusted that rating system so that the percentages are reported based on the people who really evaluated a candidate based on their experience so that the percentages accurately reflect—more accurately reflect what the lawyers of a given district or of the state think about that particular candidate.

Another criticism we hear is that this is simply a popularity contest. And it doesn't tell who will be qualified to be a good judge, but, rather, just is a vote as to who likes somebody else. Again, I don't think it is a valid criticism. The various areas that people are rated on who want to be considered as a judge are professional competence, legal experience, judicial temperament, and integrity. And again, I feel very strongly that the lawyers of this state, the members of this Bar Association, will take the job of filling out these polls and these evaluations very seriously, and they will do it honestly, and they will do it in a good faith effort to rate the candidates in a manner that they think is best for the legal profession and is best for the citizens of the State of North Dakota. As lawyers, we need to speak out on things that we believe in. We need to do that in our communities. We need to do that on state-wide matters. We shouldn't shirk that responsibility. We shouldn't abandon our right and our obligation to let the public know who we think will be good judges. Thank you. (APPLAUSE)

MADAM PRESIDENT: Thank you, Dave. To present another option involving the use of the committee is Jim Hill.

MR. HILL: Thank you, Sarah. I will try and be brief. I have been involved, I think going back about ten years actively in the Board of Governors, perhaps a little longer. This has been one of those troublesome issues. And, as you know, I have had friends on both sides of the fence on what we want to do with the evaluation process. We have looked at several other alternatives, and we invited actually the candidates themselves to give us some idea what they wanted to see. And in this last polling that took place in the South Central, we sent out a note to those people who are contemplating a race or had entered the race by sending in petitions to be on the ballot. And we asked them what they would think of the possibility of utilizing something akin to the Judicial Nominating Committee that is in place in a statutory sense for the Governor's consideration. Essentially, using perhaps, the Board of Governors as a sounding board or just selecting a committee appointed by the President of the organization utilizing all of the facets of the organization to do something similar to what the American Bar Association does in considering candidates. Utilizing the same criteria.

Now, we are generally doing that now in some respects because we use the definition of qualified, unqualified, or highly qualified. We use the definitions that the American Bar Association utilizes in their filtering process. And we all realize on the Board that we are dealing with somewhat of a different situation than the federal appointment process. But would there be something that the candidates themselves would be interested in essentially rating lawyers based on whether they are qualified for the position—whether they are highly qualified or not qualified. It would be difficult in some respects to judge one of your close peers as unqualified, but we laid that out. And surprisingly, the people that wrote back to us—and there were quite a few who responded, Sandi, right?

MS. TABOR: Nineteen.

MR. HILL: Nineteen of those people that were actually in active judicial races told us, "Gee, we would like to take a look at that, use a hybrid." They didn't suggest throwing out all of what we are doing, but they liked the idea. So the proposition, or at least what we are throwing up trying to get our Association to tell us, is how do you feel about that. Do you feel that there is some additional mechanism or means that we could use to deal with what Dave has talked about, the fine tuning that sometimes we can't get to?

One of the other criticisms or observations in the list that Dave was giving us, you would have the situation where 250 lawyers would rate Lawyer A and there would be ten that would be able to rate Lawyer B. What the press will never publish is that David Peterson was rated by 500 lawyers and 480 of them said he was highly qualified. Whereas, ten

people rated and all ten rated one candidate highly qualified. How does that statistic play out. So it was at least a proposition, and I think we were as a Board somewhat surprised with the reaction of the candidates themselves. Some of them are sitting judges. People that we said, well, what would you think of an interview process. One by which we would rate highly qualified, qualified, or unqualified. And even the sitting judges were telling us look into it. Talk about it. See what is there, and see if there is something we can do to meld in not only the polling process but bring into play some type of interview process. And that is what the Board of Governors is attempting to do, is to see if we get all the voices so the next time we do it and refine it the best we can, we don't get, you know, really disheartened voices from people who do get rated and we feel badly about high percentages of not qualified that don't seem to be in place. And that's what the worry of the Board is.

Sometimes you get candidates that—who get forty and fifty percent not qualified, and you think how could that be. How could it be that in this popularity contest forty-five or fifty percent could rate a candidate unqualified to that extent. So that is somewhat the adverse position, or at least the thoughts going through the mind and what we are hoping. If we don't get them here, write us, tell us, call us, give us all of your voices so as we go into the general election in the fall we know kind of what the temperament of the Association is. Thank you, Sarah. (APPLAUSE)

MADAM PRESIDENT: Thank you, Jim. I would like to now open the floor for discussion of this issue. And ask that you please make your comments from the floor mikes and identify yourself before you begin your comments.

MR. PETERSON: Thank you, President Herman. The benefit of being around long enough is some of these things seem to come around time after time. Jim mentioned he has gone back about ten years or so in the discussion of these things. And I'm going to take you back a little further.

When I was President of the Bar in 1986, we were asked at that time to do an evaluation of some federal judicial candidates. The request was made to me as President to set up a procedure of interviewing clients—or candidates, rather, who were interested in the position, and to come up with a list of the three most qualified of these persons interested, to then be considered. And not having had any experience in that before, what we did is we went through a process that was really developed a number of years before in selecting Eighth Circuit Court of Appeals judges. And there was a rather sophisticated process that was used in how do you do this interview process and a weighted average on certain things that you took into consideration. And so what we did is we—and I don't

remember how many candidates we had, or persons interested, but I think it was probably close to fifteen. And I took a large percentage of the Board of Governors, people that were on the Board of Governors at that time, and we sat in Fargo for two days and had interviews with each of the persons who were interested in this position. And we took—and we spent a lot of time. We spent a lot of time in developing the weighted averages. We spent a lot of time interviewing them. We spent a lot of time discussing them afterwards. And it was a very, very difficult decision to come up with a list of three. But we thought we did a good job. Let me tell you right now that none of the three on our list are sitting in a judicial position today. So my conclusion at the end of that was we had just wasted the time of a considerable number of busy people. And so why bother.

Then we had gone through the process that we have now which is always subject to criticism. And I think the two things we can bank on is, number one, no matter what we do we are going to be criticized. But more importantly, no matter what we do, we shouldn't do nothing. I think the public deserves from the lawyers what they think. And I know that many of my friends, for example, just now in the judicial district where I live in Bismarck, asked me about the judicial candidates, and they were very, very interested in the polling procedure. So I can tell you that at least from my friends who are interested in who is going to be their judge, they look at that and they don't laugh because it is, you know, it is a lawyer thing. And I think we need to do something, and I think that that is a very decent process.

One of the things I wondered about is, you know, the concept of quote, unquote, unqualified bothers me. And maybe we are playing games. But I think if you look around and you look at that polling and the questions there, to say someone on the group of potential candidates to one of these positions is unqualified is really a stigma that is difficult to live with. And maybe we could have the polling and use the more positive parts of that poll and not use maybe quote, unquote, unqualified. Maybe we can come up with a different name for it or something. But I'm just simply here to say that I think we would be derelict in our responsibility if we didn't do something. I think the process we are using now is okay. I think that if we go to an interview process, it is not going to eliminate the criticism. Because we are all lawyers, and with the ego that lawyers have, nobody is going to come up with a system that we all like. But let's not do nothing.

MADAM PRESIDENT: Thanks, Dave.

MR. PETRIK: Sarah?

MADAM PRESIDENT: Yes.

MR. PETRIK: I'm John Petrik. Is this on? I just wanted to follow up on Dave's—I agree that the unqualified is just so negative. And I think the way we need to address that would just be have people say is this person qualified rated from one to five. And then we just report that this person rated 3.14, or whatever, and not say that they got twenty percent qualified, forty percent somewhat qualified, and sixty percent not qualified. We just have them give us a number range and report the present average, and then we are not telling the public that this person—we are going to give them a rating, but it doesn't have the stigma, as Dave indicated, of unqualified. I think that would be proper. That is all I have got to say.

MADAM PRESIDENT: Thanks, John.

MR. VOGEL: I'm Dan Vogel from Fargo. I agree with the comments of Dave Maring, also Dave Peterson, and also the previous speaker here. I think that in terms of the present system, in terms of evaluating the plebiscite, the key issue is to do some fine tuning in terms of the questions and how the information gets disseminated to the press. I really feel that we as a Bar Organization do have a strong obligation to provide input. I think that the public expects us to come up with recommendations on these judgeships, and I don't think it should make any difference whether we are talking about state court judgeship or a federal judgeship. We are all just as entitled to have input into who gets selected for federal judgeships as we do with respect to the state court judgeships.

My recommendation would be that the Bar undertake a study to look into a situation where we have a combination of a judicial plebiscite, perhaps utilizing some properly worded questions or better worded questions, combined with the merit selection panel. This is something that is used in other states to evaluate both state court and federal court candidates for these judgeships. I think that a study could take a look at what is being done in some of the other jurisdictions. And then in conjunction with the governor, the legislature, and the congressional delegation, we could come up with a format so when these judgeships opened up, there would be a mechanism for having a fair plebiscite that would be distributed to the lawyers for filling in. And then on top of that, there would be a merit selection panel that would make a recommendation to the governor or to the congressional delegation for filling the judgeships, and that panel could have the benefit of these plebiscites and make sure that the information gets appropriately communicated. I don't think that—I'm really not in favor of just turning this over to some blue ribbon panel and having that small committee make the decision, because I think that the public will view that very negatively.

MR. WOLF: I'm Al Wolf from Bismarck. As Dave Peterson referred to earlier, in the 1970s there was a federal nominating commission for the district judge—circuit judges operating for four years. And I served on that, and we went to several meetings and there were three circuit judges appointed during that time. I served for North Dakota, and I believe that process was well handled. We had about fifteen people on that commission. There were probably ten lawyers and five non-lawyers as I recall. And then in 1979—in 1977, we first organized the state nominating commission. And although those were for appointments I realize, both of those commissions—and then I served as chairman of that commission when Art Link was governor, and we appointed nine judges, several of which are still sitting I noticed today as I was counting. And—on one round and three of the judges on the other round. Again, that process could very well be adapted to elections as well as appointments. Again, there were people, as you know, on the state nominating commission now that became by statute in 1981—that provides for lay people, and non-lawyers, and lawyers. And I think that is an essential part, whatever body is created, I think that would be essential to have people that are non-lawyers and be participating with that.

I would see that as we did in Fargo and in Grand Forks during that 1979 process when there was two judges appointed here and two in Fargo—there was a public meeting. It was at, I believe, at this hotel or one of the big hotels here. There were a lot of people here from the community, and news media was covering it. We had a two-day session of interviews of the candidates. Open session, open meetings. I didn't like it. I was chairing it and they had a big argument about they wanted to have it closed and we couldn't have it closed. We had it open. But it was a process that I felt that people responded to very well at that time, and the news media carried the stories, and they made their own comments about what was brought out with the various candidates. I think a combination of that and a survey such as we are using with again. I would also agree that we should have different characterizations of those evaluation standards.

I had a redneck friend of mine at the coffee shop the other morning suggest that we should just use two lines on those surveys. Least qualified and most qualified—least unqualified and most unqualified, for all lawyers. He said they should not be recognized as being qualified at all, then you wouldn't be offended if you recognized in the process that they are all unqualified to various degrees. I think that is a system that needs to be developed. I agree that there needs to be a process that

would provide a vehicle to communicate with the candidates that are in the election process as well as an appointment process. Thank you.

JUDGE ERICKSON: My name is Ralph Erickson. And I'm a judge. And one of the things that I know is that since I became a judge I'm smarter, I'm better looking, I'm funnier, I'm stronger, I'm faster. And I know that because you guys tell me all the time, alright? Now one of the things that concerns me about any kind of a process that is ultimately left to a panel is that that judge, if you are dealing with a sitting judge in a contested race, is going to know who is sitting on that panel. And if you harbor some suspicion that that isn't going to influence the outcome of what that panel says, I think you are deluded, okay? And so I think that some form of a plebiscite is necessary because anything that puts a sitting judge in a situation where he is going to be or she is going to be evaluated by lawyers, and the judge knows who those lawyers are, is just an unworkable solution, alright? And, really, if what we are about here is trying to find a better, more qualified judiciary from top to bottom, what we really ought to be talking about is taking this sort of plebiscite that we have been discussing and taking it every year or two on every sitting judge, so that the judges learn something while they are sitting there about what's wrong with what they do.

You know, part of what happens is you operate in a vacuum. No one ever comes up to you and says that was really bad, you handled that poorly, you embarrassed my client, you embarrassed me, you were a discredit to the profession, you have just got to get better, alright? Now, when I practiced law I occasionally saw that happen, okay? So I suspect, I suspect that I am very capable of doing that on any given day, alright? So I think that really if we are about trying to fix that problem, we should try and open a dialogue of communication between the lawyers and the Bar. And I know a lot of judges say all you are doing then is inviting people to run against you. And my theory is that I would much rather know in the first year of my term that I am doing a lousy job than find out in the fifth year of my term when four people declare a candidacy against me, alright? So I guess I have said my peace. Thank you.

MADAM PRESIDENT: Thanks, Ralph. Thank you all for your input. The Board will take the discussion under advisement. Hopefully, we can come up with a solution for this issue before the November elections. And hopefully, it will be a solution that you will like. Please, if you have other ideas or comments, write, call, let us know. We want to make the right decision on this issue. We have several resolutions thanking the sponsors of the annual meeting. I would entertain a motion at this time to dispense with the reading of the resolutions and pass a

motion unanimously approving the resolutions included in the agenda material.

MR. WOLF: So moved.

MADAM PRESIDENT: By Al Wolf. Second?

MR. DALEY: Second. Mike Daley, Grand Forks.

MADAM PRESIDENT: Thanks, Mike. All in favor? "Aye."
Thank you. (Whereupon, the resolutions are inserted into the record as follows:)

RESOLUTION #1

WHEREAS, members of the Northeast Central Judicial District and others have put considerable time and efforts into planning and organizing the 1998 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:

To: Chair Darrell Larson, and board member Mike Daley for the planning and overall coordination of a multitude of details;

To: Judge Joel Medd and Howard Swanson for chairing the Tennis Tournament;

To: Sandy Dittus for chairing the Children's Program;

To: Joel Arnason for chairing the Family Fun Run/Walk;

To: Karen Braaten and Linda Bata for arranging, and to the attorneys and law firms for sponsorship and donations to the North Dakota Bar Foundation silent auction; and

To: The North Dakota Association of Legal Secretaries for their generous assistance during registration.

RESOLUTION #2

WHEREAS, the businesses and organizations that graciously sponsored portions of the 1998 Annual Meeting and those that participated as exhibitors are:

American Arbitration Association

ABA Members Retirement Program

Attorneys Liability Protection Society (ALPS)

Attorneys' Title Guaranty Fund, Inc.

Benefit Specialists

BlueCross BlueShield of North Dakota

Bureau of National Affairs, Inc.

Community First

Conflict Resolution Center

Eide Bailly PLLP
 First American Bank
 First National Bank Trust & Asset Management
 Gaffaney's
 Hons Investigations
 Lexis-Nexis
 Medical—Legal Consulting
 Michie
 Minnesota Lawyers Mutual
 Norwest Bank North Dakota, N.A.
 OMF
 UND Law Library—Attorney Services Division
 United Printing, Inc.
 US Bank
 Vaaler Insurance, Inc.
 West Group

WHEREAS, without their participation and financial support, the 1998 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.

RESOLUTION #3

WHEREAS, President Sarah Andrews Herman and her husband Doug have served the State Bar Association of North Dakota during the past year at a great personal sacrifice to themselves and their family; 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 Sarah, and Doug Herman for their dedicated efforts.

MADAM PRESIDENT: At this time I would open the floor for nominations to the office of President-Elect. The Chair recognizes—

MR. WOLF: We didn't vote on the resolutions.

MADAM PRESIDENT: We just did.

MR. WOLF: Okay.

MADAM PRESIDENT: At this time I will open the floor for nominations to the office of the President-Elect. The Chair recognizes Ron McLean.

MR. MC LEAN: Should I stand here or up there?

MADAM PRESIDENT: Why don't you come up here. I think Deanna will have an easier time if you come up here.

MR. MC LEAN: Good afternoon. My name is Ron McLean. Ms. President, members of the North Dakota Bar Association, it is with a great deal of enthusiasm that I stand before you to put into nomination the name of Paul Richard to be the next President of our association. Paul graduated from NDSU in 1974 with a degree in nursing and business economics. From 1974 to 1976 he worked at St. Luke's. He informed me that his job at this time was he was the patient care evaluation coordinator. He tells me basically he determined who needed to be in the hospital. Now, remember, Paul had a business degree. So I think it is with no coincidence that St. Luke's Hospital had an occupancy grade at that period of time equal to any luxury hotel at a Super Bowl site. On weekends he worked on the psychiatric ward. I'm sure that is an important qualification for this position. From there he was off to law school. And he graduated in 1979. And he tells me he was the case editor of the Law Review and a success. From 1979 to 1998 I know he was a success as I practiced law with him. And today he is the general counsel for MeritCare Hospital in Fargo.

A couple of weeks ago, God knows why, I was watching C-SPAN and, God knows why, I was listening to George Will, but I was. And George Will was giving a commencement speech. And he told these young graduates that the most important thing is to do the small things right and the big things will kind of fall into place. He gave the example put the shower curtain always on the inside of the tub. If you are playing baseball, there is a runner on second, less than two out, get behind the runner. And don't play golf in a lightning storm. That is probably not such a small thing. But really, practicing with Paul is like that. Paul has all the small things perfect and we never have any big problems. His files are in perfect order. He has a fee agreement set up. His legal research is initially done. His strategy is planned. His client is always informed. His work is always excellently performed. His desk is perfectly clean. And all discovery timely done. Now this is not to say this isn't occasionally irritating. But who else has three umbrellas in their office to loan you when the summer thunderstorm hits. And you know, despite these irritating traits, he did get Mary Jo, our bookkeeper then and receptionist, to marry him. Well—and this was also before such conduct was the basis of any litigation.

Paul is married to Mary Jo. He has three children, Kristi, Adam, and Paige. He has been very active with our Bar. He has been the Cass County Bar President. He has been a frequent CLE lecturer. He has been on the North Dakota Bar Board. He has been on the Inquiry Committee East. He has been on the Ethics Committee. He is a member of the ADA, a member of the Minnesota Bar Association, and the Real Prop-

erty Sections. A member of the Health Law Section of the ABA. And Paul has been very active in his Catholic Church. He is the President of the Fargo Catholic Schools Network. He has taught CCD. He has been on every staff parish commission or committee there could be. And once Paul introduced me to Father Phil Brown. Now, I think most of you know Father Phil is a lawyer and a priest. So I meet Father Phil and I say, "Father Phil, I finally met a lawyer who is a better Catholic than Paul." And Father Phil says, "Don't bet on it."

I know Maureen and Roger would also pass on to you that he has not the greatest communication skills sometimes. When he says the words, "I really don't care what you do," don't take him at his word. He really cares then, and you're in big trouble. And, you know, I miss him. And I am sure he has brought a lot of expertise at MeritCare. And just to give you the kind of example of the expertise he has in health matters, we were talking the other night at a party about this strain of pneumonia that you get in the hospital. And Paul, you know, we looked at him and really for some expertise on medicine and law, and he said, "You know, there are lots of sick people in the hospital." Hello. Well, I have nothing but kind words to say for Paul. There is no one I know who has better judgment than Paul. There has not been an important decision that I have done in my personal life or any lawsuit or any litigation I have been involved in that didn't involve Paul's input. Paul is a leader. He is a leader as a role model. He has the ability to determine the issue, tackle it, and he has the ability to build a consensus. He is a great lawyer. He is a great human being. It is with great pleasure that I place into nomination for the position of President-Elect Paul Richard. Thank you. (APPLAUSE)

MADAM PRESIDENT: Thanks, Ron. Is there a second for Ron's nomination of Paul Richard?

MR. MINCH: Second.

MR. MYERCHIN: Thanks.

MADAM PRESIDENT: That is Mr. Myerchin. I think I will recognize Gordon Myerchin.

MR. MYERCHIN: Thank you. My name is Gordon Myerchin. I'm from Grand Forks. Hopefully, most of you know that. It is a privilege for me to second Ron McLean's nomination of Paul Richard to be President-Elect of the State Bar Association of North Dakota. As the first nominator/speaker, Ron outlined many of the fine qualities of Paul Richard. He also gave his eulogy as I see it. Those things are true. He has been a recognized leader, been involved with many, many of the State Bar organizations, and he has and will continue to provide direction and structure to the organization. I don't know how many of you sat

through the CLE this afternoon. I don't really see Paul as Vinny. And I don't really see Paul as Tom Cruise. But the fact of the matter is that most of us aren't Vinny and most of us aren't Tom Cruise. Most of us are just trying to do our job, be good lawyers. And when you get a person like Paul who has volunteered his time for the State Bar Association with the qualifications that Paul has, I don't think you can ask for anything more. And, therefore, I'm proud to second the nomination of Paul Richard for President-Elect of the North Dakota State Bar Association. Thank you.

MADAM PRESIDENT: Thank you, Gordon. Are there any other nominations for the position of President-Elect of the North Dakota State Bar Association? Are there any other nominations? Are there any other nominations for the office of President-Elect? Hearing none, I would entertain a motion to close nominations.

MR. WOLF: I move.

MADAM PRESIDENT: Al Wolf.

MR. CROTHERS: Second.

MADAM PRESIDENT: Dan Crothers. Since we have only one person nominated for the office, I will entertain a motion to suspend the rules and elect Paul Richard by unanimous acclimation to the office of President-Elect.

MR. WOLF: That was my motion.

MADAM PRESIDENT: Thanks, Al.

MR. CROTHERS: That was my second.

MADAM PRESIDENT: Okay. All in favor of the motion signify by saying "Aye." "Aye." Opposed? Congratulations, Paul.

(APPLAUSE)

MADAM PRESIDENT: I will now open the floor for nominations of the position of ABA delegate. The Chair recognizes Les Loble.

MR. LOBLE: I'm Les Loble from Bismarck. I move the—I nominate for the position of ABA delegate my good friend and colleague Jim Hill. Jim will bring the same intensity and enthusiasm for this job as he has all others, and this could be another term for Jim. I can assure you of that intensity and enthusiasm because after every ABA meeting Jim and I run together and I get the full, unabridged version of what happened. Which does you all a good service because after we go through that process he then writes a shorter article for the Gavel. Now, Jim has not reached the level of card and letter writing of Kermit Bye, but if elected he assures me he will. Thank you.

MADAM PRESIDENT: Thanks, Les. Is there a second to Les' nomination?

MR. KENNER: Harris Kenner from Minot. I would be happy to second the nomination of Jim Hill for another term on the board. I think he needs to get some more experience as to how they are doing down there.

MS. HOLMAN: Then you don't need me.

MADAM PRESIDENT: No. Thanks, Harris. Are there any other nominations for the position of ABA delegate? Any other nominations? Any other nominations for the position of ABA delegate? Hearing none, I would entertain a motion to close nominations.

MR. LOBLE: I so move and that the candidate be elected by unanimous acclimation.

MR. CROTHERS: Second.

MADAM PRESIDENT: All in favor? "Aye." Congratulations, Jim.

MR. HILL: Thank you. (APPLAUSE)

MADAM PRESIDENT: Prizes. Door prize winners. Free membership in Attorney Services Program, Vince Ficek and his firm. Golf bag from Alps goes to Justice Sandstrom. Golf bag from Hons Investigation goes to Virginia Carter. Putter and balls from Hons Investigation to Gary Sorensen. Lobster dinner from the ABA Retirement Fund, Monty Stensland. Gift certificate to Red Lobster from the Medical Legal Consulting Associates to Connie Portscheller. And a TV which was sponsored by Alps goes to Frank Weisser. Congratulations. You need to report to the prize center for prizes—exhibition hall which is next door.

There being no further business on the agenda, it gives me enormous pleasure and satisfaction to turn the gavel over to your new President, Dann Greenwood. (APPLAUSE)

MR. GREENWOOD: Thank you. I was grouching earlier about not having anything significant to do, but they have given me something that is very significant at this point to do. Before I do that, I want to remind you that there is a silent auction at 6:30 tonight followed by dinner at 7:30, and we would like to see you all there. The very significant thing I get to do at this stage is to adjourn the meeting.

(Whereupon, the 1998 Annual Meeting General Assembly concluded at 5:20 P.M.)

REPORTER'S CERTIFICATE

STATE OF NORTH DAKOTA)

COUNTY OF CASS)

I, DEANNA L. SAGER, 312 Black Building, Fargo, North Dakota, of Norman E. Mark—Court Reporter Service,

DO HEREBY CERTIFY that I am the Reporter who was present and reported the foregoing testimony.

I DO HEREBY FURTHER CERTIFY that this record is a true and correct transcript of my shorthand (Stenograph) notes made at the time and place herein indicated.

Dated this 6th day of July, 1998.

Deanna L. Sager—R.P.R.
12 Black Building
Fargo, North Dakota
(701) 235-7571

