



1993

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

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

OFFICERS

JOEL W. GILBERTSON President
GORDON W. SCHNELL President-Elect
JAMES S. HILL Immediate Past President
RALPH R. ERICKSON Secretary-Treasurer
SANDRA TABOR Executive Director

P R O C E E D I N G S

JUNE 10, 1993

(Thursday)

PRESIDENT JOEL W. GILBERTSON: I would like to call the 1993 Annual Meeting of the State Bar Association of North Dakota to order at this time. We will begin our meeting this morning with a Presentation of the Colors by the Grand Forks Air Force Base Color Guard and then the singing of our National Anthem by Job Christenson. Will you please rise?

(Presentation of Colors and National Anthem)

PRESIDENT GILBERTSON: Thank you. Now, I would like to introduce Father Phil Brown, a member of our Association who is going to give us the invocation. Father Phil.

FATHER PHILLIP J. BROWN: The Book of Job from the Hebrew scriptures is one of the literary masterpieces of all time. And Job is the prototypical just person, patiently suffering injustice. Whatever other situations we may have dealt with, not one of us has not had a client or known of a client like Job, the innocently suffering just person. During these days of convention we are seeking to find the balance in our lives and in our profession as lawyers. So I thought I would open our convention with Job's prayer asking God to weigh him in the balance. If you could please stand. Let us pray: Lord God who set the universe in motion and who sets all things in balance, the suffering just man Job cried out to you in his distress and asked for justice, saying, "Does not the Almighty see my ways and number all my steps? Let God weigh me in the scales of justice, thus will he know my innocence." May we never fear to be weighed in the scales of your justice, Almighty God, and may we follow in your ways so that we will find the balance of justice and wholeness that we seek in our lives and in our society and may you guide us toward that end during these days of convention. Amen.

PRESIDENT GILBERTSON: Thank you, Phil. Prior to the welcome from the Local Planning Committee there are a couple appointments I would like to make for purposes of our General Assembly. I am going to appoint Randy Lee of Grand Forks as parliamentarian and I appoint Phil Johnson from Fargo as the Chairman of the Resolutions Committee. At this time I would like to call on Kevin Spaeth who will give a welcome on behalf of the Local Planning Committee. Before he takes the podium, however, I would like to thank, as well, some other members of that committee, Sonja Clapp and Pat Morley who served with Kevin. It is a big job. It takes a tremendous amount of time and energy and I just want to say thank you. Kevin.

(Applause.)

MR. KEVIN B. SPAETH: They took apart or took away the best part of my speech which is to thank Pat Morley and Sonja Clapp. I would also like to thank Garry Pearson for the golf tournament and Howard Swanson and Joel Medd for the tennis tournament and Joel Arnason for doing the fun run/walk. It was a lot of fun. We enjoyed it. We welcome

you to Grand Forks. It is a great place to be. And we hope you have a very good time. Thank you.

PRESIDENT-ELECT GORDON W. SCHNELL: We have been very fortunate this year to have a person at the helm of our Association, a President who truly understands the structure and the organization of the Bar Association. This has been a watershed year for our Association and Joel has done an outstanding job in getting us back on track. Please help me show our appreciation to our President Joel Gilbertson.

(Applause.)

PRESIDENT GILBERTSON: Thank you. At the beginning of this bar year I indicated to you, the members of the Bar, the lawyers of the State, that I wanted this year to develop a perspective of what really is important to all of us, important professionally, personally and as an Association. You remember from my first President's Perspective my discussion of Hlidskjalf, the throne of Norse god Odin from a Scandinavian heritage, where all the world was in focus and all the world could be seen, and how I had anticipated and hoped that we could do some introspection of ourselves and of ourselves as an Association. Well, I have also written this year about my appreciation for our great quality of life in North Dakota and my concerns about making sure that lawyering in North Dakota continues to be a rewarding way to work and North Dakota continues to be a great place to live. I am going to talk about those a little bit, but first I want to mention some thank yous to some people that have given me some great support and some thank yous are in order.

The first person I want to thank is our new Executive Director, Sandi Tabor, and the State Bar staff as well. Sandi is a quick study. She has many special managerial and administrative skills and I think will serve the Association well for many years. My partners, Pearce & Durick, thanks for covering. I think I know what a billing slip looks like. I will try again next week to figure out how they work. To Jan, David and Lisa who won't be around here until noon and tonight, you will see why I think I am a pretty lucky guy. And then finally to Dad who is not here but who is up there, I want to thank him as well.

Well, before getting to some final thoughts that I have on finding the balance, I think—I wanted to look at some of the ongoing work of the Association as a work that goes on every day and I want to mention a few programs that I am particularly proud of. The work goes on and it keeps the high quality of programming that you come to expect from our Association, and we have some new programs so that we can forge ahead into the future as well. Over the past several years the profession has come under increasing attack in the area of attorney discipline and admission standards, particularly as they relate to character and fitness. One year ago both Chief Justice Erickstad, who is here this morning, and Hill issued a challenge to our Association to undertake an in-depth, joint study of the discipline and admissions systems. We have done that. The Board of Governors filed and was granted a formal request to establish a joint bench and bar study commission to examine our present attorney disciplinary system in light of changing national standards and changing national expectations. That committee was charged as well with reviewing admissions standards of future lawyers. I am happy to report that this joint committee, under co-chairs Christine Hogan of Bismarck and Paul Ebeltoft of Dickinson is well under way and we have a scheduled release of their final report with recommendations at or prior to our next annual meeting.

Another area of study that is ongoing has been undertaken by our Group Insurance Committee chaired by Gary Lawrence of Northwood. A couple years ago we abandoned our Client Security Fund. It was a fund that had dissipated to practically nothing, and we ultimately decided we were worse off with an underfunded inefficient program than with none at all. We decided to take a look at other funds in the country, most now called "client

protection programs," to see how they operate and to build ours the right way. The purpose of a client protection program, as most of you know, is to protect persons who have been swindled by unscrupulous attorneys and who have no other recourse. The Group Insurance Committee has examined a number of funding mechanisms and has discovered some exciting new alternatives. I am happy, again, to report that present plans are—a final report with recommendations will be ready at or before our next annual meeting as well.

One area that has received much attention last year primarily because it deserves, and you might say—could say demands attention, is the Legislature. For those of us, of course, that make our living in the law, any assembly of lawmakers deserves that time and energy. There is one particular area of legislation that I would like to focus in on this morning. Under the leadership of Legislative Committee Chair Sandi Tabor, our Association managed to shepherd through the process—the Limited Liability Company Legislation. A Limited Liability Company is a new business form, organization form, that captures the best aspects of corporations and partnerships. It is especially helpful for small businesses. For those of you who have been involved in the legislative process, you know that the prospects of getting 300 plus pages of a new bill through the Legislature the first try, supported no less wholeheartedly by lawyers, is almost laughable in terms of an impossible task. Well, it was done. It was done professionally and it was done really with relatively few problems. It was not done with relatively little work, however. We received assistance from the Secretary of State's office and the Tax Commissioner's office, but I personally want to thank Bill Guy Jr. and Jon Strinden, two lawyers with some fairly obvious political connections, for not only their political heritage but for their countless hours of work and testimony on this bill. I think that we as lawyers have performed a service for North Dakotans for which we can rightfully be proud. I have always believed that a strong local bar provides good foundation for a strong state bar association. I recognize that in some states there is an intense rivalry between state bar and local bars, but here we work together. This year I got to play a role in something long overdue and of benefit to our local bars. In November we sponsored the first-ever Local Bar Leadership Conference. We brought in local bar leaders from around the state, a keynote speaker from the ABA who works with local bars on practically a daily basis and had many ideas, and we had some state bar leaders as well. The combination of all this got excellent reviews from the participants. I think that the channels of communication between our state bar office and the local bars is more open than ever, and the local bar leaders now know that we are here to help them, not compete with them. I was frankly ecstatic about the conference.

Now I would like to talk just for a few seconds about I think one of the most underappreciated programs of the bar. Every day, nearly every hour, at least one of the telephones at the State Bar office is ringing. There are hundreds and hundreds of telephone calls every year from people who need a lawyer or who think they may need a lawyer. Often these people are in crisis situations—highly charged domestic disputes, financially distressed families or similar crisis type situations. Referrals are made by the State Bar Association office either through the Lawyer Referral Service for free or reduced fee referrals or through the Volunteer Lawyer Program for pro bono referrals. The work of the Association is then transferred to individual North Dakota lawyers who do their part in assisting clients to resolve their problems. There are over 500 referrals every year made through these programs where clients are matched up with lawyers. It is a tremendous public service program and another program that I think we should be proud of.

Well, I could go on and on. The Association continues to carry on a tradition of serving the members and tradition of serving the public. It has been a good year. It has been a year that I have been—I have enjoyed working with the programs and I have developed, I think, a new appreciation for the program of the State Bar.

If pocketbook issues are important to you, then I think I should maybe talk for just a few moments about financial matters. I won't talk long because rather than giving you a lengthy review of financial data, I will tell you that two years ago a Resolution was passed by this General Assembly in the Annual Meeting raising the State Bar dues in two increments, one in 1991 with the anticipated second raise in 1993 at this Annual Meeting. Well, there will be no recommended raise on dues this year. We don't think it is necessary and we don't think it is advisable at this time. Enough said about financial matters.

Now, if I could, let me talk about some of the things that I have discovered and that we have discovered about the lawyers of North Dakota. As you know, we recently sent out an extensive survey to the lawyers of North Dakota. We received an excellent response. We sent out 1250 surveys and 403 were returned. The purpose of the survey was to get an overview of our profession. How professionally satisfied are we as lawyers? How old are we as lawyers in the cross-section? What is the State Bar doing right? What is the State Bar doing wrong? How can we better serve our members? That was done fairly recently and results of the survey are being tallied now. Hopefully these can provide assistance and direction to bar leaders for many years to come.

I have reviewed a few of the results and I would like to mention a few of those because I think they are interesting. Just as an example, 53 percent of the respondents bill \$75 to \$99 an hour. Twenty-six percent bill \$100 to \$124 an hour. Seventy-six percent, a pleasing number as far as I am concerned, rate the performance of the State Bar Association of North Dakota as either excellent or good.

There was some quality of life questions in the survey as well, and there are some interesting results. Although most lawyers feel that they have input into professional decisions and the atmosphere and work is good, most lawyers in North Dakota, most respondents at least in the survey, also believe that advancement is determined more by the quantity than the quality of work. Although a large majority of lawyers responding believe they are respected and treated as professionals, a large percentage also feel significant pressure and tension on the job. The lawyers of North Dakota, at least as reflected in the survey, strongly believe that they keep clients well-informed and involved in decisions. They also believe by a large majority that opposing counsel and lawyer colleagues are courteous. Seventy-eight percent of the respondents are either very satisfied or somewhat satisfied with their current job. However, not all are happy. About one in six, 17 percent, plan to change their employment within the next two years.

We will be looking at these results, of course, for a long time, but at least at this point our early impressions are favorable. It is fair to note, I think, however, that the "time famine," as some have called this balancing act we go through of balancing our personal and professional lives, has crept into North Dakota as well. I think that you can rest assured, however, that we appreciate that and the Association is doing something about it.

President Teddy Roosevelt has made many speeches praising the people of North Dakota, and any of you that have heard me speak this year know that I have quoted freely from Teddy Roosevelt's speeches. I not only like what he said but I like the way he said it and, of course, I agree wholeheartedly with what he said about the people of North Dakota.

North Dakota is a place where, as he said, the romance of his life began. He called the people of North Dakota "a splendid class of good people" who "believe in a person's worth as a person without regard to wealth, social standing or position." After this year of traversing the state and talking to lawyers, bar associations, community and school groups, I simply could not agree more. The hospitality has been heartwarming. The concerns that I have seen from lawyers has been real but usually spiced with some laughter here and there. The lawyers of the state treated me wonderfully.

At a meeting of National Bar Leaders several months ago someone approached me and said, "Oh, you are from North Dakota." Not knowing what to expect other than possibly a few kind words about the weather, I said yes. And he said, "You know, I bet that is a place where it is still fun to practice law." I said, "You better believe it and we want to keep it that way." We are truly lucky.

My ride is about over and it is about time to get off, but before I do that I want to offer a sincere and heartfelt and humble thank you for the privilege of serving as your Bar President. The pleasure has been all mine. Thank you.

(Applause.)

Thank you. Thank you very much. I told you the pleasure was all mine. There have not been many years in recent history, at least that I know of, where we have had more changes in our judicial/legal system than the past one. We, as I mentioned, have a new Executive Director on board with a year plus under her belt. We have gained a new Clerk of the Supreme Court, Penny Miller, who filled in for a legend, Lu Dunn who retired. Shortly after Lu Dunn's retirement banquet, I started writing a speech to get ready for the retirement banquet of the person who for over twenty years was simply referred to as the Chief, Chief Justice Ralph Erickstad, who is now retired and can go jogging any time he wants to, I guess.

Well, we now have a new Chief and we have a new Chief Justice who is very visible, very conscientious. Over the past year, Chief Justice Gerry VandeWalle and I have shared microphones at any number of judicial and community functions. He has dived into this new role with a great amount of enthusiasm, a fresh look, a ready smile, and as you know, an infectious laugh. It is now my pleasure to introduce to you for his first State of the Judiciary Address, the head of the judicial system in the State of North Dakota, Chief Justice Gerald W. VandeWalle.

(Applause.)

CHIEF JUSTICE GERALD W. VANDEWALLE: Thank you. Good morning. Members of the Bench, the Bar, President Joel Gilbertson, President-Elect Gordon Schnell, Secretary/Treasurer Ralph Erickson, Members of the Board of Governors, and Executive Director Sandra Tabor:

I am delighted to be with you this morning to continue the traditions started by Ralph Erickstad and present the State of the Judiciary message. As a primary user of judicial services, you, the members of the Bar, have a big stake in our state judiciary.

I have had the message printed. You all have a copy of it. I am not going to read it in its entirety. Despite what some of my colleagues say, I know you can read. I really am just going to use some excerpts.

People have asked me how the first few months of my term as Chief Justice have been. Well, perhaps I can best explain it by sharing with you a letter I received. It says:

"My dear friend: Perhaps you have heard of me and my nation-wide campaign against sins of the flesh. Each year for the past fourteen years I have made a tour of Florida, Georgia, Indiana, Iowa, and North and South Dakota. I have delivered a series of lectures of the evils of worldliness. On this tour I have been accompanied by my young friend and assistant Clyde. Clyde, a young man of good family and excellent background, is a pathetic example of a life ruined by excessive indulgence in things of the flesh. Clyde would appear with me at the lectures and sit on the platform wheezing and staring at the audience through worried bloodshot eyes, sweating profusely, picking his nose, passing gas and making obscene gestures while I would point him out as an example of what over-indulgence can do to a person.

Last fall, unfortunately, Clyde died. A lawyer in North Dakota has given me your name

and I am wondering if you would be available to take Clyde's place in the 1993/94 tour. Please respond immediately."

I must tell you that came from my barber. Actually, we are in the process of undergoing the most significant changes ever undertaken within our court system. Trial court unification is a year and a half from being a reality. With this monumental change comes uncertainty, a cloudy future, questions on how to best proceed and, not unexpectedly, anxiety on the part of many judges who have a personal interest in the implementation. I am committed to implementing unification with as little pain as possible. "No pain—no gain" may be realistic for exercise fanatics, but if we plan and work together it need not be the process by which trial court unification is implemented.

Obviously, I need your support. We will need your cooperation, your understanding, your patience, and your constructive suggestions as we work through the implementation of trial court unification.

A little bit about the trial courts. The trial courts are in good health. Cases are routinely being disposed of within time standards that are the envy of nearly all other states. The percentage of district and county court civil cases which exceed the docket currency standards remains at less than 5 percent. Our trial judges deserve a round of applause for the manner in which they have diligently supported docket currency and I ask you to join me in giving them that round of applause.

(Applause.)

The future of docket currency, however, is another story and a cause for concern. New filings in the district and county courts have averaged an increase of 5 to 7 percent each year for the last three years. If the workload continues to increase 5 to 7 percent each year and the total number of judges is further reduced by 16 percent, as programmed in the unification law, it will be a matter of time until North Dakota joins the many other states that have a two to five year wait to get a civil case heard. I believe our legislators are reasonable and genuinely care about judicial services that we provide to our citizens. If we find more judges are needed, I am confident the Legislative Assembly will find a solution.

The Supreme Court. Joel already told you about the changes we faced in the Supreme Court. Our new colleagues have joined the court. They are in place. They are working well. The court has remained well within its docket currency guidelines recommended by the American Bar Association. Actually for 1992 our filings were down. However, if history proves true, the increase of filings in the trial court will be reflected in an increase in filings in the Supreme Court.

Thirteen months ago the tragic shooting of District Judge Lawrence Jahnke here [in] Grand Forks caused many of us to re-evaluate the need for security in our North Dakota courtrooms. One year ago this General Assembly passed a Resolution in recognition "of the serious risks faced by judges in the daily course of carrying out their duties, and more specifically, the life-threatening violent act of a litigant against Judge Lawrence Jahnke."

The Supreme Court has been offering financial assistance to the counties installing courtroom security equipment. Although we need to make our courtrooms secure, we do not need 53 trial court centers—trial centers in North Dakota. We should not expect counties to spend large sums for permanent improvement on court facilities that are seldom used. We will urge permanent improvements in those court facilities which are most heavily used and seek more modest security improvements in those facilities which are used less often.

Court funding. Our budget is through the Legislature. The Governor signed it. Overall, the 1993-95 trial court budget, excluding unification, was increased by approximately 1 percent.

The funds requested for court unification for the last six months of the biennium, and that's January through June of 1995, were appropriated by the Legislature. The Legislature also authorized continuation of the Court of Appeals for two more years but without legislative funding.

Finally, a few words on pay. The Legislative Assembly authorized a \$60 increase for employees for the first year of the biennium and a 3 percent increase for employees the second year of the biennium if we can find it in the appropriation. They didn't appropriate any money for it. Those increases did not include judges. Judges were classified as state officials, and no state officials were given increases. That means the pay gap between North Dakota judges and judges of other states will continue to grow for the next two years. We currently rank in the bottom 4 percent of pay for state judges. We need to develop judicial pay as a priority in the Legislative Assembly.

Lawyer discipline. Joel has spoken to you a little bit about it. The number of new complaints filed against attorneys in 1992 hit a record high of 168. We supported the funding of an additional attorney to assist the Disciplinary Board in clearing up the backlog and improving the time it takes to process a complaint. The Legislative Assembly approved its request and approved funding as of July 1, 1993. The position is currently being advertised. I should tell you that I was surprised, very pleased, when they added the position. That was contrary to what they did in almost every other area. And I was even more pleased, and I shared this with Joel and Gordon and Sandi, that we were able to accomplish the additional position without trotting out all the horror stories in front of the Legislature that sometimes is needed to push their button. They were very cooperative in financing this position, and I am very appreciative that they did it.

On legislation, a—there is a piece of legislation that was passed that will permit us to help—help us in reducing the number of trial court judges to meet the number the Legislature has now prescribed. And, briefly, it provides that a vacancy will be considered to have occurred in the office of district judge if the judge declares intention not to seek re-election or if a judge fails to file a timely petition for candidacy. So that means that if one of the current judges determines not to run, we will be able to declare that position vacant if we believe it need not be filled.

Many of you over the years had occasion to work or to have some contact with Elmer Dewald, our lawyer librarian. As you know, Elmer resigned a few years ago. That position has been filled by Marcella Kramer. Marcella has done a wonderful job. She is not a trained librarian and the Court, in an effort to improve the library, is going to be filling that position and is already calling for applicants to fill the position.

Finally, I want to comment on the spirit of cooperation between the Bar and the Bench. At the suggestion of the Bar leadership, we met periodically throughout the Legislative Session. The status of pending legislation was discussed and we shared our knowledge and perceptions of the legislators' attitude. No attempt was made to change views or alter positions but there were few, if any, surprises as to the positions or the actions taken by the Bar or the Court on matters of mutual concern. I wish to publicly thank Joel Gilbertson, Gordon Schnell and Sandi Tabor for their openness and straight-forward views. They made the Legislative Session much easier for a new Chief Justice.

Yes, we can have gain without pain. The same cooperation that assisted in the last Legislative Session and enabled the creation of a Joint Bench/Bar Commission on Lawyer Discipline and Admissions can operate to simplify trial court unification. I ask for your help and support. I thank you for your part in the new direction we are headed jointly.

When I—when Sandi asked me about talking, I said, "About what?" And she said, "About the judiciary and about fifteen minutes." And I tried to come within that time.

Sandi, do I have a few minutes left? I have a few minutes left. I told her, and I know it is taking a risk, but I told her I would like to try something different. If any of you have any questions that I or my colleagues, and they are here, all except Justice Sandstrom who is ill and could not be here, I would like to take them at this time. I would like to have a dialogue with the lawyers. So if any of you have any question about anything I have said, anything I haven't said about the Judiciary, I am willing to take them within the time allotted. And if not, I'll thank you. Any questions? Bob.

MR. ROBERT O. WEFALD: In terms of law librarian what is it you expect to achieve that we are not getting from Marcella right now? I am just curious.

CHIEF JUSTICE VANDEWALLE: A screening process, Bob, of what is out there. The materials are just—we don't have enough money. We have very limited resources to purchase new acquisitions, and it is very difficult to determine what there is. We are also going to be heading away from hard cover, and that's a whole area that we need some very expert advice in. We asked the University of North Dakota Law Library people to come in. I had hoped that we could make an arrangement with them, but they recommended that we have a full-time trained Law Librarian on staff. And so that is really—those are the areas. Marcella has done a wonderful job. Those of you that have been in that library know she has done a nice job and we are appreciative of that. Anybody else have any questions? David, I knew you wouldn't let me be.

MR. DAVID L. PETERSON: Justice Levine ordered me to ask a question.

CHIEF JUSTICE VANDEWALLE: And I believe that.

MR. PETERSON: Judge, how do you know what is going to happen on the unification thing? There was a lot of discourse in the Legislative Session. Are we headed—are we looking at the possibility of backsliding on that in the next session?

CHIEF JUSTICE VANDEWALLE: On whose part?

MR. PETERSON: Legislature's part.

CHIEF JUSTICE VANDEWALLE: I am not sure we can make it with 42. I am very doubtful we can make it with 42. We may be able to cut one or two, maybe three more positions, and I think that is the bottom line without really starting to hurt, or hurt more than we can afford to. So I think we need to go in and tell them that we have made an effort. We have looked around. We have looked at some of the positions that might be on the board, and I think three is an absolute maximum, three more to go. And I am not sure what we can—if we can take that. I think if we explain it to them, that they will cooperate.

We also have to take a look, and I said I wouldn't sow the seeds of dissention, but I think we need to take a look at our venue statute. If we are going to have fewer judges we simply are not going to be able to try the cases in some of these rural counties, and I am not sure that we are going to be able to call juries in some of those rural counties. There are very few people in some of those counties. We really need, I think, to take a hard look at our venue statute. So those are some of the things, David, we will be looking at. Anyone else?

MR. ROBERT WEFALD: One other question. Is the Supreme Court taking any leadership role in getting uniformity in district court and how we handle default divorce judgments?

CHIEF JUSTICE VANDEWALLE: I am not—no. Right now—this is one of the reasons, Bob, for this question and answer period is because I don't think lawyers will always tell us what are on their minds. I am not sure I knew there was a problem. So if there is, let us hear about it. And we will take a look at it. I am not sure we will do anything about it, but we will take a look at it. Anyone else? If not, thank you.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Chief Justice VandeWalle. At this time we

have a report from the Information Service Committee on the Memorials and giving that report will be Clyde Goulet—Wally Goulet.

MR. WALLACE R. GOULET: Good morning. In the year that has lapsed since our last annual meeting, ten of our members have passed away. Former Ramsey County State's Attorney Lewis Jorgenson died on June 19 of 1992. Mr. Jorgenson was a 1967 graduate of the University of North Dakota School of Law and served for eight years as an assistant prior to his twelve years as State's Attorney. At the time of his death he was in private practice. Mr. Jorgenson was very active in community affairs and was a past Exalted Ruler of his Elks Lodge.

Bill Daner passed away November 21, 1992. Mr. Daner was a highly decorated fighter bomber pilot during World War II and was an assistant professor in the ROTC Department at the University of North Dakota. Mr. Daner graduated from the University of Notre Dame Law School in 1953 and returned to practice in North Dakota in 1954. In addition to his private practice, Bill was general counsel for North Dakota Bankers Association for eighteen years and was a judge for the Standing Rock Sioux Tribal Court.

Billings, Montana Attorney Gary D. Miller was killed along with seven co-workers in the crash of their aircraft on December 18, 1992. Mr. Miller was a Jamestown native and had graduated from the University of North Dakota School of Law in 1978. Gary had been employed by MDU and was an administrator with the Western Area Power Association.

Floyd B. Sperry, a long-time member and former President of this Association, died on December 23rd, 1992. Mr. Sperry had practiced in Golden Valley and Bismarck and remained active until his death at age 87. Floyd maintained extensive ranching operations and had been Mercer County State's Attorney for ten years. Mr. Sperry's contributions to the Association had been acknowledged with our Distinguished Service Award in 1991.

Edward J. Murphy of Fargo died on January 26, 1993. Mr. Murphy was a World War II veteran and his participation in Veterans Affairs included a term as Commander of his American Legion Post. Mr. Murphy grew up in Hillsboro and attended the University of North Dakota School of Law. He commenced private practice in Fargo in 1949.

Retired District Judge Roy A. Ilvedson passed away in Minot on January 29, 1993. The innumerable professional and community leadership roles undertaken by Judge Ilvedson included a term as President of our Association. Judge Ilvedson's public service began as Ward County State's Attorney in 1936 and was followed by a term as Ward County Judge and a combined total of twenty-two years as District Court Judge. One of Judge Ilvedson's surviving children is our colleague Duane Ilvedson.

Another former President of our Association, J. F. X. Conmy died in Bismarck on February 2nd, 1993 at the age of 93. A well-known trial lawyer, Mr. Conmy began his practice of law in Fargo after graduating from the University of North Dakota School of Law. In 1953 Mr. Conmy moved to Bismarck where he continued his successful practice. Mr. Conmy's father was a pioneer lawyer and county judge in Pembina. The family tradition of service to the public and profession has been continued by his son Judge Patrick Conmy.

The City of Ashley lost a leading citizen and booster upon the death of Max A. Wishek on February 8, 1993. Mr. Wishek attended the University of Michigan Law School and was admitted to practice in North Dakota in 1924. Mr. Wishek was McIntosh County State's Attorney for eight years and was a banker and businessman in Ashley.

A former North Dakota Assistant Attorney General Jerry V. McMartin died in Eagan, Minnesota, on March 30th, 1993. Mr. McMartin was born in Grafton and had lived in Eagan for the last three years. Mr. McMartin's abbreviated legal career ended with his death at the age of 36.

Dickey County State's Attorney Daniel J. Diemert was killed in an automobile accident

on May 15th, 1993. A graduate of the University of Montana School of Law in 1976, Dan was employed by the State of Montana prior to returning to his home in Ellendale where he was engaged in private practice in addition to his official duties as State's Attorney and Ellendale's City Attorney. Mr. Diemert was 43 years old.

In memory of those whom we have lost in the past year and to honor all of our departed colleagues, I ask that we stand now at this time for a moment of silence. Thank you.

PRESIDENT GILBERTSON: Thank you, Wally. At this time I would like to introduce to you for a report Judge Allan Schmalenberger. Judge Schmalenberger is the Chairman of the North Dakota Bar Foundation. North Dakota Bar Foundation, as you know, is the charitable arm of the Association and has a number of activities. And Judge Schmalenberger will update you on those.

HONORABLE ALLAN L. SCHMALENBERGER: Thank you. In 1982, the North Dakota Bar Foundation was incorporated as a not-for-profit corporation to advance the science of jurisprudence, promote the administration of justice and uniformity of judicial decisions through education and scientific means.

In April of this year, the Bar Foundation held a general fund campaign. Through this campaign we obtained \$35,550 in new pledges. For their donation of their time and effort to make this campaign a success, I thank Becky Thiem, Bob Wefald, Joel Gilbertson, Pat Ward, Mike Sturdevant, Vern Neff, Judith Howard, Jack Marcil, Mary Maring, Phil Johnson, Bill Heth, Bill Herauf, Wally Goulet, Howard Swanson, Judge Dick Geiger, together with the Association staff and Sherry King for the work they did on this fundraiser.

I also thank you for your pledges and welcome all new members to the Foundation. I thank Cliff Rodenburg for his continuation and renewal as a Gold Patron member. And as new Silver Patrons, I thank Jim Hill, Dave Peterson, Becky Thiem, Chief Justice Vande Walle and Pat Ward.

As new Patron members, I thank George Ackre, Jr., Bruce Bair, Brenda Blazer, Linda Catalano, David Danielson, Patricia Ellingson, Robert Feder, Mary Maring, Michael Guler, James Harris, Sarah Herman, Judge Ron Hilden, Penny Miller, Tim Priebe, Paul Richard, Dean Rindy, Calvin Rolfson, Dan Vogel, Pamela Hermes, Greg Selbo, Al Wolf, and Steve Easton.

In 1992, the Real Property, Probate and Trust Law Section donated \$5,000 to the Foundation. This is the second year the Section has contributed \$5,000. We also received eight donations to the Memorial Fund.

Our current membership stands at 3 Gold, 10 Silver, 94 patrons and 151 Sustaining Members. This past October the Bar Foundation awarded scholarships and plaques to the three highest ranking UND law students in their class during the 1991 and '92 academic year. These presentations were made at the home of Dean Jerry Davis. This reception is always a very pleasant time to again see old friends and to make new ones. Again, thanks to Dean and Jackie Davis for their gracious hospitality and use of their home.

The Bar Foundation also awarded a \$400 grant to the UND Moot Court Association; a \$500 grant to the sponsorship of North Dakota Citizen Bee Competition; a \$1,000 grant to the Law Review Stipend Program to practicing attorneys Jon Jensen and Kerry Rosenquist to write a law review article; a \$1,500 grant to the Law Review Stipend program sponsored by the Real Property, Probate & Trust Law Section that went to Edward Erickson; a \$2,000 grant to Billings County Courthouse Museum; a \$300 grant to the North Dakota Legal Secretaries Association for scholarships.

In 1992, the Lawyer Trust Account Committee of the Bar Foundation received twelve applications for IOLTA grants. From these applications the Committee awarded ten grants

totalling \$127,445. The grants were \$100,000 to the Legal Assistance of North Dakota and the North Dakota Volunteer Lawyers Program; \$3,500 to Migrant Legal Services; \$4,500 to the North Dakota Legal Services; \$4,500 to Dakota Plains Legal Services; \$4,500 to the UND Legal Aid Association; \$3,597 to State Bar Association Law Related Education Program for printing a distribution of the booklet "Graduating Into An Adult World"; \$1,248 for publication of the booklet "Human Rights Act And You"; and \$5,600 to the North Dakota Council of Abused Women's Services for Advocate Training.

Since the inception of the IOLTA program in October 1987, about \$616,898 in grants have been awarded. The cooperation and participation by the North Dakota attorneys and financial institutions make this program a success. And I thank all of you.

At the 1992 SBAND golf tournament, the Attorneys Liability Protection Society sponsored a \$1,000 hole-in-one prize, and since there was no winner they donated the prize to the Foundation. It is my understanding that they did this again this year and hopefully on behalf of the Bar Foundation it will not happen.

At year end, the non-IOLTA fund balance was \$59,262, and as of March 31st, 1993, our total non-IOLTA fund balance and outstanding pledges total \$137,365.

It is through your act of participation that the Bar Foundation exists and is able to assist with worthy projects. I thank you.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Al. At this time we are going to have a report from Sarah Herman. Sarah Andrews Herman will give a report of the CLE Commission and perhaps she can explain to you why the CLE Commission is not going to give credit for the wine etiquette course this afternoon. Sarah.

MS. SARAH ANDREWS HERMAN: The decision of whether or not to give credit is an interesting decision to make and it is one that occupied a good deal of the time of the CLE Commission.

The Commission includes Mike Ahlen, DeNae Kautzmann, John Burke, Maureen Holman, Chuck Miller, Jerry Kettleon, Mary Maichel Guler, and Dean Jerry Davis is involved as well in some of the processes. We have continued to function, as usual, with some streamlining due to computerization. We reviewed 909 applications for course approval, some very interesting, some causing a great deal of controversy among the various members of the Commission, some very easy to decide on. Seven-hundred thirty-two of those applications were approved. One-hundred seventy-seven disapproved. We reviewed 504 letters of compliance, reports of compliance. Those do take a while. Sent out 66 60-day letters, 11 suspensions of which 5 were reinstated.

CLE concerns and the work of the CLE Commission is since there is a suspension requirement it is very serious business, and I want you to all be aware that we do try very hard to make correct and appropriate decisions as to courses proposed. If you feel that a course that you have taken which has not received approval or has been disapproved inappropriately, please give us more information. Contact us. We have changed our opinions on a number of occasions when additional information has been given. We have changed our opinions based on the format of the application. And I invite you to look at the back of the form that we send you. Uniquely connected is a nice area which allows us a great deal more latitude for approval of course work. If you make a uniquely connected application, that is to say that a particular course is uniquely connected to your area of practice and should be approved for you where it might not be approveable as a course in general, that gives us a much more — much more freedom to approve the course that you are trying to have approved.

One of our concerns because of the seriousness of suspension and because the way that

our rule is written is that our hands have been effectively tied and there are circumstances where it seemed to us as the CLE Commission Members that we really didn't have much choice but to do the harsh thing and we decided and have proposed a rule change. The rule change in essence will allow us to in certain circumstances have members opt out of active status to an inactive status. The reason we feel this is important is because there are many attorneys who though licensed in North Dakota initially have moved to other states and don't desire to retain the licensing here. There are attorneys who because of age or disability have determined that they no longer desire to practice law. To date with the rule in the format that it now exists, our only avenue when someone reaches that time in their life when they no longer desire to practice and when they are not fulfilling their CLE requirements is to suspend. And a suspension is not something that people look forward to with any great fondness. It was for that reason that we asked — we were asked as a Commission, I guess, among ourselves, to put together a proposed rule. Maureen Holman and I drafted a proposed rule, and it has been submitted to the Board of Governors with general approval. I think there is some requests for some minor modifications. I think there is a request particularly that we ask lawyers to certify their inactive status. The rule is not long. It is actually a portion of the old Rule 4. This would be a statute of Paragraph 4(b), and I would like to read it to you so that you have some knowledge of what it is that we are contemplating.

The new rule will read essentially: "An attorney who does not desire licensure in North Dakota may request inactive status. An attorney must make such a request in writing no later than June 30th of the year in which he/she is due to file his or her CLE Compliance Report. Attorneys electing inactive status are not required to comply with continuing legal education reporting requirements. A North Dakota lawyer who does not comply with the continuing legal education requirement and elects voluntary inactive status has special ethical concerns. An inactive lawyer may not represent or advise any person or business in legal matters in proceedings other than him or herself. The name of an inactive lawyer may not appear on firm letterhead without a qualification that the North Dakota licensure is inactive. The law firm name may continue to include the lawyer's name if the name was included prior to the lawyer's placement on inactive status. An inactive lawyer may not be listed as of counsel or otherwise be represented to clients or others as being able to undertake legal business. It is a violation for law partners or associates to knowingly allow an inactive lawyer to continue practice, and an inactive lawyer may not have a financial interest in a law firm that is a professional corporation except in so far as there is a separation agreement which allows for payments to former partners or associates of a law firm. An inactive lawyer should promptly advise clients that he or she is unable to represent them and that they should select other counsel."

Reinstatement from inactive status is governed by admission to Practice Rule 7. As you can see, we have spelled out some very serious consequences for election of inactive status. We wanted it to be clear that CLE requirements are serious and that there is a suspension requirement and for people to take the election to an inactive status as a serious election. It is our intention to go forward with the Board of Governors' approval for approval of this rule and inclusion of this rule in the CLE Rules in this state.

That's been what we have done this year. It's been an interesting year. We all go to very interesting courses in interesting places and we enjoy going through and kind of living vicariously through some of your experiences. Thank you.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Sarah, for the discussion of lawyerism. How about legal aspects of wine tasting? I would like to introduce to you next for a report, as far

as I know, she is the only law partner I have who is here and who is in Grand Forks is not on the golf course, Christine Hogan, who is going to give a report of the Joint Commission studying admissions and discipline. I referred to that a little earlier in the President's message and it is Co-chaired by Paul Ebeltoft of Dickinson and Christine Hogan from Bismarck.

(Applause.)

MS. CHRISTINE A. HOGAN: Maybe you could work in how to improve your law practice by having wine tasting in the law firm in a course that could get credit. We do that in our law firm and it has improved our law practice. I can tell you that.

As Joel mentioned, I am here as co-chair. Paul Ebeltoft could not be here today. He is in Washington as far as I know. I wanted to just be very brief today. The Joint Commission on Lawyer—I always have to look this up—Lawyer Discipline and Admissions, or JCADA, as we call it, you are going to be hearing more about it as the year goes on, and you are going to probably, we hope, hear our full report next year. We are just getting started, but I do want to take a few minutes now to let you know what the Joint Commission is, where it came from and where it is going, we hope.

It is—the Joint Commission is the brainchild of Justice Ralph Erickstad and our current President Joel Gilbertson and our current Board of Governors. They conceived of the idea of a study group to undertake a thorough examination of what is right and what is wrong with the disciplinary system within our profession, respecting both admission of lawyers into the profession and respecting the discipline of lawyers once they are admitted into the profession.

In short, the Board and the President and the Chief Justice felt it was time for us as a profession to step back and take a good hard look at ourselves with the idea of possibly making some changes to improve our disciplinary system. Quite frankly, the impetus in this state for this self-scrutiny was two-fold. There were sort of a rash of scandals involving lawyer ethics in this state and there was a concern that if the lawyers themselves did not take it upon themselves to do something, other people would. And there was also a third smaller minor impetus from the McKay Report which was handed down from ABA which was telling the—which provided some model concepts to be implemented within the state.

As you know, up until now the profession has always prided itself as being self-regulating, and the Board and President and Chief Justice through creation of this Study Commission have studied to find out if the theory is still working, and assuming that it is, to make the improvements necessary to make sure that the high standards of professionalism for our organization are maintained for the future.

Just very briefly how it was created. Last October the Board of Governors petitioned the Supreme Court for an order establishing a Joint Study Commission. The Petition spelled out exactly what the Board had in mind. The Commission would be composed of members of the SBAND Attorney Standards Commission and Supreme Court Attorney Standards Commission, both of which were existing organizations. The Joint Commission would be co-chaired by the chairmen of these two committees, Paul Ebeltoft and myself, who were already in place. The Joint Commission would be jointly staffed by the SBAND staff and by the Supreme Court staff. And I do want to comment that our staff was Sandi Tabor and Jim Ganje from the Supreme Court and they have given new meaning to the word cooperation. And as I am sure you can imagine, we don't need turf battles in this issue and we are—we don't need that kind of complication between the Bar and the Court, and our mission is not going to be regulated by that. It appears there is going to be excellent cooperation between the Court and the Bar for this Commission.

The Commission's mission is very clear and it is also very broad. We were—the Peti-

tion spells out that the Commission is to review admissions both in terms of the substantive standards which apply, should apply, and in terms of the Board's procedures and policies with an eye toward evaluating the need for any changes that need to be made in the area of admissions in the State.

Secondly, to review the disciplinary process that is in force by the Court and the Bar at this point. And again, the purpose of that evaluation is to evaluate the need for any changes and then to go ahead and implement that change, those changes, through suggestive rule changes which we hope to bring to you next June.

If this sounds broad and sweeping, I believe it is. We are taking this as a mandate make some—at least take a good hard look at what we are doing. The Supreme Court granted the Petition in November and Paul Ebeltoft and I sat down with Joel and the staff in December at a planning meeting and started to put the concept into practice. The first thing we decided on at that very first meeting was a date on—to complete our project. And we set the rather ambitious goal of March 1994 so that we would be in a position to report to you next year at this Annual Meeting. I am hopeful that we will meet this goal.

At the very first meeting we also identified the scope of the study which consists of finite items even though our mandate is broad and those items are disciplinary rules of procedures. We are not focusing so much on rules of conduct themselves since, as you know, those were recently updated, and we may have some incidental changes to those rules, but we are not really contemplating anything major with respect to rules of conduct. We will be looking at rules of disciplinary procedure. We will be looking at the rules of—regarding lawyer sanctions. We will be looking at the McKay Report. We will be looking at ABA model rules of disciplinary enforcement and looking at amendments to the admissions rules.

Just a word with respect to the McKay Report. We decided at the outset to focus only on those items which have actually been adopted by the ABA. As you may know, not all of the McKay Report has been adopted. We also decided to focus only on the problem areas that are raised in the McKay Report that are applicable to the needs of a small rural state such as North Dakota. As I am sure you know, much in the McKay Report is not really feasible in our state.

We have took up immediately the question of composition of the Commission. As I mentioned, it is composed of the Attorney Standards Committee of the Bar Association and of the Supreme Court. The composition was expanded somewhat on the Supreme Court side to include participants in the process and on the Bar side it was expanded to include members of the Inquiry Committees—I'm sorry, Chairs of the Inquiry Committees. The membership is long. It is listed on a letter—on our letterhead which I have available here and which all of you, I think, got when you got the survey, and we do thank you for that.

I am going to mention briefly a little bit about our survey. At our very first meeting the first thing we decided to do was get some baseline data on what are the problems in this state and how can we identify them and how can we start correcting them in this area of discipline, lawyer discipline. We decided that the best mechanism for finding out what the problems are is asking you, the membership of the Bar Association, and also the participants in the field, the members of the Board, members of the Disciplinary Board, members of Inquiry Committees, to survey them and also to survey the Complainants for the last five years. We got their names from the Supreme Court and sent them surveys as well. We designed three different surveys, one for the general membership of the Bar, one for the participants within the system and one for the Complainants to ask them to tell us what they think is working and what isn't working within the system. The most detailed survey was the one directed to the participants within the system because we felt that these were

the experts; these were the people who could really tell us what the problems are. We sent out these surveys in late April. We have now received the responses and I want to thank you for participating in the survey. We actually—out of 1250 that were sent to the membership, we received over 400 responses, I think 419, which is 33 percent of the Bar, and that is very good. The other two surveys we got almost 50 percent compliance in terms of response. So I think we have excellent data to work with. We have some very interesting responses. We did ask for detailed written responses from the participants within the system. Our staff has compiled a report of those responses which is available. I am not going to go into it right now. You can get it from Sandi if you are interested. I would just tell you very quickly because I don't want to take up a lot of your time this morning, but there are some things that kind of jumped out at us. A lot of people within the system and the general members of the Bar as well say the system is inefficient and complaints take too long to process, and that is something that needs to be looked at. They have given us some concrete suggestions about how to resolve some of the inefficiency problems that they perceive.

Another thing that really leaped off the page is a concern that the public does not know what is going on and they are not well informed. So the very first thing we did after receiving that response was immediately to create a Subcommittee on Public Information to prepare a pamphlet that will be sent out to all people who make the complaints so it will completely explain the system and what they can expect. And that is something we are going to be working on immediately.

I do have a list of some of the other complaints that we have gotten that I would be happy to discuss with you. I don't think there are too many great surprises. I can tell you one thing, that we will be using this data that we got from our survey responses in attempting to improve the system and we hope to have a complete report to you next year, and I will look forward to seeing you then. Thank you. Any questions?

PRESIDENT GILBERTSON: Thank you, Chris.

Next we are going to talk about a program that has been really the envy of many bar associations around the country and won a number of awards, but before we do that I want to tell you we are ahead of schedule. It is now according to my schedule supposed to be 10:46. It is not. One of the things I would like to do is we are going to take one of the reports we had scheduled for tomorrow. Gary Lawrence was going to give a report tomorrow on the Group Insurance Committee and I am going to ask Gary in a few minutes to give the report today, if that's okay. I can always ask. Give you a little time to think about it.

Before doing that, however, I would like to introduce to you Jim Vukelic who is going to give a report on behalf of the Volunteer Lawyers Program, the program that has literally hundreds of lawyers involved giving and donating hundreds of hours to—for the benefit of the people of North Dakota.

Jim, I think you should note, as of two days ago is one of the newly elected members of the Bismarck School Board. Congratulations, Jim.

(Applause.)

MR. JAMES M. VUKELIC: Thank you, Joel. I think it was John F. Kennedy who said that a child miseducated is a child lost. I am appreciative of the education I have received in North Dakota and in particularly the legal education I have received and I hope to enhance those opportunities for my children and for the other kids in Bismarck, so I am very happy. Thank you for that.

I am here on behalf of Leo Wilking who chairs the North Dakota Volunteer Advisory

Committee and I want to thank Deb Knuth and Sandi Tabor for all the help they have given our Committee this past year.

One in seven North Dakotans live at or below the poverty level, and the American Bar Association estimates that each poor person in this country averages three or four civil legal problems each year. We also know that on average only 20 percent of those needs are met. We have five legal service corporations in North Dakota. The largest, of course, is Legal Assistance of North Dakota. However, they can't serve everyone. We also have North Dakota Volunteer Lawyers, and this past year I am very proud to say we handled 500 referrals—or the lawyers of North Dakota handled 500 cases on behalf of indigents. However, we also know that there were 3200 documented cases of people who requested legal help in our state who were turned away. Many of these cases involve family law. Volunteer Lawyers Advisory Committee recognized that many lawyers did not volunteer to handle these family law cases simply because they felt unqualified or inadequate to represent clients in that particular area of the law. In 1992 our Committee's most significant progress was made in the area of family law training for lawyers who had served indigents. In September of last year we co-sponsored a seminar on family law and the indigent client which was very well attended. We also distributed last year 430 copies of the Family Law Handbook. This was a manual with sample forms relating to divorce, child support and a host of other matters.

We placed 500 cases last year and we hope to expand that next year with the continued support of you all and with the Bar. Thank you.

(Applause.)

At this time I would like to recognize two attorneys who were instrumental in serving indigent clients in North Dakota, and with the able assistance of President Gilbertson, I would ask that these two attorneys come forward who have contributed 100 hours of service in the pro bono program. Jan DeRemer.

(Applause.)

Thank you very much.

And Wayne Solberg.

(Applause.)

Thank you, Wayne.

Not present but also contributing 100 hours or more of service were George Ackre, Jr., Carol Larson, Scott Porsborg, Jerel Schimmelpfennig and Pam Hermes. Can you give a round of applause for them?

(Applause.)

In addition there were five attorneys who contributed between 50 and 100 hours of pro bono service. They were Jane Dynes, Sally Marin, Craig Richie, Jim Geyer and Richard Hagar. Would you recognize them, please?

(Applause.)

PRESIDENT GILBERTSON: Thank you, Jim. And thank you to all the speakers this morning for keeping the speeches short and to the point. I always—I have got a few pearls of wisdom from my father who is a minister, and he used to talk about sermons as we talk about speeches, and I remember one of the things he said about a sermon. A sermon in order to be—how did he say it? He said a sermon in order to be immortal need not be eternal. That is how he said it. He also said if you don't strike oil after fifteen minutes, quit boring. I think we are going to finish a little bit ahead of schedule. As far as I am concerned that is fine with me. But we have a few more things that we will finish up this morning as I continue my quest to go on inactive status, and we are going to have a report by Gary Lawrence on behalf of the Group Insurance Committee.

(Applause.)

MR. GARY W. LAWRENCE: I have had about five minutes notice to do this, but my law partner, he is my speech writer also, and lo and behold, he came up with something for me here, so we will see how we do here.

First of all, I would like to apologize to Sonna Anderson from Bismarck. I incorrectly spelled her name in our report, and Sonna, my apologies there. We will not do that again.

Your Group Insurance Committee is involved in a number of endeavors, but this morning I would like to report to you on a new project that we are undertaking. It is—it involves the Client Security Fund. Most of you are aware that this state for a number of years did have a Client Security Fund and at the present time there are no funds within the fund itself. And under the old procedure, a sum, I believe up to \$5,000, could be paid out when there were instances of fraud and somebody lost money. But as I said, the fund now is depleted. Recent events in the State of North Dakota, both in the east and west, have brought to the forefront again an interest in redoing the Client Security Fund, and our Committee was asked to study this subject and to make a report to the Board of Governors. And what I would like to just briefly run by you is some of our thoughts, some of the discussion we have had.

We have only had two meetings, and this will be kind of an ongoing study that will be occurring later this fall with a report made to the Board of Governors and targeting this for the spring.

What we did, we had a gentleman come up from New Mexico by the name of Jeff Mains, and Jeff is an insurance broker, very knowledgeable in the area of bonding, and he spoke to our Insurance Committee in Fargo and gave us a very excellent presentation. Mr. Mains developed a program in New Mexico wherein they started—they did not have previously a Client Security Fund but they did start their Client Security Fund, and in addition the—they will use a blanket bond in the State of New Mexico. And they were successful in getting the Continental Insurance Company to provide a blanket bond in the State of New Mexico. They use a \$5,000 deductible. They studied higher deductibles but they came up with \$5,000 deductible, and the Client Security Fund pays the first \$5,000 and after that the bonding company takes over. And interestingly enough, they funded their program in New Mexico—keep in mind they have more members than we do—but they funded it for the sum of a \$10 assessment for the bond and \$5 for the Client Security Fund for a total of \$15. New Mexico has about 4,500 members. We only have 1,500 members, but this is one of the matters we will be studying is what will it cost the North Dakota Bar Association to do this.

Mr. Mains assured our Committee he could do the bond portion of this for \$10 and we will have to give further study as to what amount the assessment would be to the members, but we do not anticipate a very large assessment. What happens—what will happen, we anticipate, is we will put this program together, present it to your Board of Governors and that it would be presented to the membership at next year's meeting.

That's a real brief thumbnail sketch of what we are attempting to do. If there are any questions on this, as I said, we are just getting into the program ourselves, the study, but I would be happy to try to answer any questions that you might have regarding this program. Judge Hunke.

HON. MAURICE R. HUNKE: Gary, what action would the bond secure?

MR. LAWRENCE: Okay. I am sorry. The bond would basically cover fraudulent actions. In other words, we anticipate where a member or a client has—a member of the general public, a client has been defrauded, they would be reimbursed. I should mention under the New Mexico program there was an aggregate payment, a single payment, I

believe of up to \$100,000 per occurrence that could be paid out. But that is what we anticipate, where a lawyer has absconded with funds.

MR. R. MATHER: Is it a graduated scale for assessment in New Mexico by length of time you have been in practice or is it just straight?

MR. LAWRENCE: No, it is not. What they told us, they have settled in on this assessment I mentioned, and then they will look at it on an annual basis as to any further assessments, whether they are needed or not. And obviously if you have a terrible loss, then the price of the bond is going up.

Any further questions on this? I know this is a very brief thumbnail sketch of a very complex subject, but it was felt this is something that was needed. We are a self-regulating agency, and it is something we are going to have to continue to look at quite seriously, I believe, in view of some of the things that have occurred.

MR. PATRICK W. FISHER: Gary, do you have any statistics as to what the loss to clients has been in North Dakota in the last two or three or four years?

MR. LAWRENCE: As far as payment?

MR. FISHER: No, as far as money absconded by—

MR. LAWRENCE: We do not. The statistics that Sandi came up with, and perhaps she has a better handle on this, were from losses, I believe, from 1980 through '85 essentially and payments from the Client Security Fund that were actually paid out. But as to actual losses within the state, how much has the public been defrauded, we don't have the statistics yet.

Any further questions? If not, thank you very much.

(Applause.)

PRESIDENT GILBERTSON: Thank you particularly for giving the report on this short notice.

That is an exciting program, I think. It is also a program that has a lot of new answers and I think you can look forward to next year having a substantial discussion and a lot of material in front of you for discussion with respect to that Client Protection Program. The committee meeting is ongoing and they continue working on getting the program ready for discussion, hopefully for action by the General Assembly next year.

That will conclude our reports for this morning.

At this time we have some business to take care of and that business has to do with nominations for the Officers of our Association. Before doing that, however, I would like to recognize one of our elected state officials who is the highest ranking legal official in the State of North Dakota in charge of enforcement and she is—I am glad to see you here—that is Heidi Heitkamp. Heidi.

(Applause.)

I would like you to note that our present Secretary-Treasurer is not running for an additional term. Our present Secretary-Treasurer is Ralph Erickson who has been Secretary-Treasurer for three years and I think the plate of financial matters was a lot more crowded than he expected three years ago when he ran.

Ralph, I just wanted to thank you for all your time and energy and good humor and as well as some of the wisdom that you have imparted to the Board of Governors over the years. Thanks.

(Applause.)

Ralph's discussion of political theory as practiced and discussed mostly in the 1700s is stuff which legends were made.

At this point I am going to open the floor for nominations for the position of President-

Elect of the State Bar Association of North Dakota. Are there nominations to be made? Chair recognizes J. Philip Johnson of Fargo. Phil.

MR. J. PHILIP JOHNSON: President Joel, Members of the Association, thank you for your attention.

I rise to nominate Howard Swanson of Grand Forks for the position of President-Elect of the State Bar Association of North Dakota. I actually act here as a substitute for the eloquence of Dewey Kautzmann who is unavailable. Dewey, I am informed, is at the Pritikin Clinic in California.

Howard was born in Grand Forks and raised in Argyle, Minnesota. He graduated from Argyle High School, attended the University of North Dakota, obtained a degree in Economics and a minor in Political Science. He then graduated from Hamline Law School, graduating cum laude in 1983. He presently works as a partner in the law firm of Letnes, Marshall, Feidler & Clapp and also serves as City Attorney for the City of Grand Forks. Howard's wife, Debbie, is originally from my home town of Minot, North Dakota. She is a registered nurse with the Grand Forks Public Health Department, and they have two young children, Jeffrey, age five, and Stephanie, who I understand is about twenty months right now.

I have worked with Howard on the Board of Governors of the State Bar and also on the Board of Directors of the North Dakota Bar Foundation, and Howard has always shown me a very serious dedication to the profession combined with an appropriate sense of humor about the world at large, and I think this is probably an essential combination for leadership.

In addition to these qualities, Howard is a pretty good tennis player though not yet possessed as the cunning of senior players like Judge Medd and myself.

It gives me great pleasure to place before you the nomination of Howard Swanson for President-Elect of the State Bar.

(Applause.)

PRESIDENT GILBERTSON: Is there someone who per chance would want to second that nomination?

MR. LYNN M. BOUGHEY: It gives me great pleasure to second the nomination of Howard Swanson. I think Howard will be a superb President. He is thoughtful. He is a hard worker and an excellent lawyer and I think he has done a superb job in finding the balance in his life and practice. He does both criminal and civil work. He has done both plaintiff and defense work. He has always found the balance within the realm of North Dakota geopolitics by having the good sense to establish a significant western connection by marrying Deb Fowler who I went to junior high school with and high school with and is a wonderful individual. I am sure she will be an excellent assistant to him and partner in his role as President of our organization. I hope you join me in supporting Howard Swanson as President-Elect of our organization.

PRESIDENT GILBERTSON: Thank you, Lynn Boughey, our newly elected President of the Northwest Judicial Bar Association and he will join the Board of Governors tomorrow. Thank you, Lynn.

Any other nominations for the position of President-Elect? Any other nomination? Hearing none, I would entertain a motion at this time to close nominations.

MR. DANIEL VOGEL: I move we close the nominations and cast a unanimous ballot for Howard.

PRESIDENT GILBERTSON: The way, Dan, we do this is accept the first part of the motion and a second. I know you will be on the edge of your seats but we can't vote until

tomorrow, but we will accept your motion to close nominations. A second to that? Someone identify themselves.

MR. RICHARD J. FOREST: Second.

PRESIDENT GILBERTSON: And the motion was made by Dan Vogel. All in favor of the motion say, "Aye." Opposed? Thank you. We will now open the floor for nominations for the position of Secretary/Treasurer of the State Bar Association. Chair recognizes Ralph Erickson.

MR. RALPH R. ERICKSON: It is a dangerous thing to put an 18th century mind in front of a microphone, right?

PRESIDENT GILBERTSON: What did Alexander Hamilton say?

MR. RALPH R. ERICKSON: I don't know.

Kip Flagstad asked me to make this nominating speech for him. I was struck with a tinge of sadness, and I think that it is important that there is turnover in these types of positions, and yet at the same time I have so thoroughly enjoyed my time as Secretary-Treasurer, at least most of it, that I am somewhat saddened by the prospect of leaving.

When Kip asked me to give this speech, I also was concerned as to whether or not he could fill my space. The way I got it figured, he is at least a hundred pounds too light and so I decided that I should undertake to examine his qualifications.

Now, it seems to me that in order to be Secretary-Treasurer of this organization you have to have knowledge in three general areas. First of all, you have to have a demonstrated knowledge of the State of North Dakota and its people; you must have an understanding of the practice of law; and finally, you must have some basic understanding of the Bar.

So I sat down last night to talk to Kip and he was properly able to identify Carpio, North Dakota as boyhood home of Dave Peterson, Amidon is the place that is a county seat where there is least likely to be a jury trial, and Voltaire, North Dakota, as the home of the David S. Thompson Memorial. Now that is not David Thompson, the lawyer. That is the guy who first surveyed the State of North Dakota.

Now, I thought that that demonstrated a pretty fair knowledge of North Dakota and its people and I thought okay, that's good enough. But what about the law? What does Kip know about the law and lawyers in general? So I asked him what a contingent fee case was, and he told me that was a case that you either won or you took out a second mortgage on your home.

I asked him if he could identify the salary rate for legal secretaries and associates, and he told me that the proper rate of salary was the going rate, and that's the minimum that they will accept before going. Finally, Kip was able to identify the county courts as the place where you meet the dregs of society and their clients. I practice frequently there so I can say that. Well, I thought those were all pretty good answers so I thought let's move on to the last area, and that's the area of Bar knowledge. And what Kip told me was that he really wasn't too concerned because all he had to do is ask Sandi, and I thought, well, you know, that's a good reason and that works for me. So I thought that he had met my three qualifications for holding the office of Secretary-Treasurer.

On a more serious note though, I have had the opportunity to serve with Kip on the Board of Governors for the past two years. I have found Kip to be dedicated, intelligent, hardworking, a man of wit, a man of charm, a man of humor, a man of substance. Quite frankly, I can think of no other person in this Association who could more ably serve as its Secretary-Treasurer, and because of that I am very pleased and it is my high honor and distinct privilege to place into nomination the name of Kip Flagstad.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Ralph. If the—if Ralph is on a TV show and the Final Jeopardy answer is Alexander Hamilton, it is money in the bank. We truly have enjoyed, as I mentioned, having Ralph on the Board. Is there anyone who Ralph—Kip, rather—somehow talked into a seconding speech?

MR. ROBERT J. SNYDER: He talked somebody into it.

PRESIDENT GILBERTSON: We have a Mr. Snyder. Never been called Mr. Snyder before?

MR. SNYDER: Mr. President, Members of the Bar, I am Bob Snyder from Bismarck. And it is my pleasure to second the nomination of Kip for Secretary-Treasurer. I have known Kip since he and I and a couple others graduated from UND Law School in 1977, and since that time Kip has been up in Minot and, you know, he does the type of work that I think really is the essence of the Bar. I mean the essence of what it is to be a lawyer. He is representing the alleged criminals and he is representing the small people and he is down in the trenches working every day, day in and day out, to see that justice works the way it should. And without people like Kip that are willing to do that, without doing a whole lot of moaning doing it and a whole lot of gratification for it, I am afraid that the system wouldn't work at all. And I think—my hat is off to him because I know what he has done all these years.

So the position of Secretary-Treasurer probably isn't as glamorous, for example, as—I mean it seems to me that what you do is you get a whole lot of work but you don't get a whole lot of glory. And I think again we are talking about someone that has demonstrated a willingness to work with the Bar and a type of person who is willing to do that sort of work.

So it is my pleasure and my honor to second the nomination of Kip for the position of Secretary-Treasurer and I think we are lucky to get him if he is elected. Thank you.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Bob. Are there any further nominations for the office of Secretary-Treasurer? If not, I will accept a motion for—I'll entertain a motion to close the nominations at this time.

MR. WALLACE GOULET: So move.

PRESIDENT GILBERTSON: Wally Goulet made the motion. Is there a second?

MR. ORLIN W. BACKES: Second.

PRESIDENT GILBERTSON: Second by Orlin Backes. All in favor say, "Aye." Opposed? Thank you. The nominations are closed for the office of Secretary-Treasurer. I know again you are on edge of your seats, but I am afraid you can't vote until tomorrow so you are going to have to wait. I don't know how you will be able to sleep tonight, but the tension will be mounting and we will have the grand finale tomorrow with the casting of the votes.

Next we have the reading of the Resolutions by our very competent Chairman who has been working very hard drafting Resolutions and will read them at this time. At least I think he will. Yes, he will. Thank you.

MR. J. PHILIP JOHNSON: Those of you who have attended one or more meetings are aware that this is the time at which we recognize by Resolution some of the people that have made the meeting possible.

First of all, the first Resolution is as as follows:

WHEREAS, the members of the Northeast Central Judicial District and others who have put considerable time and effort into planning and organizing the 1993 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: Co-chairs Sonja Clapp, Patrick Morley, and Kevin Spaeth for the planning and overall coordination of a multitude of details including arrangements for the Spouse/Guest Program, the Children's Program, the Wednesday evening social, and the Red Mass;

To: Garry A. Pearson for chairing the Golf Tournament;

To: Howard D. Swanson and Hon. Joel D. Medd for chairing the Tennis Tournament;

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

To: Howard D. Swanson for securing sponsorships from the law firms of Letnes, Marshall, Fiedler & Clapp, Ltd.; Morley, Morley & Light, Ltd.; Vaaler, Warcup, Woutat, Zimney & Foster; Pearson, Christensen, Larivee & Fischer; and McElroy, Camrud, Maddock & Olsen, Ltd., for the private exhibit of art works by Ross Rolshoven on behalf of the North Dakota Bar Foundation;

To: The Grand Forks Legal Secretaries for their general assistance during registration;

To: The Grand Forks Country Club, the Grand Forks Tennis, Racquetball and Fitness Center, the Y Family Center, the Dakota Queen Riverboat, the Campbell House and Museum, the North Dakota Museum of Art, the Ramada Inn, and the Holiday Inn for their hospitality and assistance in arranging all of these events; and

To: The State Bar Association staff for overall supervision and administration of details related to the 1993 Annual Meeting.

We have this coming somewhat out of sequence. We have a special Resolution relating to the endorsement for candidate for President-Elect of the State Bar Association—excuse me—American Bar Association. It is very seldom that we have anybody from our region that is willing to undertake the rather arduous task of running for President of the American Bar Association, but we do have someone who I know personally; and, therefore, we offer this Resolution.

WHEREAS, Charles M. Thompson of Pierre, South Dakota, is an outstanding lawyer, Bar leader, and a good friend and colleague of the lawyers of North Dakota;

WHEREAS, he is past president of the State Bar of South Dakota, has been in the ABA House of Delegates since 1978 serving on various committees, is immediate past chair of the Fellow of the American Bar Foundation, and is currently President of the National Conference of Bar Presidents, and has served the American Bar Association in numerous capacities, to include a term on the Board of Governors, as State Delegate, and State Bar Association Delegate from South Dakota, as well as several other positions within the ABA and its affiliated organizations;

WHEREAS, the lawyers of the State Bar Association of North Dakota wish to express their support and encourage CHARLES M. THOMPSON of Pierre, South Dakota, to seek the nomination of President-Elect of the American Bar Association at the February, 1996, meeting of the Nominating Committee.

NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA IN ANNUAL MEETING AT GRAND FORKS, NORTH DAKOTA, ON JUNE 8-11, 1993, that the Association officially goes on record by means of this Resolution and unanimously supports, endorses and encourages Charles M. Thompson to seek the nomination for the office of President-Elect which in turn will lead to his becoming president of the American Bar Association in 1997-1998. Again, another Resolution:

WHEREAS, the businesses and organizations that graciously sponsored portions of the 1993 Annual Meeting and have participated as exhibitors are:

American Arbitration Association
Attorney's Liability Protection Society
Attorney's Title Guaranty Fund, Inc.
Benefit Specialists
Blue Cross Blue Shield of North Dakota
Emineth & Associates Court Reporters
First National Bank of North Dakota
Grand Forks Great Plains Claims, Inc.
Jordon Winery & Jordon Sparkling Wine Company
Mead Data Central and UND Attorney Services
The Michie Company
North Dakota Association of Legal Secretaries, Grand Forks Chapter
North Dakota Court Reporters Association
Norman Mark Court Reporters
Pearce & Durick Law Firm
Piper Jaffray
Ramsey National Bank & Trust Company
The Rivery
Team Connecting Point
United Printing, Inc.
Vaaler Insurance
West Publishing Company, and
West Services, Inc.; and

WHEREAS, without their participation and financial support the 1993 Annual Meeting of the State Bar Association would not have been the success it was;

NOW THEREFORE BE IT RESOLVED that the above be thanked for their gracious support.

And finally and perhaps the most significant of these Resolutions:

WHEREAS, President Joel W. Gilbertson and Jan Gilbertson have served the State Bar Association of North Dakota during the past year at 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 Joel W. Gilbertson and Jan Gilbertson for their dedicated efforts.

Mr. President, that completes the role of Resolutions.

PRESIDENT GILBERTSON: Thank you, Phil. Those will deem to be filed.

I know, once again, the suspense is killing you as to whether those will be adopted tomorrow in the vote. Have to wait until tomorrow to vote. Can't vote today. They will not be read tomorrow, simply be voted on except for the Resolution on the President, of course, which will be read several times hourly, I think.

Sandi, are there any announcements at this time?

Please fill out evaluations of the Annual Meeting that you have and return those to the registration desk if you would, please. Those are things that we look at and can help us in planning future meetings.

Can I just review quickly with you our schedule of events? We will adjourn here

shortly and then we will—we will call the meeting again to order for a final session tomorrow afternoon at 12:30, but we do have a few things between now and then. The noon luncheon speaker today is a fellow by the name of Tweed Roosevelt who is a truly captivating fellow and is an absolute storyteller and I think you will really enjoy that presentation. There is a CLE seminar this afternoon by Mike McGowan on finding the balance to create satisfaction in your work and life. That will be interesting as well.

There is something that you got in your materials that we have put together a lecture or a course by Corrinne Richel from Sonoma County, California on wine and health and wine tasting etiquette. That will be at 3:30 this afternoon, from 3:30 to 4:30 in the Cushman Room at the Holiday Inn. We will then have a wine tasting reception with some—with J. Champagne as headliner and a number of other wines for you to taste as well. That will be at the Holiday Inn from 6:30-7:30. We will have the banquet then. The featured entertainment at the banquet will be White Eagle. That is all I have for now. Anything else?

UNIDENTIFIED: Is there a river boat cruise?

PRESIDENT GILBERTSON: The river boat cruise is on the spouse's program. And what is the status of the river boat cruise? It is still on. River boat cruise is at 11:30. You can always swim and catch up, I guess, swim fast.

MR. RALPH ERICKSON: It's only 11:00. Don't swim yet.

PRESIDENT GILBERTSON: If not, meeting is adjourned. (Whereupon, the proceedings were adjourned at 11:00 a.m., Thursday, June 10.)

P R O C E E D I N G S

June 11, 1993

(Friday)

(Whereupon the General Assembly proceedings continued at 12:25 p.m.)

PRESIDENT GILBERTSON: I assume no one will mind if I—I assume no one will mind if I call the meeting to order a couple minutes early. But I think it is time now to get started. I will call the meeting to order.

The first person I'll call on is Ralph Erickson, our soon-to-be-departed Secretary-Treasurer. Ralph has been Secretary-Treasurer for three years. Can you help me welcome Ralph Erickson?

(Applause.)

MR. RALPH ERICKSON: I plan on living to the next meeting so I will keep this short.

Mr. President, the Board of Governors was pleased with the findings of the 1992 audit in which we received a clean opinion from the auditors on all statements. Given the problems we encountered two years ago we believe that the Association is back on track. Unlike the 1991 management letter which contained thirteen recommendations and four additional comments, the 1992 management letter contained only three recommendations, one involving the small size of the office staff which included no recommended action. The Board hopes to continue to refine our progress in the area of fiscal responsibility to our membership by implementing further measures to reduce expenses while maintaining our present quality of service during the fiscal year.

As you will recall, the Association changed fiscal years in 1991. Consequently, last year was our first accounting period under the new calendar year which ended December 31st, 1992. The 1992 audit reflected year-end assets of \$126,322 which included restricted cash of \$58,604 and inventory of \$26,153. The restricted cash represents money held by the Association for the sections and the CLE Commission.

Our overall fund balance at December 31st, 1992, was \$34,570, all of which represented restricted funds. During the year, the Association generated \$520,299 in

unrestricted revenues and \$103,857 in restricted funds for a total of \$624,156. License fees represented \$294,414 of the unrestricted revenues. Our total expenditures of \$588,018 included administrative expenses of \$247,509, disciplinary expenses of \$45,048, and program services of \$112,429. Included in the administrative expenses were CLE seminar costs and office overhead. Disciplinary expenses included payment of \$36,000 to the Disciplinary Board and costs associated with the Inquiry Committees.

With that brief overview of the 1992 audit, I would like now to turn our attention to the 1993 budget. Our overall projected revenues for 1993 are \$580,245. License fees represent 52 percent of that figure. Other sources of revenue include CLE seminars, the annual meeting and the Volunteer Lawyers program.

Our total projected expenses for 1993 are \$574,882. In addition to salaries and employment taxes, other expenses included in this projection are expenditures associated with the operation of the CLE seminars, the annual meeting and the Volunteer Lawyer program. Our goal is to insure 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 years to come.

(Applause.)

PRESIDENT GILBERTSON: Any questions of the Secretary/Treasurer on any financial matters from the General Assembly? If not, we have a few committee reports that we would like to complete this afternoon and we will get started.

Roger Minch is here from the CLE Committee and will give a report at this time. Roger.

MR. ROGER J. MINCH: I am giving this report for Sean Smith. He is either a year behind us or we are a year ahead of him. He is in Dickinson doing depositions so he asked me to give the report for him.

He has completed his first year as chairperson and has done an excellent job. It is no secret that the bulk of the work of the Committee is done by Sherry King, and of course, Sandi Tabor gets credit for that, too. If that weren't working she would be getting the heat. As far as hours and attendees, in 1990/1991 we presented 83.5 credit hours, '91/'92 we did 106.5, and in '92/'93 we did 82.5; but overall attendance per program has been going up. These are attendance figures: 1990/1991 there were 1,083 people that attended. In '91/'92 it was 1,369 and in 1992 to 1993, 1,413. So we are up with numbers. And what we want to do is to stress the importance that if you have a choice of going to SBAND CLE programs I hope you will do that and hope you encourage people in your firm to do that. A lot of times we end up going to Minneapolis and so forth. It is not that CLE is supposed to be a money-making part of the Bar Association. It has been more in the past than it is now. Our Mission Statement says that our goal is to produce the highest quality programs at convenient locations with pertinent topics and we are to operate on no worse ever than a breakeven basis and within the guidelines set by the budget for the Board of Governors. And we are pretty much on even keel with all of that. And that is on page 2 and 3 of the report here.

The other thing about SBAND, there is a lot of people in North Dakota, I have discovered, that are better qualified than anybody else in the world to give certain programs, and that is not necessarily just because North Dakota law is peculiar to certain points. So I hope you take a look at the programs. You see the brochures. Over the last four, five years we have just really felt a pressure from competition from out-of-state producers of CLE, and although sometimes they use local speakers, except for the \$10 per attendee that they

divide among all three of the speakers, the Bar Association gets nothing else out of those programs. Thank you.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Roger. The State Bar Association has thirteen committees, and one of the pleasant tasks that I have as the President, very soon to be ex-President, Immediate Past-President, but one of the tasks I get to do—one of the things I get to do is to recognize one of the Chairs of the committees as the Outstanding Committee Chair. This year's winner of the Outstanding Committee Chair has reorganized the operation of the Ethics Committee, has created a structure which encourages full committee participation. The Committee has issued twenty-one opinions this year, has addressed six additional requests, has submitted numerous articles on ethics to *The Gavel*, and his committee has acted—helped to act as facilitator for ethics discussion at the Annual Meeting this year.

His leadership in Bar activities is well-known to everyone. He was recently promoted to be one of the highest ranking officers in the United States National Guard. Please help me congratulate and thank the 1993 Outstanding Committee Chair, the General, Murray Sagsveen.

(Applause.)

Murray, as long as you are up here, you can give me a report, too.

MR. MURRAY G. SAGSVEEN: Thank you, Joel. I am honored to accept this recognition on behalf of all the members of the Ethics Committee. I think they have done a phenomenal job during the past year, and I believe that the opinions that they have authored and we have discussed have been excellent.

The members of the committee this past year were Bob LaBine, Alice Senechal, Pat Ellingson, Paul Richard, Brian Bjella, Al Wolf, Mike Maus, Barry Vickery and Pam Hermes, and I think they have done a wonderful job in the entire year. Thank you very much.

(Applause.)

The Ethics Committee of the State Bar Association has issued the opinions, the number mentioned by Joel, and I think it is very important that the Ethics Committee be remembered as you are practicing because the Ethics Committee provides an excellent opportunity for you to have an objective third-party opinion about a question that you may have. It is particularly important because the North Dakota Procedural Rules for Lawyer Disability and Discipline state, quote, "A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the Ethics Committee of the State Bar Association of North Dakota shall not be subject to sanction for violations of the North Dakota Rules Of Professional Conduct as to the conduct which is the subject of the opinion or advisory letter."

So in addition to having an objective third-party opinion, complying with the opinion to a certain extent provides a safe harbor for the person requesting it.

This past year we also indexed the opinions. With a \$250 grant from the Bar Association we hired a paralegal, and they have been fully indexed. And we have about 125 opinions that fall within certain categories and they are listed in the—in the report that is in the book. So if you have any question about a particular rule, it is possible that the Committee has already issued an opinion on that or a similar issue. And you can receive a copy of that opinion by calling Sandi Tabor who was always the foundation and the rock for the Committee during the past twelve months. Thank you, Sandi. Thank you very much.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Murray, and congratulations again.

The Inquiry Committees, both Inquiry Committees had a very busy year as well. Dan Crothers is here and will give a report on behalf of Inquiry Committee East. Dan.

MR. DANIEL J. CROTHERS: Good afternoon. Thank you, Mr. President. I, too, will be brief noticing that there is a small group of people at this meeting, but those who are here have their feet pointed towards the door, as do I.

Inquiry Committee East last year, the Bar year from 1992 starting in May going to May of 1993 considered 91 files, and it disposed of almost all those files. A few of them have been carried over for current consideration; but as Joel said, the caseload has been high. I think in general the dismissal rate also has been high and I think that speaks well of the Bar. I think it speaks well of the system we have in place, and it is ironic that I might speak right after the Ethics Committee report. The Bar members should keep that in mind, and I think that is something that even as the—those of us in the Inquiry Committee and disciplinary process, we should keep in mind referrals to that committee would be most useful and maybe some of these reports would not need to be made. I would be remiss as Chairman of Inquiry Committee East without thanking a number of individuals who do keep busy and they work very, very hard. There are lay members, three lay members, as you all know on the inquiry committees. On Inquiry East: Joan Flynn of Grand Forks, Tom Gabrielsen of Grand Forks, Curt Cornelius of Larimore. And if you know those individuals or see those individuals or know them, please say something to them in terms of thanks for their work because it is a lot of work and it is a great effort, volunteer effort, for these lay members.

In addition—and obviously the same amount of work is involved—in addition there are attorney members. Howard Swanson is on the committee, Tom Rutten, Ron Fischer, David Walker and Richard Smith, and my personal thanks to all of those individuals for doing service on behalf of the Bar Association.

I have provided in your materials, and I will not review it, a summary and a report to the President on the nature and the type of cases that have been presented. I think it is instructive to look at that report and the one, I presume, that was prepared by Inquiry Committee West, Chairman Ron Reichert. I think that gives you some idea of the type of complaints and I think it also gives you some insight into your practice and maybe what needs to be or might be changed so as to avoid ever becoming part of the complaint process.

In total in 1992 Penny Miller tells me we had 322 files pending at one time or another. That is calendar year 1992. So there were a number of files. When that year started there were 55 formal proceedings pending from 1991. At the end of that year there were 38 pending. So the Disciplinary Board and Supreme Court obviously has been busy and involved at this level as well.

A brief observation, if I may, and then I will conclude, is that the nature of the complaints seem to be this: There are a certain number of complaints that are going to be made no matter who is involved and no matter how good a job you do for your client. There are a number of other complaints that are being made that probably are being made by less sophisticated individuals and those complaints might not be made if the attorneys were paying better attention to regular communications, if those attorneys were documenting their communications, they were documenting their fee arrangements and finally, but not least obviously, that they were documenting the scope of their representations because more and more we are seeing complaints about lawyers—complaints of lawyers by people who did not understand exactly what the lawyer was going to do for them.

So with those things in mind, I thank the President for the opportunity to appear, and I thank the Bar in general for the support of the disciplinary process.

(Applause.)

PRESIDENT GILBERTSON: Thank you, Dan, and to the Committees. It is really pretty much, as you can imagine, a thankless task but it is an important task and it is a task that takes a lot of time and a real commitment.

The next thing I have written down is a report of the Real Property, Probate and Trust Section by Bob Wefald, and Bob seems to be wandering in and out.

UNIDENTIFIED: The last time he was here he said he had to catch a plane and to give you his apologies.

PRESIDENT GILBERTSON: So that was a real short report. Just about right.

(Applause.)

Thank you, Bob.

We are going to move to our last report, but I notice we have someone here that I would like to introduce to you so we can thank him for what he has done before he heads south to Vermillion. Barry Vickery is here, and as I think you probably heard yesterday, he has been asked to accept the job as the Dean of the Law School at the University of South Dakota. We are kind of proud of you.

MR. BARRY VICKERY: Thanks, Joel.

(Applause.)

PRESIDENT GILBERTSON: Okay. Garry Pearson on the Taxation Section is going to talk a little bit about—briefly discuss the limited liability.

MR. GARRY A. PEARSON: Thank you, Joel. It is nice to be up in front of you again. I would like to thank Ron Reichert who went fishing this week. Whenever he is at the Bar convention I can never make it up until 3 o'clock the next afternoon.

This section on taxation took over the sponsoring of the legislation for the LLC. Limited Liability Company is what LLC stands for. It has nothing to do with Lutherans, has nothing to do with legislature, has nothing to do with llamas or whatever. It is Limited Liability Companies. And for those of you who are not familiar with the term, it is a partnership where all the partners have limited liability. And it is a totally brand new thing for us, although historically it has been used in a lot of foreign countries. In fact, it was used and perhaps invented in Germany back in the 1880s. About, well, in April or May of 1992 we commenced this process and at that time nine states had enacted Limited Liability Company acts. Now the reason for this, of course, as you can all imagine and suspect, this is some kind of a tax dodge, right? Rostenkowski and Reagan ruined the tax law back in 1986 and since that time we have got to find some way to fight back, and this is the way we do it. It will be very popular and I predict that come the time that this Act is fully implemented that you will never again form a corporation or a partnership. You will only form LLCs. At the last count, from the notice I had in my office here about ten days ago, thirty-one states have passed LLC legislation. The tide is so high—even in those states that have shown reluctance because of revenue loss, it appears that, as I say, the tide is so high it will sweep it through and within a year or so we are going to have it in every single state.

We formed a committee to draft the bill and also a committee to consult with, and this included representatives of the State Tax Commissioner's office, representatives from the Secretary of State's office because these Limited Liability Companies are going to be registered just like corporations, and you will get a charter, so to speak, from the Secretary of State's office. We included representatives of the North Dakota Trial Lawyers Association and just about everybody we thought that might have some insight or complaint or input into the legislation.

It was spearheaded by the Section of Taxation and I have any number of people that really did a lot of work and a lot of help on the bill. Particularly, however, the bill was drafted by Bill Guy and Jim Bullis of the same law firm as well as Jon Strinden, and they are

the ones who did a monumental amount of work in getting the legislation through. The statute itself is about so thick (indicating), legal size, of course. The trailer bill that is changing everything else in the North Dakota Century Code that refers to corporations or partnerships to include LLCs is equally thick. I think it has—there was something like 1,700 different references that had to be worked out. The job is done, and it passed. It was modeled after Minnesota's statute and it passed the house and it passed the Senate and we had a few minor changes at the very end, but we did some rather important things. For example, Minnesota was unable to cover farmers with their Limited Liability Company Act. There was an objection by a farm group which will remain unnamed, but in any event, the Farmers Union was really steamed about that, Limited Liability Companies in Minnesota. And we got a hold of these people rather early on in North Dakota and we cover farmers, and frankly, it is going to be of most benefit to our farm clients. We also cover professionals. I submit to you that professionals will now organize almost exclusively as LLCs in North Dakota, including you.

There are lots and lots of technical things about the Code, one of which is that we are all attempting to get revenue rulings, that is each individual state from the IRS, wherein the IRS says we recognize the LLC statute of Vermont as yielding this particular type of tax result, the desired result we are looking for. Minnesota, of course, as I said, is—their bill is about the same as ours. And I talked with the people who are sponsoring that and working the ruling process through, and they expect the ruling to be issued in the very near future and it will be favorable. And since our bill is patterned after Minnesota's, I submit to you that we will then proceed with confidence to organize LLCs in North Dakota although we, too, will go through with the ruling process. I will do that on behalf of the Association, and I have received word from Mr. Wefald who just received another rousing applause here a moment ago, that the Real Property and Probate Section will put the money up because now the IRS is charging user fees and I think they are going to extract \$2,500 to cookie-cutter the work they just did in Minnesota.

So anyway, another round of applause for Real Property and Probate.

(Applause.)

Okay. Finally, a lot of you are going to want to learn about this, and we are doing what we can in the way of continuing education. There will be a video presentation by Jon Strinden and I will do on the 30th of June. I and a third-year law student, one Chad Pearson, are writing an article for the Law Review. If the Dean has anything to say he can probably get it fixed so it gets published. But we are going to be doing a seminar on Limited Liability Companies at the Joint Committee—or the Joint CPA and Lawyers seminar that we put on every year. This year it will be held, and I am not sure about what city, but about the middle of September. There will be one put on for CPAs about the week after that which will be open to members of the Bar, and finally, I am going to do one for Real Property and Probate, and I think it is in Fargo the first week in December—the normal one they have at that time of the year.

So there will be a lot of CLE out there for you and you can become familiar with this. The Bar Association helped us a lot with money. The CPAs gave us some money as well. I have received immense cooperation and a very smooth running organization to put this thing through and I think we have done ourselves proud and I want to thank all of the people that helped us. Thank you.

(Applause.)

PRESIDENT GILBERTSON: Jim Bullis and Bill Guy and Jon Strinden, as I have indicated before, spent a tremendous amount of time on this LLC legislation, but I do want to say that the person who got the ball rolling, the person who walked into the Board of Gov-

ernors meeting and said this is something that we have got to have was Garry Pearson. So Garry was a tremendous force in starting LLCs, in getting the legislation through as well. Thank you, Garry.

Next we have election of officers. I know again you are on the edge of your seats in anticipation of a tight race, but we do only have one candidate for each position. I will at this time entertain a motion to suspend the rules and ask that we cast a unanimous ballot for Howard Swanson for the office of President-Elect.

MR. DANIEL VOGEL: I will make the motion over here since I have been sitting on the edge of my chair for the last couple days.

PRESIDENT GILBERTSON: Motion made by Dan Vogel.

MR. RICHARD OLSON: Second.

PRESIDENT GILBERTSON: Seconded by Dick Olson. All in favor of the motion say "Aye." All opposed? Motion passed.

(Applause.)

MR. HOWARD SWANSON: Dan told me to keep it short. Thank you.

PRESIDENT GILBERTSON: Next we have one person nominated for the office of Secretary-Treasurer. At this time I will be happy to entertain a motion again to suspend the rules and ask that a unanimous ballot be cast for Carl "Kip" Flagstad for the office of Secretary-Treasurer.

MS. JULIE EVANS ERJAVEC: I make the motion.

MR. RANDY H. LEE: Second.

PRESIDENT GILBERTSON: Seconded by Randy Lee. All in favor of the motion say "Aye." All opposed? Nobody opposed. The motion passed. Kip, congratulations.

(Applause.)

MR. CARL O. FLAGSTAD, JR.: I just wanted to say thank you, too.

PRESIDENT GILBERTSON: We had three Resolutions read yesterday—four Resolutions read yesterday, and you heard the Resolutions. We will not read them again.

I will again one more time entertain a motion to suspend the rules and to vote on the adoption of all of the Resolutions at one time.

MR. J. PHILIP JOHNSON: So moved, Mr. President.

MR. BRENT J. EDISON: Second.

PRESIDENT GILBERTSON: Brent Edison seconded. Motion has been made and seconded. All in favor of the motion say "Aye." All opposed? Motion carried. Thank you very much.

Now, my favorite part of the whole afternoon, Boss, I deliver to you one Association in good condition, reasonable wear and tear accepted. It is all yours.

(Applause.)

PRESIDENT-ELECT GORDON SCHNELL: I guess it works. My job now is quite lengthy. I will entertain a motion to adjourn.

MR. RANDY LEE: I make a motion.

PRESIDENT-ELECT GORDON SCHNELL: All in favor? Opposed? Meeting is adjourned. Thank you. Have a good summer.

(Whereupon, the proceedings concluded at 1:00 p.m.)

CERTIFICATE

STATE OF MINNESOTA)

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COUNTY OF CLAY)

I, LaVonne J. Houts, 312 Black Building, Fargo, North Dakota, of Norman E. Mark - Court Reporter Service, certify that I am the Reporter who was present and reported the foregoing proceedings. This record is a true and correct transcript of my shorthand (Stenograph) notes made at the time and place herein indicated.

Dated this 21st day of June, 1993.

LaVonne J. Houts- R.P.R., C.M.
312 Black Building
Fargo, North Dakota

