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Proceedings of the Ninetieth Annual Meeting of the North Dakota State Bar Association

North Dakota State Bar Association

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PROCEEDINGS OF THE NINETIETH ANNUAL MEETING
OF THE NORTH DAKOTA STATE BAR ASSOCIATION

OFFICERS

JACK MARCIL..... President
GARRY PEARSON President-Elect
DWIGHT C.H. KAUTZMANN Immediate Past President
REBECCA THIEM Secretary-Treasurer
LES TORGERSON..... Executive Director

P R O C E E D I N G S

June 14, 1990

(Thursday)

(Whereupon, the General Assembly commenced at 9:30 A.M.
as follows:)

PRESIDENT JACK G. MARCIL: Can I have your attention,
please? Good morning. I would like — it is my privilege to call
this 1990 Annual Meeting to order. I want to tell you what we are
going to be doing in a moment here. We are going to have the
Presentation of the Colors by the North Dakota Air National
Guard and we are going to have the National Anthem by the
Fargo Chord Authority at this time.

I would like to — if I can see my people in the back, we would
like to have you stand and we would like to present the colors,
which we will then do the National Anthem and Pledge of
Allegiance.

(Presentation of Colors.)

(National Anthem.)

PRESIDENT MARCIL: Will you join me in the Pledge of
Allegiance?

(Pledge of Allegiance.)

PRESIDENT MARCIL: We will now have the invocation by
Phil Johnson. Please remain standing.

MR. J. PHILIP JOHNSON: Let us pray. Lord God, we gather
together here in the 200th year of the adoption and ratification of
the Bill of Rights and in the 90th year of the State Bar Association
of North Dakota. A wave of human aspiration for the values
embodied in that Bill of Rights has washed across Eastern Europe
and ebbs and flows across the world. We who gather here may not
have the wisdom of those who first promulgated these ideals of
individual liberty and an order society. Yet we must rededicate

ourselves to recognizing, maintaining and protecting these values and ideals which sustain a society both democratic and cognizant of individual rights. Help and direct our efforts, oh, God, that we, the sworn upholders of constitutional government, may be models and teachers for our fellow citizens of the United States of America and the other dominions of the earth. Amen.

PRESIDENT MARCIL: Thank you.

I would like to call on the Mayor, Honorable Jon Lindgren.

MAYOR JON LINDGREN: Thank you very much. It is a privilege to be invited to stop by for a few minutes this morning to welcome you. I know that the folks here in Fargo and Cass County have been working hard to make arrangements and put before you a very interesting convention. At this opportunity I would like to also say a word and perhaps speak on behalf of all local officials. I know of mayors, county commissioners across the state who expressed to me so often appreciation for volunteer work done by attorneys, the many ways all of you serve on boards and committees throughout your community. It's a tribute to not only yourselves as individuals but to the profession in the many ways that it serves our society. Have a good time while you are here. Stay up late, but I hope you get all the work done also.

PRESIDENT MARCIL: Thank you for being here. We do welcome you. Thanks.

(Applause.)

PRESIDENT MARCIL: I would like to call on the President of the Cass County Bar Association, Richard Crockett.

MR. RICHARD B. CROCKETT: Good morning, President Marcil and fellow attorneys. The Cass County Bar Association which is, of course, Jack's home bar association is happy to have you meeting here in Fargo. We think it is an interesting place to practice law. Why, even last Saturday the Fargo Forum reported one of the potential clients was picked up by the local police at the Roundup Bar where he had, quote, "... either slipped or fell face first on the floor, sustaining a severe cut above his right eye." He was nonetheless, quote, "... acting combative," end quote, according to the Forum, and while having his cut stiched he had a blood alcohol level of .58 percent. Just think of the legal issues. At that point he was transported to Jamestown State Hospital and given two pints of blood which brought his blood alcohol down again after presumably a couple more hours had passed to only .29 percent. That's the first time I have heard of a blood transfusion to

dilute the alcohol in someone's blood. That poor fellow obviously needs a doctor more than a lawyer.

The same issue of the Forum, by the way, reported an even more interesting legal situation in Bismarck where Animal Rights Activists are claiming that the mule diving show at the Missouri River Expo constituted cruelty to animals. As is typical with a legal conflict, the arguments made by the party were argued dramatically as in a LA Law type of case. Animal Rights Activists claimed this was an excruciating case of animal rights violation and "... that we ought to line up all the people doing this and make them jump off the board." Whereas the mayor of Bismarck, Bill Sorenson, affiliated in a business sense with the promoters claimed that, quote, "It's just a good, clean, family event."

So Fargo and Cass County certainly have no corner on the interesting legal issues in North Dakota, but we are happy to have your annual conference here. We hope you enjoyed the picnic we hosted last night at Bonanzaville and that you beware of the Roundup Bar for subsequent evening's entertainment. And we wish you good fortune for the balance of the meeting here. Welcome.

(Applause.)

PRESIDENT MARCIL: Thank you, Richard. I would like to call on Sarah Andrews Herman who is the Chairman of our Planning Committee for the Bar Association for this Annual Meeting.

Sarah.

MS. SARAH ANDREWS HERMAN: Pat Ellingson and I as Co-Chairs for this year have had a wonderful time plotting and planning and thinking up events for you. We welcome you to Fargo. We welcome you to the 1990 Bar Meeting and we hope you have an excellent time here and that events will appeal to you. Thanks very much.

(Applause.)

PRESIDENT MARCIL: Thank you, Sarah. Sarah and Pat have done, I think, an outstanding job in terms of this convention. I do appreciate all the effort that they have made.

This is the time in the program where I have a chance to give you and make my President's Message, and if anyone else wants to leave, this only lasts an hour — I feel like a captain on a ship. Thank you very much for coming. I guess they are going to stay here.

Garry — now this is Becky Thiem, too, who is Secretary-Treas-

urer and President-Elect Garry Pearson who is finding his way to the stand and Les Torgerson who is Executive Director who is sitting down there.

First of all, I wanted to tell you there is one area that needed a lot of work as I took over as President, and that was the long term basis for our budgetary needs. I appointed Becky Thiem as the Chair of this Budget Committee. Her committee has filed its report of the Special Committee on the Long Range Budget. You will be asked to consider that report later on in this meeting. That committee's efforts will insure that our financial goals and objectives are met for the future. I ask you to review that report and if you have any questions about it, please ask Becky or anyone on her committee. I want to thank Becky and her committee for all of the work that they have done with respect to this important report for our future.

Second, the report of the Special Committee and the Unified Bar was adopted at the 1989 meeting. As a result of that report, I am happy to report to you today that on March 1st, 1990, Administrative Rule 23 which had established a North Dakota Pattern Jury Instruction Commission, was amended. The reconstituted rule provides for appointment of six members by the Board of Governors of this Association, which has been done, and six judge members of the — from the Judicial Conference. On June 1st, 1990, the reconstituted Commission held its first meeting. The next meeting of the Commission is scheduled for the University of North Dakota Homecoming Weekend. Judge Allan Schmalenberger is Chairman of that Commission. I would like to express my appreciation to Tom Dixon and Judge Allan Schmalenberger for working with me to resolve that issue and chart a course of action for the future.

Third, in the area of attorney standards, the Bar Association now has its own Attorney Standards Committee. The Chairperson of that committee is Professor Randy Lee of the UND Law School. That committee has met and we want it to be the primary vehicle for initiating changes, improvements and innovations in the area of attorney standards. This important function must be funded and the Long Range Budget Committee addresses that issue.

There are a number of other things I can talk about that we have done this year, and I think we have made some real progress, but I am not going to go into all of those. All of the committees and people involved have worked very hard. There is, however, one committee that must be recognized as having had an out-

standing year. That is the Continuing Legal Education Committee chaired by Roger Minch. This committee has done an outstanding job with Roger's leadership and the efforts of Sherry King. That committee has done more than we could ever have expected. I want to publicly thank you, Roger and Sherry, for your effort in helping our Association, not only financially but helping us to educate our lawyers on a continuing basis.

There are two individuals that served on the Board of Governors this year that I want to publicly recognize. They are Phil Johnson and Dean Jerry Davis. Phil is stepping down as State Bar Delegate to the ABA House of Delegates. I want you all to know Phil Johnson has been a real asset to me personally as President of our Association. He is a dedicated, hard-working person who works without complaint for the betterment of this Association. He has done that for many years.

Phil, thank you for the effort that you have given to us over many years.

(Applause.)

PRESIDENT MARCIL: In addition, I want to also recognize Dean Jerry Davis, Dean of the Law School. I have appreciated his counsel, his advice and judgment over the past two years that I have been on the Board of Governors. I look forward to spending another year with you, Dean, on the Board of Governors. We must support the Law School. We are fortunate indeed to have a dean the caliber of Jerry Davis. Let's give him a hand.

(Applause.)

PRESIDENT MARCIL: Les Torgerson and his staff are highly trained and true professionals. Without you, Les, and your people, I could not have performed in this function. You have done an outstanding job. The Board of Governors I feel this year have done an outstanding job. Their people are very concerned about this Association. I want to also say that not one of you refused me when I asked you for help this year, and I do appreciate that.

Finally, one of my goals this year was to speak and write about the image of our profession, professionalism, quality of life as an attorney. I hope in some small way because of my efforts and the Board of Governors' efforts our lives as lawyers, our public image, and our professionalism has been improved in this state.

Thank you.

(Applause.)

PRESIDENT MARCIL: According to the agenda it is the

time for me now to introduce a gentleman that needs no introduction. Our Chief Justice is an active judge in this state and nationally. He is recognized in North Dakota and nationally as an individual that is concerned about the administration of justice. He is a very dedicated, hard-working judge.

Please welcome Chief Justice Ralph Erickstad.

Justice Erickstad.

(Applause.)

CHIEF JUSTICE RALPH J. ERICKSTAD: Good morning. I thank you, President Jack Marcil and especially for those kind words, President-Elect Garry Pearson, Secretary-Treasurer Rebecca Thiem, members of the Board of Governors, Executive Director Les Torgerson, members of the judiciary, other distinguished guests, members of the State Bar Association of the State of North Dakota attending this 1990 Annual Meeting.

I am very pleased to be here with you again this morning. By your applause, which I hope you will extend, I hope you will take this opportunity to thank our Fargo hosts and hostesses, the Board of governors, and the staff of your Association who have contributed so much to this meeting. Would you do that at this time?

(Applause.)

CHIEF JUSTICE ERICKSTAD: Thank you very much. This has been a difficult year for all of us. But as individual adversity often challenges one's ingenuity, so should general adversity challenge us in the judiciary to improve our judicial system. These difficult times can, in my view, be utilized to the benefit of our citizens as a time for new initiatives to improve the legal system of our state. No initiatives will be without some controversy. But, as always, I am optimistic. With your leadership and support, we can look forward to significant improvements in the North Dakota Judicial System.

Trial Courts. The trial courts are in good health.

The judiciary has been subject to criticism as a result of suggestions by some judges and others that there are too many trial court judges in North Dakota. That may be true at the moment because of the downturn in the economy, but it was only a few years ago that the people from both the east and the west and even the central part of our state sought our support for more district judges in their areas.

Parenthetically, I would be much more concerned if we had too few judges and our citizens were languishing in overcrowded

jails awaiting trial or sentencing, or our civil courts were so backlogged that our people had to wait five or more years just to get to court to have their civil cases decided and then long periods of time thereafter to have their appeals decided as in some parts of our country. Witness the recent statement of Chief Justice Malcolm Lucas of California in his first address to the legislature which he said, and I quote, "In Los Angeles, the time for a civil case to get to a courtroom is down to three and one half years from almost five years — a sizeable improvement for just two short years of effort." end of quote.

Basically, because of demand from our people, the number of district judges has been increased from sixteen originally to twenty-seven since I became a Justice in 1963. With an upturn in the economy, the need for judges would increase again. We need a measure of historical perspective and a realistic view of the future in evaluating suggestions for any sudden and severe changes in the number of trial court judges. If too many full-time law trained judges is a problem, it is from a judicial standpoint a problem most states would like to have. To illustrate, if we were to strive to reach the national average in the judge per person ratio, our reward would be a serious downgrading in the quality of the delivery of judicial services in our state. With that as a consequence, I doubt that there would be many in this room who would seek that objective.

As a present, practical matter, what we need, to make the necessary temporary adjustments, is authority within the judiciary to decide whether or not vacancies in trial court judgeships should be filled and where the vacant judgeships should be located when filled, based upon shifting and changing needs. The Ad Hoc Commission on Trial Court Unification of the Judicial Conference has recommended such legislation. We need to do something to expand upon those ideas and gain support for them.

As for the numbers of county courts, prior to House Bill 1060 which was passed in 1981, we had seventeen County Courts with increased jurisdiction with judges who were law-trained and full-time, approximately thirty-six county judges without increased jurisdiction with judges who did not need to be law-trained but who were full-time, and approximately thirty-six county justices who were for the most part law-trained but only part-time.

In 1978, the Legislative Committee of the Supreme Court, chaired by Harry Pearce, then of Bismarck, who incidentally is speaking to you today after having become General Counsel of

General Motors, recommended to an interim committee of the Legislature a proposal, after much study, discussion, and seven redrafts, which became House Bill 1066 in the 1979 Session of the Legislature.

House Bill 1066 would have created nineteen associate district judges in lieu of the then existing three-leveled county court system with its many and varied judgeships. Those judges would have been assigned to districts whose boundaries would have been determined by the Supreme Court on the basis of workload and other needs. This bill passed the house with a very slim margin and was killed in Senate, by persons from rural counties, one of whom said, "We do not need nor want an Ayatollah Khomeini in North Dakota."

In the interim, between 1979 and 1981, Representative Dean Winkjer of Williston chaired a Legislative Council Committee which worked out a compromise which satisfied the county commissioners and was encompassed in House Bill 1060 which is law today with slight amendments over time. House Bill 1060 created a single level county court system, which today includes twenty-seven full-time, law-trained judges. The number of judges and the areas in which they serve, and within limits the salaries they are paid, are determined by the county commissioners.

There is no Ayatollah functioning within the North Dakota Judicial System. What we have within the county court system, from the standpoint of a structure, is a very democratically created system based upon what the locally elected county commissioners of each area of our state believe is necessary.

It may appear to some during this downturn in our economy, especially to those who may not know or remember how the court structure came into being, that the court system is not cost effective. If enough of our people believe that this is true, changes could be made in the legislature, but I would hope that whatever changes are made would be made gradually and without disruption of judicial services and without the creation of disastrous case backlog which could have the effect of delaying justice, resulting in a denial of justice.

If there are important deficiencies in the distribution of caseloads and in the geographic distribution of district court or county court judges within our state, this is a matter which must be addressed by the North Dakota Legislative Assembly. I will express further my personal views on this subject momentarily.

Appellate Court Service. The North Dakota Supreme Court continues its heavy caseload.

New cases filed during 1989 in the Supreme Court totaled 397, an approximate 6 percent increase over 1988. Of this total, no cases were transferred to our temporary Court of Appeals, due to the budget cuts necessitated by the drought, the general downturn in the economy, and the tax referrals.

The number of cases carried over from 1988 was 208, for a total of 605 active cases on the docket during 1989. The Supreme Court disposed of 381 cases during 1989. Of the dispositions, 295 cases were civil cases and 86 were criminal cases.

The effect of these numbers on the work of the justices is significant. The average number of cases decided by opinion per justice rose to 55 cases in 1989. In other words, each justice prepared over four and one half opinions per month every month, in addition to special concurring opinions, dissenting opinions, and administrative tasks, while sharing responsibility for approximately eighteen other opinions per month.

As you know, the Appellate Docket Currency Standard Subcommittee, chaired by Orlin Backes of Minot, of the Judiciary Standards Committee, has been studying the application of appellate docket currency standards to the Supreme Court, primarily as a way to inform the public about the resource needs of the court and its present services, and to set in place a safety net for the future. The Subcommittee is convinced that our Supreme Court is current and on top of its caseload.

While this Bar Association, through its designated representatives, expressed vigorous opposition to the concept of docket currency standards for appellate courts before the Subcommittee, and the Subcommittee recommended that no action be taken at the present time to establish such standards, the full Judiciary Standards Committee suggested a middle course.

After discussion by the full Judiciary Standards Committee chaired by Jane Voglewede of Fargo, our Supreme Court has been asked to implement informally a pilot appellate docket currency standards process for a year and to report its observations from this experience. We have decided to do this. We believe that we are doing quite well with the present membership of our court without appellate docket currency standards, but if our informal implementation of standards points up a need for such standards or alerts us to some future benefit, we will then have the experience upon which to base formal standards.

Economic Emergency. I started this report by telling you that it has been a difficult year.

My colleagues and I have anguished over the means of cutting expenses while preserving essential judicial services.

We are pleased with the diligence, even without their complete agreement, of the presiding judges of the judicial districts, working individually and cooperatively through the Council of Presiding Judges, in monitoring budgets to this date. Their energy, prudence and resourcefulness have combined to create a reasonable anticipation that we can complete the biennium without major sacrifices to the quality of services. We have made drastic cuts in travel, both within and outside the state, and we have suspended indefinitely face-to-face committee meetings for the most part. We have by decision, ordered that civil jury trials continue to be held along with criminal jury trials.

As you know, a report arising out of the Jury Standards Committee chaired by Judge Jon Kerian of Minot, of the North Dakota Judicial Conference, and endorsed by the Council of Presiding Judges, recommended an adjustment in the number of peremptory challenges allowable in selecting jurors in North Dakota. After a rather lively hearing, we essentially implemented the changes recommended through the adoption of two emergency rules on January 17, 1990. Following the hearing, — I should say that the hearing was rather lively — on March 5, 1990, we have, after amending both the Emergency Criminal Rule and the Emergency Civil Rule to allow four peremptory challenges, rather than three, when a six-person jury is to be impaneled, extended those rules until further order of our court. Please see Appendix A for complete copies of the rules.

In light of our financial problems, it is likely that in the future we will need to develop a set of staffing standards for all judicial districts within the state. With proper staffing standards, we should be able to either make adjustments with the least disruption of essential services, or we should be able to document the need for appropriate resistance to further cuts in the Judicial Branch. With continued monitoring of our system, month by month, and by not filling 10 vacancies as of July 1, 1990, at the district court level, that's 10 out of 115 positions or 9 percent of the district level staff positions, and 6 positions as of July 1, 1990, at the Supreme Court level, that is 6 of 42 positions, or 14 percent, of the staff of the Supreme Court, and by elimination of most of our training and equipment budget, we should make it through this

biennium if we are not asked to reduce our expenditures beyond the \$2,000,000 mark. If we are requested to cut further this biennium or the next biennium, we will likely not be able to do much without structural changes.

Civil Legal Services for the Poor. You are all aware of the process initiated in 1988 for the study of civil legal services for the poor. At this meeting in 1989, this Association authorized a voluntary opt-out program for civil legal services for the poor, after a written plebiscite. Les Torgerson tells me about 400 members of the bar are presently dedicating twenty or more hours per year to pro bono services. All of who are doing this should feel good about their contributions of time and effort for the benefit of those who cannot afford to pay for those services, but who need them greatly.

I think anyone looking on from a distant perspective at the legal system of our state would conclude that the legal system is fundamentally sound. Equally, an objective observer could conclude that the access to civil legal services for the poor is still inadequate in our state.

Lack of ready access to the civil legal system encourages people to use inappropriate self-help measures to attempt to resolve their conflicts by violence. The legal system provides a mechanism for resolving these conflicts without violence and with procedural and substantive due process, but it functions best only when all parties are represented by persons who are learned in the law.

We eagerly await the long term results of this Bar Association's initiative, and hope that there will be continuing and growing participation by the lawyers of North Dakota in this undertaking. We have established fair and adequate public support for indigent defendants in criminal cases in North Dakota. The work of the North Dakota Legal Counsel for Indigents Commission, chaired now by Judge John Paulson of Valley City, has been widely accepted and implemented by bench, bar and the public.

Incidentally, through the efforts and support of many of you in this room, Senate Bill 2382 was passed in the last session to provide funds for legal services for the poor, and as of February 1, 1990, \$55,000 had been collected and nearly \$40,000 has been disbursed to six recipients. These funds should be helpful, especially to the activities of all of the civil legal service programs in North Dakota.

Unification of Trial Courts. The issue of unification of court services in our state has a long history in our state, as my previous review of the first steps in this process for county courts indicates.

This continuing discussion has been accelerated by economic pressures on local government, resulting from the tax referral vote on December 5, 1989. Squarely before us is the issue of the future structural characteristics of the North Dakota Judicial System.

I believe the discussion has advanced significantly. It is no longer a question, in my view, of whether or not something should be done to move toward state funding of a trial court that includes present county court services. If the economy were improved and funds were available, the majority of our people today would likely agree that such steps should be taken. The question we must ask ourselves is what should be done and on what basis, over what period of time.

Since I spoke with you last, the Budget Committee on Government Administration, chaired by Representative Richard Kloubec of Fargo, of the North Dakota Legislative Council, has undertaken a review of this process and provided a forum for the airing of a multiplicity of views regarding the steps to be taken. This has been a significant opportunity, for which we are grateful to the Legislative Council.

The discussion has been vigorous and healthy to date. Many views have been expressed by individual judges, by the Ad Hoc Commission of the Judicial Conference, chaired by Judge Larry Leclerc of Fargo, and by the County Judges' Association, chaired by Judge William McLees of Watford City, among others. I know that members of this Bar Association have participated in this dialogue as members of the Ad Hoc Commission. Justice Gerald W. VandeWalle of our court has represented our court on the Commission and we appreciate much that he has kept us informed of all developments.

Now it seems that we need to begin focusing the diverse views towards the development of a common plan for consideration by the 1991 Legislature and legislative sessions to follow. Not to provide a comprehensive proposal from the North Dakota Judicial System risks the passage of significant changes which may not most effectively meet the needs of our people and may create harmful fragmentation and divisiveness among the judges of our system.

The timeliness of our attention to this issue becomes even more obvious with the support of Judge Bruce Bohlman's proposal for unification of the district and county courts by the Ad Hoc Commission as a concept. His proposal contemplates a redistricting of the state into eight judicial districts, a reduction in total number of district and county judges from 54 to 42 by January 1,

1999, and an interim period between January 1, 1995, and December 31, 1998, during which all county judges would be interim district judges. Please see Appendix B for complete copy of the Bohlman proposal as of the June 1, 1990, meeting of the Ad Hoc Commission. Incidentally, we learned on June 12th that some refinements have been made in the proposal for submission to the Budget Commission of the Legislative Council at its next meeting on June 26, still, however, only as a concept.

Although I'm not ready to endorse the proposal in its present form, I think it can serve as a lightening rod and basis for further discussion. I personally think the reduction in the number of judges is too severe. I would prefer adjustments in the plan that would facilitate more gradual reduction in numbers. However, let us all give this proposal a chance to be improved and an opportunity to develop support as it progresses through the legislative process just as the preparation of a rough draft opinion in our court does not end our task. It is a good beginning. I think this is a good beginning, and I hope we will all get in sync and attempt to work it out so that we can make some major improvements within the judicial system with as little pain as possible.

In conclusion, please refer to Parts VI through XVI of my written message for the balance of my message which I shall not take your time today to discuss with you but which I hope some day you will have time to read.

We look forward to continue working with you in the improvement of court services in the future.

I personally look forward to the opportunity here in Fargo to talk with each and every one of you who is interested individually to learn of your views on the issues that I have discussed and to hear your suggestions for improving our judicial system.

Although this has been a difficult year, we have made significant progress and, with your help, we will continue to improve court services in North Dakota.

Thank you very much.

(Applause.)

PRESIDENT MARCIL: Thank you, Judge.

The memorials will be given by Robert Feder, Chair of the Information & Service Committee. Robert.

MR. ROBERT A. FEDER: Last year saw the passing of five of our members since our last meeting. On July 31st, 1989, Albert J. "Bill" Stern, formerly of Bismarck, passed away in Knoxville, Ten-

nesses. Bill, as most of us will remember, was Executive Director for many years of the Trial Lawyers Association in North Dakota and was a founding member of the Association's Alcoholism & Drug Abuse Committee. He also established the first two chapters of Lawyers Concerned for Lawyers in our state in Bismarck and in Fargo.

On August 19, 1989, H. Morris Borstad of Tioga passed away. Mr. Borstad was a life-long resident of the western part of Tioga and was actively engaged in farming. He was a civic leader in Tioga and he left among his friends and family a tradition of public service.

On September 22, 1989, F. W. Greenagel of Grafton, member of this Association, passed away. Bill was a graduate of UND and admitted to our bar in 1956. He worked long and hard for the North Dakota Legislative Committee, served as attorney for the Legislative Assembly and Code Revisor of North Dakota. Since 1961 he has served in private practice and, as you know, was very active in the North Dakota Army National Guard rising to the rank of General.

On January 12, 1990, C. H. Carroll Strand of Bowman, passed away. He was a long-time member of our Association. Mr. Strand was 75 at the time of his death. He was a graduate of the St. Paul College of Law and very active in the southwestern part of the state as not only a civic leader but also as a member of our bar.

Finally, just a month ago on May 17, 1990, Douglas W. Hughes, a 33-year-old member of our Association who practiced most of his life in northern Minnesota was taken from us because of an automobile accident. Doug graduated from UND in 1981 and since that time practiced law primarily up in the Warroad area of northern Minnesota.

In memory of these and of others who we hold dear, I ask that we stand for a moment in silence.

Thank you.

PRESIDENT MARCIL: Thank you, Robert.

Next we move on in the agenda, Report of the Committee on the Constitution and ByLaws Revision by Chris Hogan, Chair.

MS. CHRISTINE A. HOGAN: Thank you, Mr. President. Good morning.

The Special Committee on the Constitution and ByLaws was created by President — then President Charles Feste back in 1986. And that committee over the following years studied and

met to review the Constitution and ByLaws and to come up with a new draft, a new proposal. We went through several drafts, and in 19 — June of 1987 we submitted drafts to you for consideration and discussions. We resubmitted the drafts again in June of 1988. In June of 1989 we provided and published notice of the amendments, of the proposed amendments, in the Gavel and we formally moved and seconded in this Association last year to submit it to your vote this year which is in accordance with the current Constitution. The procedure in the current Constitution requires that there be a one-year waiting period between the time that a resolution is moved and seconded to amend the constitution and the actual vote. So this year in 1990 we are finally having the opportunity to vote on the draft, to vote on the proposal that was submitted by the committee and submitted to the Assembly last year.

I believe the work of the committee — which by the way, the draft is in the packet of materials that was provided to you when you registered and I'm sure you have all had an opportunity to review it and study it at some length now, but just in case you haven't, I thought maybe we could all read it together starting with Article 1 — just kidding.

I just want to make a couple of comments on the — on what you might want to take a look at in particular. Among other things, the draft does bring the procedures up to date with current practices. It does expand the initiative and referendum procedures, and it does, I believe, improve the selection procedures for district representatives for the Board of Governors. During the last year, I should point out, I have not personally received any comments or questions about the draft since it was formally submitted. I don't know if other members of the committee have. Looking around the room, I do see several members of the Committee are here and you might ask them or me or Les Torgerson any questions you might have. This, by the way, will come up for vote tomorrow, tomorrow afternoon during the General Assembly. Members of the committee are Randy Lee, Dave Peterson, Phil Johnson, Les Torgerson was our staff member, Judge Kerian, Kermit Bye, Orlin Backes. I hope I haven't forgotten anybody. I don't have the full list in front of me, but I believe that is the membership of the committee. So please ask the committee any questions you might have about this. And I hope you will vote in favor of it tomorrow. Unless there are any questions now that we might handle, —

Thank you very much.

(Applause.)

PRESIDENT MARCIL: Thank you, Chris. We will be voting on that tomorrow. We are going to move to Agenda Item 12 which is report of the Special Committee on the Long Range Budget which the Chair of that is Becky Thiem.

MS. REBECCA THIEM BENSON: Thank you, Jack, and Members of the Association.

You do have a copy of the report in your materials. I'm not going to read it to you or for you. I am pleased to present this report on behalf of the committee. I do want to publicly thank the members of my committee which were Joel Gilbertson, Garry Pearson, Mark Stenehjelm, Howard Swanson and Les Torgerson. Les did a lot of work on actually putting together the final draft for putting this report together. I want to thank him for that hard working committee. We met five to six times over the last year, couple hours at a time. It is a difficult task always to look at the budgeting process. And we did look at it very seriously. Our committee was basically an outgrowth of two processes going on almost simultaneously.

A couple of years ago the Association was in a financial crunch and there was a recognition at this time that you just couldn't run a group of this size with the kind of money involved on a year-to-year basis. You had to do some more long range planning. So there was a motion made at the Board of Governors level that we needed a more long range budgeting process, and that motion was approved back then and there was discussion about appointing a committee. Simultaneously, Phil Johnson, Chair of the Unified Bar Committee, was appointed. And you'll recall that last year their committee report came out and that committee report was adopted overwhelmingly with a few minor amendments, and included in that report were several recommendations that had budgetary impact. And so the committee saw its role as really at least a dual role.

One of the major roles of the committee was to look at the current income and expenses, see where there were possibilities of increasing income, look at outside funding sources and also look very closely at the expenses and see if there were really any areas where there could be some serious cuts in expenses.

Another very important role that the committee saw that it had was to look at the Unified Bar Report, look at the specific recommendations made by that report as adopted by this Association

and determine what budgetary impact that had and try to specifically address these concerns within the five-year budget plan.

Frankly, as the committee undertook its tasks it wasn't able to come up with many areas where it felt that expenses could be reduced. The way the committee examined this budget is we each took different areas and we looked at them rather closely to see if there were any — was any fat to be trimmed. We saw a couple of areas where there was a possibility, and this was in the area of some travel reimbursement and also in the committee structure.

You will note there is a recommendation within the report that the Board of Governors looked very closely at the committee's structure to see if there was some way to reorganize so you wouldn't have committees meeting for the sake of meeting, that you would have larger committees with subcommittees below those. It is somewhat similar to the Supreme Court structure of committees and that you have more Ad Hoc and special committees appointed and then dropped when their task has been completed. And that is nothing that is going to happen right now, but we felt that is an area where the Association could run more efficiently.

From the standpoint of the Unified Bar Report, there was several areas that had budgetary impact, and I recommend you read those in particular.

It finishes in the CLE area. The CLE Committee this year has been very successful in really paying for itself including paying for its staffing, but there was a recognition in the Unified Bar Report that the CLE Committee also has a role in doing seminars, particularly ethics and professionalism type of seminars that may not necessarily break even. And so we can't look to the CLE Committee to always have seminars that pay for themselves which means that there has to be some part of the budget assigned for that.

Also in the area of attorneys standards, the Unified Bar Committee had recommended that the State Bar Association be the primary vehicle for initiating changes. Our committee felt that there would at least be a \$5,000 budgetary need for the Attorney Standards Committee to have the adequate — to have adequate staffing to really get going in this area.

Another area is the disciplinary process, and again, the Attorney Standards — Unified Bar Report as adopted by this Association recommended that the State Bar Association take a larger role in the disciplinary process.

There is a very interesting graph contained on Page 7 of the

Report which shows that the Association just really hasn't been contributing what it should to the whole disciplinary process. And so there is going to be additional funding necessary in order for us to really fulfill our responsibility there.

The bottom line, as you might imagine, is that the committee determined that there is going to be a dues increase necessary in order to be able to complete these additional tasks. The last dues increase was in 1983. Because of inflation, the expenses of the Association have been increasing. We have been looking at different fee schedules at different associations and did not feel a dues increase was out of line with either what other state bar associations are charging for licensing or what other professional groups are charging.

We feel — the committee felt and Board of Governors agreed that it was very important for the Membership to be involved and be supportive of this process. As you all realize, this would require legislative change since the present constitution does have a cap of \$200 on our licensing fee. There was some consideration given to going to the legislature to remove the cap, but neither the committee or Board of Governors felt it was feasible at this time. In order to get the support of the membership it was decided that this Report would be discussed here today. The committee and Board of Governors also agreed there be a vote of the Membership on the Committee Report and that if, in fact, the Membership agreed and if, in fact, the legislature agreed, there would still necessarily be a resolution at the 1991 and 1993 Annual Meetings. The committee recommended there be a partial dues increase in 1991 and another \$20 increase in 1993. We do believe that the support of the Membership is essential, and that is the reason we are recommending the plebiscite. I would ask that you review the report closely, try not to get hung up on the dues increase portion of the report. There are a lot of other recommendations contained in the report that impact on the budget. I — or the members of my committee and I'm sure the Board of Governors would be happy to answer whatever questions you have.

And, Mr. President, at this point I would move that the Report of the Special Committee on the Long Range Budget be approved.

Thank you.

PRESIDENT MARCIL: Is there — thank you, Becky. Is there a second to that motion?

MR. J. PHILIP JOHNSON: Second.

PRESIDENT MARCIL: Phil Johnson seconded. That is on the floor. We will discuss it and vote on it tomorrow.

Let's move on to the North Dakota Bar Foundation Report, Philip Johnson, Chair.

MR. JOHNSON: Thank you, President Marcil.

It was interesting. This past year I had an opportunity to attend the National Conference of Bar Foundations Meeting in Los Angeles, fortunately at no cost to the Foundation since I was also there in my capacity as your delegate to the American Bar House of Delegates. But it presented an interesting opportunity to review what is happening across the country in the way of bar foundations. And there is a whole variety of experience and whole variety of programs out there. Interestingly, states such as California which you would think would be very advanced are just presently setting up a state-wide foundation. They have had foundations within local bar associations, but it's only recently that they have established a state-wide foundation.

Our principal program and principal funding right now through the Bar Foundation is the Interest on the Lawyer Trust Account Program which is administered through the special committee. And 1988 was the first full year of operation for the IOLTA program. We in North Dakota went the full nine yards and we established a full participation and mandatory IOLTA program. Up to this point we had had no voluntary or other type of program. Many of the states have started with volunteer participation and are only now moving to the stage that North Dakota is at where all lawyers in the state are required to maintain the trust account which is interest bearing and the proceeds of which go — are transferred to the Bar Foundation for purpose — special purposes, primarily support of civil legal services.

In 1988 the program generated \$124,608. And in 1989, total receipts were \$139,743. So there has been an ongoing expansion of receipts and expansion of resources. In October of '89, the IOLTA Committee also approved a series of grants which are to take effect this year, and overall grants of \$115,000 were approved for legal services providers in North Dakota. That is on a combination basis with Legal Assistants of North Dakota being the primary coordinator. The State Bar Alternative Dispute Resolution Committee received a grant of \$3,180 for educational materials and a need survey. The Children and Family Service Training Center received \$3,000 for training guardians ad litem. The Rape and Abuse Centers received \$4,000 for seminars on protection orders.

The State Bar Law Related Education Committee received \$5,600 for publication of a booklet which many of you, I think, have seen, a very excellent booklet on "Graduating In An Adult World" which goes to high school seniors. So the program has allocated a total of over \$131,000 for civil legal services and legal education-related programs.

In addition to IOLTA, which has been our major focus over the last several years, we are working to expand the general financial base of the foundation. And I am pleased to report that as of now, we have as participants one gold patron of the Bar Foundation which means a pledge or contribution of \$5,000, four silver patrons, which means a pledge or contribution of \$2,500, fifty-eight patrons which means a pledge or contribution of a thousand dollars, and seventy-eight sustaining members which is the \$25 a year category. I think the Foundation is approaching a plateau where our general funds will be sufficient to allow us to make more significant grants for projects that I think we all need and support in which the Bar Association in its regular operating capacity is really not in a position to fund. So we have changed our Annual Meeting to October so that there — we aren't totally confused with the Annual Meeting of the bar. We encourage you members that might be interested in participating in that Annual Meeting. We will have a Board Meeting tomorrow morning at 8 o'clock here at the Holiday Inn, and we look forward to your continuing support.

Thanks.

(Applause.)

PRESIDENT MARCIL: Because we have to be out of this room at about 11:30, I am just continuing on, so I just want you to know that. I don't stop much at meetings. I just keep going. If any of you want to get up and go, that's fine, but we are going to keep going.

Continuing Legal Education Committee Report, Roger Minch, Chair.

MR. ROGER J. MINCH: The materials are on Page 7 of the subpart in your materials here. I just want to highlight real quickly a couple of the items in there.

In fiscal year 1989 through 1990 the total number of CLE hours offered through State Bar Association programs was 89.25 credit hours. Total attendance was 1,318 attorneys. This compares with 85.75 credit hours and 1,189 attendees for the prior fiscal year.

The CLE schedule has been planned through fiscal year 1990 and 1991 and it will be adjusted a little bit in the next couple weeks and then that will be done. One of the things that the committee would like to emphasize in the next couple of years is faculty training. I think that over time you will see an increase in the quality of our programs and our speakers, and we hope that this will be helpful to people who speak at programs. They won't be just cut loose, sink or swim. And we are hoping to get funding or grant money to bring in somebody from out of state to help us train at least a nucleus group of people and then hopefully it will spread throughout our faculty members. ETN seminars continue to be well received by the Association and that seems to be an area where we can compete well without out of state providers, and we have got nothing but favorable comments from that. So we hope that you still like to come to those.

As far as money is concerned, on Page 9 of the materials here, the Board of Governors have projected a budget of revenues of \$85,000 and expenses of \$55,000 with an income of \$30,000 from CLE programs before taking into account the committee's shares of the salaries of Sherry King and her assistants of approximately \$10,000. So for the last year the committee's net income exceeded the amount budgeted and anticipated by the Board of Governors by about \$9,000. But credit for this belongs principally to the members of the State Bar Association that attended those programs.

And what we — every member of the committee — and what I want to particularly stress here is that if you have a choice between going to a seminar sponsored by the State Bar Association of North Dakota or somebody coming in from out of state, you know, other things being equal, please come to our programs because that allows us to keep those programs as cheap as possible and at least in the case of this last year, it allows some funding for some of the programs from the Association. The names of the committee members are on Page 10. I won't take the time to read them, but I do want to especially thank them for the work on the committee and, of course, it is no secret that Sherry King has done one hundred percent of the work of the committee.

Thanks very much.

(Applause.)

PRESIDENT MARCIL: Again, that committee just did an outstanding job this year.

Real Property, Probate & Trust Section Report, Jim Schlosser, Chair.

MR. JAMES SCHLOSSER: Thank you very much, Jack. The Real Property, Probate & Trust Section had quite a busy and exciting year if, in fact, real property and probate lawyers are exciting, and some people question that. But we started about a year ago and surveyed our members and frankly had an excellent response. Approximately 40 percent or more responded. As a result of that survey, we reactivated some of our committees and actually started formulating a new committee. We have five committees under the umbrella of the Real Property, Probate & Trust Section, and I would just like to acknowledge those committees.

I want to state that the Title Standards Committee, as many of you probably know, was inactive for a period of five years. And I want to recognize Bob Wefald as Chairman of that committee for the literally hundreds of hours they have spent in the last three years putting together the new revised title standards.

And just this past year the Practice Guide Index and Table of Contents were completed. I would also like to acknowledge the outstanding work of the Mineral Law Committee. They completed the mineral law standards, title standards. They had a fine seminar in February, very well attended. John Sherman was Chairman of Dickinson. As far as we know, this is the only separate mineral title standards — or set of mineral title standards of any State or any Bar Association in the country.

We reactivated the former Liens and Foreclosures Committee which is now the Real Property Lien Committee. Paul Hubbard of Fargo is Chairman of that committee.

We also reactivated the Probate and Trust Committee. So you can see we had a lot of committees that were not active or not functioning. Bradley Berg is serving as the Chairman, and they will be handling our annual seminar this December. So I would like to put in a little plug if you are interested in probate, trust matters, we approved at our Executive Council meeting yesterday the agenda and the speakers. It will be an excellent program. That will be December 6th and 7th at the Radisson Inn in Bismarck.

The last committee is a new committee, the Condominium and Planned Unit Development Committee. Phil Johnson of Fargo is the Chairman of that committee, and they are presently reviewing the Uniform Condominium Act, Common Ownership

Act. Those bills have been introduced in the past three or four sessions of the North Dakota Legislature.

In conclusion, I want to point out that our Executive Council has decided to take a more aggressive approach to legislative matters in 1990. I have asked each of our committee chairmen to present to me a list of proposed legislation, and we will ask you people also to supply our committee chairmen with any housekeeping or other legislation that you may want proposed in 1991.

Also, we are going to be more active in the actual legislative process. We hope we have formulated a system to get legislative bills out to our committee chairmen within a day of their introduction and then also on to the committee members so we can have feedback and also representation at the committee hearings.

We voted to have a newsletter for the section. We hope to have that up off the ground in the next sixty days. We will send a newsletter out with one of the bar publications to the general membership, and after that it will go only to the members of the Real Property, Probate & Trust Section. And we invite you if you are interested in those areas to be a member of the section.

Finally, our section was directed by — or requested by the President to investigate bar-related title insurances in the State of North Dakota. I have talked with some of the people in Illinois, have met with the captive company in the State of Minnesota and hope to have a report to the Board within the next thirty to sixty days. Our membership in the past year has fluctuated from 130 to 150 members.

Thank you.

PRESIDENT MARCIL: Thank you, Jim.

(Applause.)

PRESIDENT MARCIL: Jim has been doing a great job, too. And I also found him to be an exciting guy, so I don't know why he wouldn't think that he was exciting.

I think we have enough time for Robert Feder's Information & Service Committee Report. And Robert, incidentally, has done an outstanding job this year too. He has always done a lot of good work for us.

MR. FEDER: Because time is short, I'm not going to do much with the Report which appears on Page 21 of the handed-out materials other than to take this opportunity to briefly do a bit of show and tell and also express a gripe.

First of all, as the report indicates, we had a fairly good year.

We are proud of what we were able to accomplish in striving toward our mission of trying to do something about the negative image of lawyers, law and judges. We feel it is our mission to educate the public about lawyers, law, our judicial system and to do something to preserve what apparently is an exorable slide downward of our profession.

To that end, we prepared two major projects this year. The first was a People's Law School. People's Law School is similar to the People's Law School that ATLA has adopted and put on around the country. The difference I wanted ours to manifest was that it would be less from one perspective and more from both sides of an issue, if such could be accomplished. To that end, I worked with NDSU to have it marketed. What we did is we held seven sessions for over two hours on consecutive Tuesday nights from January 9th, through February 20th. Those seven sessions had eleven different programs. It involved seventeen different faculty members. And I want to thank them here very much for participating. They were Magistrate Karen Klien, Judge Norman Backes, Judge Frank Racek, our President Jack Marcil, Bill Yuill, Ken Olson, Mike Nilles, J. Philip Johnson, Maureen Holman, Jerry Brantner, Jim Brothers, Mark Schneider, Mary Schneider, the ever present and beloved Roger Minch and Dave Johnson. What the students got was this three-ring binder which is about the size of the one we were handed out when we registered. When broken down into different sessions, each class had its own outline for the most part prepared by the presider. At the completion of the course, they were given a diploma such as this (indicating), copies of which are attached to the printed report. And in all modesty, the program was extremely successful. We were hoping to have about forty people. We thought that would be a good turnout. Instead we had ninety-four. We oversubscribed. We had to print more books. There has been a request to do it again. And we have been requested from around the state to do it on a state-wide basis as a part of the State Bar Association's pro bono program. I don't know if that will happen or not. I hope that it will. We didn't have anybody come to the committee meeting this morning. But that comes as no surprise. We will see. Maybe we will or maybe we won't.

In any event, you should know that this cost us nothing. It was a heads, we win, tails, NDSU loses arrangement. As you know, my background does not permit me to lose money and, accordingly, we had an arrangement with them where the fees for the registra-

tion which were very modest went entirely to them and they bore the entire cost. We may or may not do that again since it is a potential money-maker.

The other project that our committee did was to prepare and to circulate a Primer on the Courts of Judicial Systems of North Dakota for media members. It is about a sixty-page document that is divided into three parts. The first part concerns itself with charts and graphs and tries to convey to the lay media member the difference between a state system and a federal system, a county court, a federal district court, an appellate court in the federal system and our courts in the state system. The second part is what is called "Anatomy of a Civil Trial," and it outlines a hypothetical case broken down into each section of a trial as to what is going on — discuss what is going on. Hopefully the media members can then understand what, in fact, is going on in a civil trial.

And the last part is a thirty-page glossary of terms which hopefully they will be able to utilize.

The committee members have been given copies of this and asked to participate with their local media in providing seminars or sessions for the media to hopefully take advantage of it so we don't read about the errors we read in the paper or hear of them on television.

Finally, the disappointment of the year. It seems like unfortunately we have one. This year, as you know, the Information & Service Committee was asked to participate as a panelist or member of the Judicial Standards Sub-Committee on Unjust Criticism of Judges Committee. We were glad to be able to do this because we think it is extremely important. We particularly get tired of judge barbing, lawyer barbing and judicial barbing and so forth. The committee chaired by Judge Schneider put in a lot of work. And surprisingly enough, they dropped it all in the Information & Services' lap and said go to the Board of Governors and tell them you are responding and set up a network to respond to unjust criticism around the state. We did that and went to the Board of Governors, and unfortunately the Board of Governors has not yet seen fit to authorize the implementation of a responsive network to respond to unjust criticism. I hope that the Board of Governors under the administration coming in will review the decision and authorize that this be done. The Information & Service Committee feels strongly we got a mission to do and it is a doggone shame that we aren't able to do it, each of us, not just committee members but all of us to do something about our image.

I thank you for the privilege of serving you in the past year. We look forward to another good year.

(Applause.)

PRESIDENT MARCIL: Thank you.

Robert does an outstanding job and has done an outstanding job, and I'm sure next time he presents that issue we can understand what he was talking about.

Okay. Let's move on to the next thing, and we are going to have to cut off the reports. We are going to move on to Kermit Bye because we are a little late in the day here. We will talk about the other reports, perhaps too, by Chairs of various committees, but Kermit Bye is going to come up and talk to us about the resolutions.

MR. KERMIT E. BYE: Thank you very much, President Jack. I am the substitute Chairman recently recruited to fill the absent Wes Argue. As long as I can remember in this Association, one of the real highlights of each Annual Meeting is for Wes Argue to come up and give the resolutions. And for those of you who read the transcripts each year, these things are just absolutely hilarious. Wes is really one of these unique individuals. As a matter of fact, he is the only guy that I know over the age of forty who gets younger each year. As a matter of fact, I understand from some of his friends up in the Hamilton, St. Thomas area he is the only person that old that regularly gets carded at the Legion Club in St. Thomas. In fact, Wes got so young during this past year that it was determined he was no longer eligible for membership in the Bar Association and so that's the reason I am up here with the resolutions.

Now, the rules require that all substantive resolutions be read at the Annual Meeting and that they be published and that they be acted on. That's the bad news.

The good news is that there is only one resolution, and that is the resolution by the Continuing Legal Education Commission. And that resolution reads as follows. Now I have got to put my glasses on. Because of telefax machines we got it here about two minutes ago, but what this resolution says is:

WHEREAS, the North Dakota Commission for Continuing Legal Education reviews and evaluates hundreds of courses each year for approval for continuing legal education credit in North Dakota, and;

WHEREAS, the Commission had observed that few of these

courses deal with ethics or subjects commonly considered professional responsibility, and;

WHEREAS, the Commission notes that the number and seriousness of complaints about lawyer misconduct, and particularly, the violation of ethical rules, has risen steadily over the past several years, and;

WHEREAS, the Commission believes that continuing education in ethics and professional responsibility is essential to addressing this problem.

NOW, THEREFORE, BE IT RESOLVED that the General Assembly of the State Bar Association of North Dakota, gathered at the Association's 90th Annual Meeting, adopts in principle, amendments to the Rules for Continuing Legal Education and recommends that the North Dakota Supreme Court adopt amendments to the Rules of Continuing Legal Education providing that three (3) hours of the triennial forty-five (45) hours of obligatory continuing legal education be taken in ethics or professional responsibility.

That resolution was pre-filed within the — or outside of the required thirty-day period. It was published, as you will all recall, in the June 4, 1990, issue of the State Bar "Notepad". And I hereby move the adoption of this report of the Continuing Legal Education Commission.

PRESIDENT MARCIL: Thank you, Kermit. Do we have a second?

MS. HERMAN: Second.

PRESIDENT MARCIL: Sarah Herman seconds that motion. That's on the floor. So we will be talking about that tomorrow.

Thank you, Kermit.

What I would like to do now is move into nominations and if we have any time after that I want to go back, so don't leave, Chairs. I want to go back and see if we can conclude those.

At this time the nominations for the Office of Secretary-Treasurer are now open.

Please identify yourself.

MR. GREGORY L. BICKLE: I am Greg Bickle from Bismarck. I stand at this time to nominate Ralph R. Erickson for the Office of Secretary-Treasurer.

Ralph, a man of substance, was born thirty years ago in Rugby, North Dakota, attended Jamestown College as a football player and graduated from the UND Law School with honors in 1984.

He is the Past President of the Young Lawyers Section, President-Elect of the Cass County Bar Association and a graduate of the Brian J. Neugebauer School of Creative Billing. He has a plaque on his desk that reads "Win, but not too soon."

I am told that Ralph is running unopposed and I suspect that is why he asked me to make this speech. But in any event, I assume that when you are running unopposed, you are running ahead, and as we all know, when you are running ahead or when you are ahead you sit down and shut up, so I'll make this really brief.

There are three kinds of people in this room, those people who make things happen, those people who watch things happen and those people who stand and say, "What happened?" We all know which category Ralph falls into. I believe that qualifies him eminently for a position on the Board of Governors, and accordingly I place his name for the candidacy of Secretary-Treasurer of this Association.

Thank you.

(Applause.)

PRESIDENT MARCIL: Do we have a second to that nominating speech?

MR. BRADLEY W. BERG: President Marcil, honored judges and attorneys, my name is Bradley Berg. I was instructed today when asked to second this nomination that there not be any nominating second speeches. This is the only time in my life that I can think of that I was disappointed not to make a speech because do I have stories about this guy. Suffice it to say, however, that I am happy to endorse the candidacy of a man whose personal philosophy coincides completely with my own, a man whose personal motto is often wrong but never in doubt.

I am pleased to second the nomination of Office of Secretary-Treasurer of the State Bar Association of North Dakota for Ralph Erickson.

Thank you.

(Applause.)

PRESIDENT MARCIL: Are there any other nominations for the position of Office of Secretary-Treasurer at this time?

As you know, tomorrow we will vote on that.

Let's move on then to the Office of State Delegate to the American Bar Association. And I think I recognize that person, but I'm not sure.

MR. PATRICK W. FISHER: Is this on, Jack?

My name is Patrick Fisher from Grand Forks, and I rise to nominate an individual who has held more offices and served on more committees related to State Bar Association activities and governmental activities than he can probably remember or that I would care to repeat. Suffice it to say, he has done all kinds of stuff that leaves him highly qualified for this position that he asked me to nominate him for. If you have any question about his qualifications, I'm sure that he will be happy to fill you in between now and tomorrow.

When elected to this position, and I'm sure that he will be, he will be the first Carpinion ever to serve in this position. And for those of you who do not have access to the glossary of North Dakota terms, a Carpinion is any native of Carpio who has availed himself to formal education beyond Grade 8.

So it is with a great deal of pride and pleasure that I nominate my classmate, David L. Peterson to this position.

Thank you, Jack.

PRESIDENT MARCIL: Thank you.

(Applause.)

PRESIDENT MARCIL: Do we have a second to that nomination?

MR. WALCE R. GOULET, JR.: Mr. Chairman, I am Wally Goulet of Grafton, and I am rising to be able to agree with something publicly with Pat Fisher. It is one of the rare occasions that Pat and I can agree on something, but I am glad to second the nomination of David Peterson. I also wondered why he had to go to the northeast to get two of us to do that. But seriously, I have had the pleasure of serving with Dave on the Board of Governors for both the State and Trial Lawyers Association and the State Bar Association during his term as President, and Dave is a man of vision and much more than that. He has an ability to articulate that vision and make things happen and turn it into action.

And so I am pleased to see Dave running for the State Bar Delegate to the American Bar Association and am glad to second that nomination.

PRESIDENT MARCIL: Thank you.

(Applause.)

PRESIDENT MARCIL: Are there any other nominations for Delegate to the American Bar Association?

If not, we'll move on to the nominations for office of President-Elect of this Association.

I think I recognise that person. Dewey, that mike works.

MR. DWIGHT C. H. KAUTZMAN: I want to point something out to you before I do my nomination. Two to three days ago the Supreme Court of the United States issued an opinion to say we can burn the American flag under the First Amendment. No problem with that. They have spoken. That's it. But it has caused a great deal of consternation among citizens, amongst some members of the Bar Association. We have got a President of the United States asking for constitutional amendments and on and on and on.

Today as I stood out there watching the opening ceremonies, I am surprised and shocked that we have the presenting of the colors at our organization and the people that did that, the gentlemen that were dressed in military made the faux pas of placing the American flag to the left of podium. All of you who know flag etiquette from Boy Scouts or from your fathers or from whoever taught it to you, the American flag goes to the right of podium.

If I may, President Marcil, you take the North Dakota flag and I'll take the American flag, it should be.

(Applause.)

MR. KAUTZMAN: If someone would be kind enough to tell Sparky Gierke that I actually did know where the flag went.

A few years ago in 1974 the University of North Dakota School of Law graduated a class that was exceptional for those people that were members of it. Such illuminaries in that class were Tim Beaton, L. Larivee and someone known as the phantom who no one in that class has ever been able to tell me the name of. Of that class there was one truly distinguished graduate. Her name is Beryl Levine. She is on the Supreme Court of United States — she will be, Supreme Court of North Dakota. Today I place the nomination, the name of a man who is lesser known than the illuminaries that I have pointed out than one of the Justices of the Supreme Court of North Dakota but yet a member of that same class. Upon graduation he clerked for the Chief Judge — Federal Chief Judge Paul Benson and in 1976 became Assistant United States Attorney for the District of North Dakota and worked in Bismarck. And that's when I first got to meet the gentleman I am about to nominate.

He was a quiet and shy prosecutor who at the time Superman came out took my sons to that movie and completely warped their mind. I recall that evening when they returned from Superman after being with James, being told by my sons the following: "Dad, do you know what Superman's father did?" And I said "No." And

they said, "Do you know who Superman's father was?" And I said "No." And they said, "He was a United States Attorney." And I said "What?" And they said, "Yeah." And I said, "How did you come to that conclusion?" "James told us." The next day I went to Superman and sure enough, this guy is a prosecutor. Then I went home and tried to get that straightened out with my children, that there is a difference in being a prosecutor on a foreign planet and a United States Attorney. As I was trying to explain to them I did realize there really is no difference between a prosecutor on a foreign plant and a United States Attorney.

He was the first attorney friend that I have ever had that told my children — and for those of you that know me, know how traumatic this must have been — but he actually told my children that it was all right to grow up to be a Republican. What's really scary is my two oldest, sixteen and fourteen, as I listen to them more and more, I am beginning to realize that it's occurring. It's happening. I am going to have two boys that will probably be Republicans because this man had the audacity to tell them it was all right to grow up to be a Republican.

In 1984 he and I traveled throughout Ireland with our wives. He was acting as navigator as I was driving. At Blarney Castle when he and the wives were kissing the blarney stone — I had already been there at the age of three — there were two young men, twelve and thirteen years old, who asked me lots of questions about Viet Nam and they looked at me and decided you are the right age group. Upon talking with those young men and upon this nominee returning from Blarney Castle, he found that he was honored by these two young men and followed around Blarney for the rest of the day because he was a war hero from Viet Nam. And those two young men hung on every word this guy said and truly believed he was the American Rambo from North Dakota.

In 1981 he joined the Zuger firm and has been there to date. He has been a past Chairman of the CLE Commission. He has been a past Chairman of Grievance Committee West, member of LegalNet, Law School Committee. He was selected Outstanding Chairman in 1988, I believe, for the committee again that was the CLE Commission. He was a member of the Board of Governors in '87, '89, Past-President of the South Central Judicial District. In the past few years he has worked very hard to perpetuate an image of a kinder and gentler person. He has personally assembled, I have seen him in his home, 1,000 flashlights, and he has worked hard for the lawyers and the bar while developing an

excellent program. He deserves the position of President-Elect of the State Bar Association and, likewise, the position deserves a man of his quality.

It is with great pride that I nominate an old nemesis of the United States Attorney's Office, my dear friend and hunting partner, one of the finest lawyers and members of this Association that I have had the privilege of knowing and working with and against, I place a nomination in the name of James Hill for President-Elect of the North Dakota State Bar Association.

(Applause.)

PRESIDENT MARCIL: Thank you, Dewey. Do we have a second?

I think we have a second.

MR. BYE: Mr. President, I am pleased to stand here and second the nomination of Jim Hill for President-Elect of the Bar Association.

As you know, Jim has pursued this office long and hard. I can recall when I was going through the chairs of the Bar Association and Jim was coming on board, one thing I learned early on, you always know where Jim stands and he is not afraid to take a position. And I think that's a very refreshing thing. And he will serve well in that capacity. Then I got letters from his law partners like Rebecca Benson who said a lot of nice things about him. That was followed by a letter from his brother who, and I won't quote the whole letter, but the sum and substance of it they had a little family meeting and in a real close vote that his mother broke the tie on, they endorsed him for the office. And then I got the personal notes from Jim himself on this very fancy stationery from the Zuger Law firm — Jack Zuger, God bless the memory of his soul, would never have approved expenditures on anything like that — but the personal notes are what really did it for me.

And I really feel that anyone who has Dewey Kautzman for a best friend and also happens to have a bankruptcy judge for a brother can't be all that bad, so I am very pleased to second the nomination of Jim Hill for President-Elect of the Bar Association.

PRESIDENT MARCIL: Thank you.

(Applause.)

PRESIDENT MARCIL: Do we have any other nominations? We have another second.

MS. MARY MUEHLEN MARING: I am Mary Maring from Fargo, North Dakota, and I rise to second Jim's nomination. I must

admit that when Jim called me and we discussed this second nomination I very quickly told him that I would be very happy to give a seconding speech on his behalf. After I hung up the phone, however, I thought to myself, if I give this speech, I am going to have to talk about how I know Jim Hill, and if I talk about how I know Jim Hill, I am going to have to talk about how long I have known Jim Hill, and if I talk about how long I have known Jim Hill, I can no longer be under the assumption no one knows how old I really am. But for you, Jim, I am going to tell all of the lawyers I have known you for almost eighteen years.

Jim and I first met in 1972 when I was a freshman law student up at UND. He impressed me very quickly as a hard working and conscientious person. Jim and I then served together on the Board of Editors of the North Dakota Law Review, and I had first-hand experience of his leadership qualities and his boundless energy to take on any task and complete it.

After law school I have watched as Jim has taken on responsibilities in his local bar association and our State Bar Association and taken on those responsibilities and handled them very well.

In my opinion it does take a very special person to be a bar leader. It takes a person who is willing to sacrifice personal time, family time and billable hours. Jim is that kind of special person. He has served this Association well in the past. I know he will serve you well in the future.

I second his nomination, and I urge your support.

Thank you.

(Applause.)

PRESIDENT MARCIL: Yes, sir.

MR. HARRIS P. KENNER: Harris Kenner of Minot. In order to, you know, maybe help that there not be too many further nominations and things and to give geographic balances of second nominations on Jim Hill, I rise to second the nomination to show Jim Hill he has some support in Minot, North Dakota, too.

PRESIDENT MARCIL: Thank you.

Any other nominations?

MR. FEDER: Robert Feder from Fargo. There are those in our Association who find it is a front to democracy that there are unopposed offices. For those of you who feel that way, you should know that in the past two years I have received letters from William A. Hill, Richard J. Hill, Robert M. Hill, James M. Hill, Thomas Hill, Steve Hill, Ruth Hill and Tim Hill, all of whom urge the elec-

tion of James S. Hill. No, there isn't anybody left. And so for those who are planning on mounting a campaign in opposition, I simply say forget it.

PRESIDENT MARCIL: Thank you, Robert.

Well, there are no other nominations so we will vote tomorrow. And we are going to move on now. We have just a few minutes, and I would like to call on — is Leo Wilking in? Leo, would you like to give a short — a short report, that's hard to say to Leo, a short report on the Volunteer Lawyers project?

MR. LEO F. J. WILKING: Thank you, Jack.

I will be brief. There is a two-page summary of our committee's work in your booklet. Just to highlight some of the last year's activities, as you know, we are a fledgling committee formed out of the old pro bono section within the bar. Our correct name is North Dakota Volunteer Lawyers Advisory Committee although we are described as the Pro Bono Committee in the booklet. As you know, there was a posted ballot which approved the creation of a voluntary opt-out plan for the State Bar Association. I am very pleased to report that approximately 500 members of the State Bar have enlisted in that program. We hope to be at approximately half the state's lawyers by the end of the year. Family law problems are still the greatest need in terms of how we can use lawyers. And we recognize that there are a number of attorneys who simply don't want to do family law cases or don't feel competent to do them, and we are trying to address that first, by developing some educational handbooks which would make attorneys more comfortable handling those cases, secondly, by expanding the options so that those who do not want to do family law, can involve themselves in such areas as consumer projects, special projects developed by legal assistants and other matters.

I believe this is a very important program, and I am pleased to advise you that other frankly, for leadership in this area. I am advised of that by Debra Knuth who attended the National Pro Bono Conference in Utah. We are looked on as a state which is progressive in this field, and I think the fact that we have almost half the state's membership in terms of attorneys signed up is a very good sign. And as I say, we will continue to look for alternatives to family law service so that we can involve more and more attorneys.

At our last meeting we had a report from — or a visit from a representative of the State's Attorneys Office. They want to get involved and they want to know how they can help. So it is

encouraging and we are making progress. But, I ask you to have patience. Those attorneys who have signed up who have not been called or those attorneys who have not signed up at all, I encourage you to think about it and to commit yourselves.

I noticed in reading these — the Chief Justice's comments that he is encouraged by this program but he also said that if this doesn't work he is going to have to consider other ways to insure that volunteer services or indigent services are increased. And so I don't think we want that, and therefore, I encourage as much participation as possible.

I guess my last comment would be that we are a fledgling program now. We are in our infancy, but I hope by the time Jim Hill assumes President it will be robust and actually working.

Thank you.

PRESIDENT MARCIL: Thanks, Leo.

Leo has been doing an outstanding job in that committee, I might add. Legislative Committee, Cal Rolfson.

MR. CALVIN N. ROLFSON: President Jack and Members of the Association, the Report of the is found in your binder that you received when you registered. Our committee membership is shown on the first page of that report and I invite you to review that.

We have considered in the course of the last year a number of issues that will be presented in one form or another to the 1991 Legislative Assembly. Predominantly there are a number of issues that have been considered and recommended by the National Conference of Commissioners on Uniform State Laws that we looked at and reacted to. That report also is for your review, and in particular UCC Article 1 with regard to definitions, Article 2A regarding leases, Article 4A on fund transfers, Article 6, bulk sales, are some of the issues we have discussed, and our report reflects our positions on those areas. We looked at modifications to the garnishment attachment, claim of delivery statutes, modification of the summons, civil summons form, and some recommendations that have been referred to by the Real Property, Probate and Trust Section with regard to probate code amendments.

In addition we looked at the Uniform Foreign-Money Claims Act recommendation by the National Conference, I believe, and a number of other miscellaneous issues that we considered, and we have the report for your consideration.

We enjoyed meeting last year and considered a number of rel-

evant and significant issues of interest to the membership. And if anyone has any questions following this report, I'll be happy to discuss them with you or the committee, I'm sure, will be available to discuss them with you. We pay a special thanks to the Executive Director, his superb staff support to our committee and, of course, to our President.

Thank you.

PRESIDENT MARCIL: Thank you. Thanks, Cal.

(Applause.)

PRESIDENT MARCIL: Cal has done a nice job this year. We have one more report. If I didn't call on my partner, Paul Richard, he would probably be very upset. Paul, you have ten seconds.

MR. PAUL F. RICHARD: It will be ten seconds. That is more than Jack gives me usually. My report is in the brochure. I will say that we have had a very good year from the standpoint of the committee. We have a good committee. We have a lot of lively discussion. We issued Formal Opinion No. 42 which dealt with our interpretation of Rule 8.3, in other words, duty to report misconduct of other lawyers. It was published in last month's Gavel. I think you should read it if you haven't read it. I think the Himmel decision, if you haven't read Himmel, I think you are going to have to know it. We are now currently working on Formal Opinion No. 43 which will deal with the issue of lawyer lobbyist and legislative lawyer, and we are having trouble with our draft. Randy Lee helped us and we are going to be working on that. We currently have four pending opinions. We have worked on eight thus far this year, so it has been a very busy year. And look forward to Opinion 43 in the Gavel to come.

(Applause.)

PRESIDENT MARCIL: Thanks, Paul.

With that, I would like to point out to you now that we are going to have the joint luncheon which begins at 11:45. We are going to adjourn this meeting until tomorrow afternoon. I would urge you to get to the luncheon early because we are going to have a full house. It is going to be a good luncheon.

Thank you.

(Whereupon, the proceedings were adjourned at 11:45 A.M.)

P R O C E E D I N G S

June 15, 1990

(Friday)

(Whereupon, the Ninetieth Annual Awards Presentation commenced at 1:15 P.M. as follows:)

PRESIDENT MARCIL: We are now moving into the Awards Presentation of this program. We have a number of them, and I would like to start out with the — I also can't imagine how somebody can stay in this business as long as this, but we do have with the Bar Association a Fifty Year Award which is a very significant award. We have one recipient of that award this year. It is B. E. Kretchmar. If he is here, will he please come forward so we can give him his plaque?

I don't see that he is probably here, but we will recognize him. And I am following along in the program.

We also this year have started to give Forty Year pins, and we have a number of individuals who qualify for that. I don't know that they are all here, but if you are here, please come forward to receive your Forty Year Pin. John Amundson, Arthur Bauer, John Haugland, Norman Jensen, Frank Knox, Jim Lamb, C. Emerson Murry. I see you, Frank. You got to come up. John Rilling and E. J. Rose. I guess Frank is the only one here.

(Applause.)

PRESIDENT MARCIL: Well, Frank wasn't shy. He came up.

The Recognition of Service Awards go to people that have served on the Board of Governors. We have some of them here today that are not wanting to be on the Board of Governors next year, and I would like to have them come forward. Becky Thiem. Becky has been a valuable asset on the Board and has been very helpful in preparing this Budget Report and has been a very good Board Member.

(Applause.)

PRESIDENT MARCIL: Ron Goodman. I don't know if I see Ron in the audience. I do see Dewey Kautzmann, Past President. Dewey has been — was a very fine President, has been a dedicated individual, was a real help to me this year in my presidency, and I do thank you, Dewey.

(Applause.)

PRESIDENT MARCIL: Joe Kubik. I don't see Joe in the audience. And I do not believe I see Maureen White Eagle. Both of those individuals were very helpful on the Board of Governors. I

do have the last one I want to present to Philip Johnson. Phil, of course, as I said in my President's Message, is just an outstanding person in the Association. I was advised before I started to talk here that he has been on the Board since 1979. I don't think. Is that, Phil, is it? Yeah, it is. That's the kind of dedication of this man, and he has been a real help for me this past year. Please recognize Phil Johnson.

(Applause.)

PRESIDENT MARCIL: The Lay Member of the Disciplinary Board, Joan Tryhus, is not here nor with respect to the Judicial Nominating Committee which is Judge Allan Schmalenberger.

I want to go to Outstanding Committee Chair Award. That is going to go to the Continuing Legal Education Chair. I have known Roger a long time. He is a law partner of mine, and I didn't realize, you know, you work with someone and you know they do a good job in the office and all that, but he has just been outstanding in his Chairmanship position. And Roger, when I told you that I had selected you with confirmation of other Board people, everyone I talked to said, "Yes, Roger is the choice." So it gives me a great deal of pleasure to recognize Roger Minch.

(Applause.)

PRESIDENT MARCIL: And the fact he is a law partner of mine doesn't hurt either.

Pro Bono Awards, North Dakota Volunteer Lawyers Award. Now the criteria for this, for choosing the people that are going to get this award is based upon the number of hours donated by attorneys in 1989-90, and the number of hours was 50 or more. Now, that's a pretty significant amount of hours. I would like to go through these names with you, and if you are here, please come forward. Jerel Schimmelpfennig. I mispronounced that probably.

(Applause.)

PRESIDENT MARCIL: Dan Chapman.

(Applause.)

PRESIDENT MARCIL: Dan and I have been at each other for years but he does a great job.

John Irby.

(Applause.)

PRESIDENT MARCIL: Elizabeth Maxwell.

(Applause.)

PRESIDENT MARCIL: Three other people received this

award, too. Rodney Danielson. I don't believe he is here. And John Olson from Bismarck and Garry Stewart from Fargo.

I can't tell you how important pro bono is, and for people to do 50 hours or more is a very significant thing and I applaud you again. I want to applaud you again.

(Applause.)

PRESIDENT MARCIL: The next award is the Liberty Bell Award. And then I am going to turn this over to Phil Johnson in just a moment, but I want to go through a couple of things because this takes me a little bit of time to tell you about this. And I just met this lady a few moments ago, but I have heard such really nice things about her.

First of all, I should tell you the Liberty Bell Award was established in 1972 and is given to a non-lawyer in recognition of community service which strengthens the effectiveness of the American System of freedom under law. The criteria for the award are, one, to promote understanding for our form of government, two, to encourage greater respect in the law and the courts and, three, to stimulate a sense of responsibility on the part of citizens regarding their duties as well as their rights.

Now, this person — I had a letter written to me, and they pointed out a few things you should know about her, and I want to read this to you. She is Executive Director of the Mental Health Association of North Dakota, a position she has held since 1969. In addition, as Executive Director, she decided to place a 24-hour-a-day crisis intervention phone line into her home. Day and night, she receives calls — receives calls from desperate people; people contemplating suicide, fearing spousal abuse, facing eviction from their farms, experiencing child abuse, suffering from chemical dependency and its manifestations and from children who have or are considering running away from home. She listens to all of them with a calm attitude. She is committed to humanity. And that's spilled over into government and law. Under her caring, her insightfulness and persistent guidance, the North Dakota Legislature passed the first mental health commitment law assuring the rights and safety of all those in need of mental health treatment in this state. In 1985 the Legislature passed several laws protecting children and adolescents that were at risk.

It gives me a great deal of pleasure, indeed, to introduce you to Myrt Armstrong.

(Applause.)

MS. MYRT ARMSTRONG: Thank you, President Marcil, distinguished guests and ladies and gentlemen.

It is remarkable that this award and your giving this award in that it shows your awareness that there are many paths to justice. Of course, there is the narrow path of the formal practice of law, one in which we have been keenly aware of as we attempt to use the law in situations like commitment procedures, to keep people safe and to get people help. That path is not open to all of us, but it is very heartening to know that you are also aware of the other ways that — in which people attempt to do the work of justice in our society.

The Mental Health Association, as you know, seeks justice for the mentally ill, farm families, children through our advocacy, education and legislative activities. And that is such a large undertaking that we certainly do need to focus the energies of many segments of our society on the task at hand. We're extremely grateful that you have chosen to acknowledge and honor our work with this award, and even more importantly that you share our goal of keeping justice a reality for all of our citizens, even the most vulnerable among us. I thank you, and you need to know that a lot of those pro bono hours, I have been a part of making referrals and thank you very much.

(Applause.)

PRESIDENT MARCIL: Thank you very much.

I will now turn the meeting over to Phil Johnson.

MR. JOHNSON: Thank you very much, Jack. As Chair of the North Dakota Bar Foundation, I am going to make a few brief presentations by the Bar Foundation. I might note that the Board met this morning. As a former editor of the North Dakota Law Review I am pleased to announce we did approve a \$1,000 grant for research for a North Dakota lawyer and law student to work on a subject of interest.

We are going to recognize some of the people that have made the grants of this type possible, and I would like to — the names of the people who are patron members have been listed in your program, and these are people that have given or pledged a thousand dollars to the Bar Foundation. I would like at this time to have Rebecca Thiem come forward.

(Applause.)

MR. JOHNSON: And a name you might recognize, Jim Hill of Bismarck.

(Applause.)

MR. JOHNSON: And another name that's vaguely familiar to those of us practicing law, the Honorable Rodney Webb of Fargo.

(Applause.)

MR. JOHNSON: We have another special category that we haven't had too much chance to utilize up to this point, but for those giving or pledging \$5,000 or more we have a Gold Patron Award, and I am pleased to recognize Cliff Rodenburg of Fargo.

(Applause.)

MR. JOHNSON: The Bar Foundation recently had occasion to review our programs and assess what we might be able to do with the somewhat limited but growing resources that we have accumulated. Based on that review, we noted that a number of foundations had very successful award programs, and we had not emphasized that area to date. We thought we should provide some special recognition for special people. And on that basis we are recognizing today our first Honorary Fellow of the North Dakota Bar Foundation. The recipient bears a name that is really synonymous with excellence and dedication to high standards in the legal profession. He retired this last year from the firm that bears his name after serving as President of the State Bar Association of North Dakota, President of Cass County Bar, Board Member of the North Dakota Community Foundation, dedicated worker and leader in enumerable Catholic charities and President of the Fargo-Moorhead Symphony. The Honorary Fellow of the North Dakota Bar Foundation is J. Gerald Nilles.

(Applause.)

PRESIDENT MARCIL: Jerry — and not everybody may be aware of this. Jerry has a heart condition which is preventing him from attending this meeting. We all wish him very well. Accepting on Gerry's behalf is Leo Wilking of the Nilles Law Firm.

(Applause.)

MR. WILKING: Gerry has asked me to read his remarks which he prepared very gratefully to the Bar Foundation.

"I am deeply honored to have been awarded an Honorary Fellowship in the North Dakota Bar Foundation. I regret that I am unable to be with you today to receive this award. I do want you to know that I am on the way back to good health and expect to be attending these meetings in the future. When the North Dakota Bar Foundation was formed, it was my view then and is now that the Law School could not achieve its desired standard of

excellence without private support through a Foundation such as this. It was for that reason that I became a Patron of the Foundation from its inception. The law profession has been good to me, and I am sure that it has and will be good to all of you. I think we all owe it to the profession to give something back. And I can find no more appropriate way of doing this than to support the Law School through the North Dakota Bar Foundation. I wish you all well. And again, I am sorry that I was not able to join you today. J. Gerald Nilles.

(Applause.)

PRESIDENT MARCIL: Well, Leo, you moved this (indicating) up too high. I have often wondered how tall Leo is but he never tells me.

Well, we now are getting to the end of the program. We saved the best for last. We have an award that's called the State Bar Association of North Dakota Distinguished Service Award. Let me tell you what that award is. That is the award that was created in 1980 by the Board of Governors and the State Bar Association of North Dakota. It's the most prestigious award which is given by the State Bar. The award, which is not given every year, honors a member of the profession who has outstandingly served the state in a legal community over an extended period of time. The Distinguished Service Award plaque which hangs outside the courtroom of the North Dakota Supreme Court is intended to permanently honor individuals and remind us of their dedication and work.

Let me tell you some of the past recipients of this. The Honorable Ronald M. Davies, Honorable Eugene Burdick, Robert Dahl, Richard McGee, Honorable Doug Heen, Vern Neff, and the Honorable Ralph J. Erickstad.

This year's award is given to a lawyer who in my judgment truly meets the criteria of the award. His wife is Lois. He has three sons, Dan and Nick, both lawyers, and he has another son whose name is Chris and he is a chemist. He is a Fellow in the International Society of Barristers, the American College of Trial Lawyers, the International College of Trial Lawyers and the American Bar Foundation among other things. He has been active both civilly and in the state and in many different things. He is respected and he is an extremely competent and a true professional in the true sense of the meaning of that word.

This individual recently spoke to a law class about professionalism, image of the profession, and I want to share with you the

last two paragraphs. He didn't know I did this, but I have the last two paragraphs of the speech he gave to those law students who had the opportunity to hear this individual. He said this:

"The real problem is the legal profession. Lawyers bring the lawsuits and conduct the proceedings. They are the primary beneficiaries and litigation is a number one end. How long the public will put up with our lengthy and expensive procedures is the question we here will read about more and more. And another. Do you exist to further the public good or is that no longer the rule? And is it now to be that what's good for the lawyers is good for the public?"

Lawyers are officers of the court by historical fact and by statutory law. We must again be brought around to reality that a lawsuit is indeed a search for truth and not one for economic gain."

I believe it fitting and proper for an attorney who has been characterized by many as a lawyer's lawyer to receive the Distinguished Service Award for 1990. Mart Vogel, come forward.

(Applause.)

PRESIDENT MARCIL: Thank you very much. I will now turn the microphone over to President-Elect Garry Pearson.

PRESIDENT-ELECT PEARSON: Jack, on behalf of the men and women of the State Bar Association of North Dakota and Board of Governors, I congratulate you on a most successful year as President. Your stewardship has emphasized an effective combination of wisdom and restraints coupled with decisiveness as required by a job such as this. You have really done a good job. Perhaps to me, at least, the most telling indication of your tenure and the success of your tenure is as a result of an informal poll I have taken here at this convention. Some of you know about this because I have asked you, but I have asked a number of people, "Do you have any complaints about the Bar Association?" When asking a bunch of lawyers something like that one would anticipate that there would be a lot of conversation, but I must say, Jack, and this is the truth, I did not hear one single response critical of the Bar Association or your tenure. And if that isn't an endorsement of a great job, I don't know what is. I just hope —

(Applause.)

PRESIDENT-ELECT PEARSON: I hope, I don't know that it will, but I hope it is something like that in June of 1991.

Jack, I am looking forward to your help with the Board of Gov-

ernors this coming year. You have done a great job. And there is something I am supposed to give you.

Congratulations, Jack.

(Applause.)

PRESIDENT MARCIL: I'll just say thank you again and thank you for those kind words.

(Applause.)

PRESIDENT-ELECT PEARSON: We reconvene in fifteen minutes for the balance of the General Assembly. Thank you.

(Whereupon, the Ninetieth Annual Awards Presentations were concluded at 2:10 P.M.)

(Whereupon, the General Assembly proceedings continued at 2:30 P.M.)

PRESIDENT MARCIL: I would like to call the General Assembly Meeting to order if I could.

We have on the Pattern Jury Committee — we don't have the Chair here, but we have a report which we are just going to pass out. It is a written report on the Pattern of Jury Commission, so that would complete all of the Commissions and Special Committee Reports.

An item I would like to first bring up — and those are being passed out for you. The first item that we want to talk about on the floor is the final action on the Constitution and ByLaws. Is there any discussion with respect to Constitution and ByLaws? Yes, sir. Could you please identify yourself?

MR. ROBERT DAHL: My name is Bob Dahl, formerly of Grafton, now of Apopka, Florida. A year ago when the proposed Constitution and ByLaws was published in one of the publications of the Bar Association, I noticed that in order to be a voting member of this Association one had to be a licensed attorney. And I found out later that was statutory. I wrote to all the members of the Board of Governors relative to this matter. As I think most of you at the luncheon are aware, I spent a considerable time during my law practice as a member of the bar, as an active member of the bar. I was quite troubled when I found out that having been in — practicing for approximately forty-two years, I was a second-class citizen as far as the Association was concerned. I was paying the \$180, I think it is, to be a member of the Association and not being licensed at that time. Incidentally, I am back licensed again. But I felt it was rather futile for me to belong to the Association if I couldn't vote. To some people, perhaps, the voting privilege may

not mean much. But to some of us who are older, it does mean a lot. Everybody responded to me very sympathetically and said they were going to do something about it. I understand it would require a statutory change which I don't think the Legislature would object to it. I would like the Association to go forward for those few of us still left that want to be active in the Association if that were taken care of.

PRESIDENT MARCIL: Thank you, Bob, and I think that is probably one of the things that the new Board of Governors is going to address because we know and are concerned about your concerns on that.

Is there any other discussion on the Constitution and ByLaws? If not, all of the — all of you that are in favor of the Constitution and ByLaws, please say, "Aye." Opposed? Motion carried. The Constitution and ByLaws as proposed will be accepted and have passed as that Report was put in.

Let's go to the next item on the agenda. The General Assembly Consideration of the Final Action of the Report of the Special Committee on the Long Range Budget. That is on the floor. Is there any discussion on that?

Seeing none, all those in favor of that report being adopted say, "Aye." Opposed? Motion and adoption of that report has been completed. Becky, you can just relax now.

The other item that we have that has to do with resolutions, we have one resolution on the floor. Is there any discussion on that resolution?

ROBERT WEFALD: What is it again?

PRESIDENT MARCIL: Any discussion on that resolution? That has to do — yeah, that has to do with the continuing legal education requirement of three hours during each 45-hour period of — requiring apparently, of course, the legal ethics and professional responsibility; is that correct, Jim? Okay. Any other questions? Any comments?

Seeing and hearing none, all those in favor of the resolution say, "Yes." Opposed? Motion carried. Resolution adopted.

Garry Pearson got an emergency phone call. I won't get into that. Kermit, we have some housekeeping resolutions. Could you take care of those while we are waiting for Garry on the budget?

MR. KERMIT BYE: This is obviously a good day to pass just about anything, and I went to my office and carefully prepared, look here, two pages. Keeping with the Ralph J. Erickstad School

of recognizing everybody, I have carefully put together a resolution which recognizes all the people who have contributed to making this Annual Meeting a success. I have a detailed listing of absolutely everybody including the bellhops and maitre d' here at the hotel, and I'm not going to read it, but I am going to give it to the Court Reporter and with the permission of the Body ask that it be inserted into the Minutes of this meeting; however, I do think a couple paragraphs are significant because special recognition should go where special recognition is due. After many whereas's, we get down to the now, therefore be it resolved, and simply stated, we are thanking particularly our Co-Chairs of our Local Planning Committee, Sarah and Pat, right back here.

(Applause.)

MR. BYE: And then also I think that there has been many accolades given to Jack Marcil and his wife Kathy, but believe me, for those of you who have and also for those of you who have not been through being President of this Association, if you are going to do a good job like Jack and Kathy have done this year in representing the Association, it takes a good deal of time. If you really want to be honest about it, about 25 percent of your otherwise productive time can be consumed by attending to these volunteer activities on behalf of the Bar Association.

So I think that we should also recognize Jack and Kathy.

(Applause.)

Then if you will trust me and believe that I didn't put anything in here that you couldn't be proud to show your mother when you return home, I would ask that this resolution be passed, and it concludes by saying that everyone have a safe trip home and may they return to their offices and begin billing out and generating the dollars that they will have to have to save up to come to next year's meeting.

1990 SBAND Resolutions submitted to the General Assembly:

WHEREAS, the City of Fargo and the County of Cass have warmly welcomed the lawyers, judges and their significant others from throughout the state of North Dakota to this area this week, and

WHEREAS, the members of the Cass County Bar Association have graciously hosted all of us during our stay, and

WHEREAS, the 1990 Annual Meeting Planning Committee of the Cass County Bar Association consisting of Patricia R. Ellingson and Sarah Andrews Herman as co-chairs, assisted also by Jane C.

Voglewede and Georgia M. Pope Dawson responsible for spouse/guest program, and Mary L. M. Maring, Maureen Holman and Mark G. Schneider responsible for the children's program, in addition to John R. Kennelly and Pamela J. Hermes responsible for the Red Mass, and Fr. Phil Brown, Rabbi Robert A. Feder, and the Right Reverend J. Philip Johnson responsible for invocations, and Greg B. Selbo and Maureen Holman responsible for golf, with Carlton J. "Mike" Hunke and M. Danny Vogel responsible for the tennis tournament, in addition to David C. Thompson planning the Family Fun Run/Walk and James R. Brothers in charge of the Bridge tournament, and each of them having responded to the call to duty by generously volunteering their times and talents,

NOW, THEREFORE, BE IT RESOLVED by the attendees of the State Bar Association of North Dakota at their 90th Annual Meeting just concluded in the City of Fargo, that we extend to the members of the Cass County Bar and to all who participated, sponsored, planned or carried out this most successful Annual Meeting, are hereby given our sincere and deep gratitude and appreciation for the hospitality and friendship that was shared and displayed during this 1990 Annual Meeting.

Resolution Directed To Jack And Kathy Marcil.

WHEREAS, Jack Marcil has dedicated a significant part of his time and a great effort during the past two years toward the improvement of our State Bar Association, and

WHEREAS, Jack and his wife, Kathy, who has supported his efforts and has generously given of her time and efforts as well, and

WHEREAS, Jack Marcil's wisdom, guidance and leadership have charted the course of this, the oldest of the unified bars in this country, during the course of the past two years.

NOW, THEREFORE, BE IT RESOLVED that the State Bar Association does hereby express its special thanks and appreciations for that service and dedication given so generously by both Jack and Kathy.

Mr. President, in addition to thanking the Marcils, we also wish and extend our best wishes to incoming President Garry A. Pearson, to President-Elect Jim Hill, to Secretary-Treasurer Rebecca Thiem Benson, and her successor Ralph Robert Erickson, also to Immediate Past President Dwight C. H. Kautzmann, a special thanks to retiring ABA Delegate J. Philip Johnson and his newly-elected successor Dave Peterson, and to Northeast Judicial District President Maureen White Eagle, Northeast Central Judi-

cial District President Howard D. Swanson, East Central Judicial District President Bradley W. Berg, Southwest Judicial District President Ronald E. Goodman, South Central Judicial District President Joel W. Gilbertson, Southwest Judicial District President Joseph H. Kubik, Northwest Judicial District President Mark L. Stenehjem, and UND Dean Jerry Davis, in addition to the staff headed by Les Torgerson and assisted by Sherry King, Deborah Knuth, Geri Einarson, Sandy Fleck and Linda Mertz for all of their work and dedication during the year and at this meeting.

Mr. President, we also thank all of those who appeared on the programs, provided entertainment, to include the Cass County Bar Players and the Cass County Band, as well as the sponsors and supporters who contributed to making this annual meeting a success, and they include the Attorney Liability Protection Society, Blue Cross Blue Shield of North Dakota, the Fargo-Moorhead Foundation, the North Dakota Community Foundation, and the North Dakota Bar Foundation, in addition to the Fargo-Moorhead Legal Secretaries Association. Our thanks also go to the staff and management of the Holiday Inn, to the Michie Company, to Mobile Video Productions, to the Nilles Law Firm for their fine reception on behalf of the Bar Foundation, to Norman Mark Court Reporting Service, to the North Dakota States Attorneys Association, to the Serkland, Lundberg, Erickson, Marcil & McLean, Ltd., law firm for sponsoring the delightful reception at the Hjemkomst Center last evening, also to Software Solutions, Ltd., as sponsors of the golf tournament, to both the Straus Company and The Classic as the co-sponsors of the style show, to United Printing, Inc., for the Thursday morning breakfast, to the UND Attorney Services and Mead Data Central, to Vaaler Insurance, to West Publishing Company, and then also to Community First National Bank & Trust Company of Dickinson, First American Bank & Trust of Minot, First Interstate Bank of Fargo, First National Bank & Trust Company of Bottineau, First National Bank in Grand Forks, Norwest Bank North Dakota of Bismarck, Norwest Bank North Dakota of Fargo, Norwest Bank North Dakota of Minot, and the Ramsey National Bank & Trust Company of Devils Lake and more recently of Fargo for their hosting this morning's breakfast, and to Bonanzaville and the Hjemkomst Interpretive Center for allowing us the use of their facilities for some of our special events.

Mr. President, we also wish to thank all of the exhibitors and everyone else associated with making this 90th meeting of the State Bar Association of North Dakota truly a memorable occasion

that will be fondly recalled with pleasant memories as we now return to our homes and law offices to begin the process all over again of billing out sufficient time which in turn will generate the necessary money to meet the costs and expenses of having spent these pleasurable days in the F-M area.

Thank you.

PRESIDENT MARCIL: Thank you. Can we have a second to that motion?

MR. DAHL: Second.

PRESIDENT MARCIL: Bob Dahl, second. All those in favor of the motion say, "Yes." Opposed? Motion carried.

Thank you, Kermit, for your help and assistance.

Well, I think — I guess I don't have enough information on the budget, but why don't — Les, do you have — let's go to elections.

Are there any other nominations for the office of Secretary-Treasurer?

Well, here comes Garry. We are — Garry, you have to do the budget, and I can assure you, this is the time to do it real fast.

PRESIDENT-ELECT PEARSON: My name is Garry Pearson, and I move the adoption of the budget.

PRESIDENT MARCIL: Second?

MR. KAUTZMAN: Second.

PRESIDENT MARCIL: Dewey Kautzman seconded the motion.

Do we have some discussion on it? Do you have any questions of Garry about the budget? Garry, do you want to make any comments on it?

PRESIDENT-ELECT PEARSON: I'll answer questions.

PRESIDENT MARCIL: Any questions about the budget?

MR. WEFALD: Can you live with it?

PRESIDENT-ELECT PEARSON: Yes, it is less than last year.

PRESIDENT MARCIL: Any other questions, comments, conversation? If not, all those in favor of adoption of the budget say, "Yes." Opposed? Motion carried. The budget has been adopted as proposed by President-Elect Pearson.

Now, let's move on to the election of the Office of Secretary-Treasurer. Are there any other nominations for the office of Secretary-Treasurer? I see no one. Do we have a motion with respect to Ralph Erickson?

MR. WEFALD: I move we cast him on the ballot form.

PRESIDENT MARCIL: Second? Identify yourself for the record who made the motion.

MR. WEFALD: Bob Wefald.

PRESIDENT MARCIL: And second?

MR. BRADLEY W. BERG: Brad Berg. Second.

PRESIDENT MARCIL: All those in favor of motion say, "Aye." Opposed? Same sign. Motion carried. Ralph Erickson is the 1990-91 Secretary-Treasurer of this organization.

(Applause.)

PRESIDENT MARCIL: Move on to nominations for the office of State Delegate to the American Bar Association. Are there any nominations?

Dewey Kautzmann, do you have a motion?

MR. KAUTZMAN: I told you about this guy beating me up on this chicken case I had in 1981, and I move we suspend the rules and cast a unanimous ballot for Dave Peterson.

MR. WEFALD: Second.

PRESIDENT MARCIL: All those in favor of the motion say, "Aye." Opposed? Same sign. Motion carried. And the new 1990-91 office of the State Delegate to the American Bar Association is Dave Peterson.

(Applause.)

PRESIDENT MARCIL: Office of President-Elect. Are there any nominations for that position?

Go ahead. Do you have a motion, sir?

MR. LANCE D. SCHREINER: Yes. Lance Schreiner. I move the rules be suspended and cast a unanimous ballot for James S. Hill for President-Elect.

MR. DEAN WINKJER: Second.

PRESIDENT MARCIL: Dean Winkjer seconds the motion. All in favor, "Aye." Opposed? Same sign. Motion carried.

Congratulations, Jim Hill.

(Applause.)

PRESIDENT MARCIL: Well, it's that time in the meeting where I get the chance to take the gavel and pass it to Garry Pearson. I wanted to tell you that if you read my articles in the Gavel and the last article in the Gavel, I did really enjoy this job. Kermit is right. It did take a lot of time, but it was a good job. And I found so many good people in this Association and people who would never turn me down, and I am really impressed with that. That stood out in my memory about this group. I want you to know

that, and you did not turn me down when I asked for help, and I asked for a lot of help. And so I urge you all, as I am going to do, I am going to work hard for Garry Pearson. Garry is going to be an outstanding President, and thank you for giving me the opportunity to have been your President for the past year.

Garry.

(Applause.)

PRESIDENT-ELECT PEARSON: We have got a great organization in this bar association. It is a good one. It runs smoothly. It has a lot of continuity, and the people in Executive Director's Office know what it is doing. The bar operates harmoniously. I cannot remember any controversy in the last year on the Board of Governors. I sure hope I can do as good as that. I shall try.

(Applause.)

PRESIDENT-ELECT PEARSON: If I go like this, does that mean it is adjourned?

PRESIDENT MARCIL: One thing I wanted to mention — LaVonne Houts, the Court Reporter, Norm Mark's office, has handled this, and I want to recognize her, and she has done a great job.

PRESIDENT-ELECT PEARSON: Those of you who are now on the Board of Governors, a Board Meeting, I believe, is going to be held in Room 621, a suite on the 6th floor in the tower. See you in ten minutes.

I adjourn the 1990 Annual Meeting of the State Bar Association of North Dakota.

(Whereupon, the proceedings concluded at 2:45 P.M.)

C E R T I F I C A T E

STATE OF MINNESOTA)

)

COUNTY OF OTTER TAIL)

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, 1990.

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

