



1988

## Transcript of Proceedings of the Eighty-Eighth Annual Meeting of the North Dakota State Bar Association

North Dakota State Bar Association

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### Recommended Citation

North Dakota State Bar Association (1988) "Transcript of Proceedings of the Eighty-Eighth Annual Meeting of the North Dakota State Bar Association," *North Dakota Law Review*. Vol. 64: No. 3, Article 4. Available at: <https://commons.und.edu/ndlr/vol64/iss3/4>

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

OFFICERS

CHARLES A. FESTE.....President  
DWIGHT C.H. KAUTZMAN..... President-Elect  
JOHN WIDDEL, JR. .... Immediate Past President  
GREGORY BICKLE..... Secretary-Treasurer  
LES TORGERSON ..... Executive Director

THURSDAY, JUNE 9, 1988

(Whereupon, the General Assembly commenced at 9:09 A.M.  
as follows:)

PRESIDENT CHARLES A. FESTE: Good morning. It is my  
privilege to call this meeting to order.

I'm going to now ask for the presentation of the colors and  
Pledge of Allegiance to the flag. Would the color bearers bring the  
colors?

(Pledge of Allegiance.)

PRESIDENT CHARLES A. FESTE: You may be seated. I  
will now call on John Petrick to welcome us to Minot and have an  
introduction. John.

MR. JOHN J. PETRICK: Thank you.

(Applause.)

MR. PETRICK: First of all, I'd like to welcome everybody  
here on behalf of the Ward County attorneys and the Ward  
County Bar Association. I want to thank everybody for coming. I  
hope you have a good time. I think at this point it might be a nice  
time to thank all the people that went to a lot of work for the  
sports programs and such that we had yesterday, particularly for  
Orlin and Millie Backes. They put together the whole function last  
night. Have a hand for those people.

(Applause.)

MR. PETRICK: Finally, if anybody has any problems, I'm the  
President of the Ward County Bar and I've kind of taken charge of  
this thing. You all know what a hands-on administrator Charles  
Feste is so if there are any problems you know who to blame.

At this point I'd like to call on the Honorable George Chris-  
tensen, the Mayor of the City of Minot, to welcome you.

(Applause.)

MR. GEORGE CHRISTENSEN: Thank you very much, John.

Good morning, ladies and gentlemen. It's certainly a privilege for me to be here to welcome you to The Magic City this morning. I'm a little bit nervous. I have never given a welcome before where somebody was sitting here transcribing it. I don't know if that makes a difference or not. But I feel very comfortable with this group because of the amount of legal experience that I've had in my own life, you see, back forty-some years ago when I was in the Army and there were very few attorneys in the infantry companies. And so they appointed some of the officers to be members of the council and members of the court and trial judge advocate and defense counsel. And so I got the job of being defense counsel even though I'd never had any legal experience up until that time. And I defended quite a number of people. And of course I would have to say in my own defense that we never court-martialed anybody that didn't need it. This was a special court-martial that the most sentence that they could give anyone was six months confinement and two-thirds of their pay. And it got so that when I would walk into the Court with my client the President of the Court would start snickering and say, "Well, here comes old six and two-thirds Christy," because all my clients got six months and two-thirds. So that's the extent of my legal experience.

But I'm very happy to greet you here on behalf of the people of Minot. We have about 33,000 people in Minot. And we call it The Magic City because the people work together and get things done. And if you have the opportunity to look around the city I think you'll see some evidences of that with our softball complexes, our parks, our dome, and some of the buildings over here on the North Dakota State Fairgrounds. And if you have a chance to visit the park and the zoo, I wish you would. We're very proud of that.

And we also want you to know that thirteen miles to the north of us is the Minot Air Force Base with 12,000 people. The Minot Air Force Base was recently selected as the best Air Force Base in the world. Not just in North Dakota, but in the entire world. And part of the reason for that is because of the relationship that they enjoy with the civilian population here. And we're very proud of that. And we'd also like to tell you that there are about over 500 military people, not just Air Force people, but military people who have chosen to make this area their home. And the reason why people like to retire in North Dakota is we've got good schools, we've got clean air, we've got friendly people and a low crime

rate. And this is not something that Minot has a monopoly on. This is all of North Dakota. But I like to mention this because I think that we have some things going for us. And every time we go out of the state we get beat over the head by people that have never been here about, "Well, we have got snow up to here (indicating) eleven months out of the year." But we've got some real good things going for us I think we can be very proud of. And I think that the word is getting out. And I hope we can continue to do that.

Well, I think we have many things here for you. And we hope you have a good convention. You've got a very nice facility here in which to have it. And we hope you have a real successful convention. And most important I hope you all come back and visit us again. Thank you very much.

(Applause.)

PRESIDENT FESTE: Thank you, Mayor Christensen.

I'll call on Lolita Romanick to give us the invocation.

MS. LOLITA ROMANICK: Father, we thank you for the privilege of living in a country where the rights of individuals are protected by our government, and for the opportunity of membership in one of the professions most integral to protecting those rights. Over the next few days as we assemble to discuss, to learn and to set directives for our State Bar Association, we ask you for your presence and guidance. Help us to remember our responsibility to honor and serve as attorneys for the betterment of all mankind. Amen.

PRESIDENT FESTE: Thank you, Lolita. Lolita is a practicing lawyer in Minot. And we thank her for her kind words.

In following the agenda, after the ceremonial event is concluded it's traditional for the President to make some remarks in the form of a President's Address. And I will do that at this time.

For those of you who may not know who I am, I'm Charles Feste, the President of the Association this year.

Perhaps the foremost matter I would like to comment on is finances. In Bismarck last year the Association adopted a budget of approximately \$475,000. While the revenue this year did not reach that proportion, likewise the expenditures didn't either. By all forecasts as of June 30th, the end of the fiscal year, the Bar Association should be in the black and have a small cash balance to begin the year with. This was one of the objectives of the Association. And it appears to have been met.

The overall activities of the Bar Association are done through committees. I'm not going to summarize the activities of each committee, for most have filed written reports. And those reports are available to you in loose-leaf that was distributed when you registered. I would, however, like to highlight some of what I perceive to be the more significant accomplishments of the Association in the last year.

The IOLTA program is well in place, off and running, as Joel Gilbertson, the General Chairman of the Bar Foundation, has stated. Joel has worked diligently along with Allen Schmalenberger, Judge Allan Schmalenberger, of Dickinson is bringing about the success of this program. Approximately \$60,000 has been paid into the program from interest that otherwise would have served no bar-related purpose. Through the IOLTA program these funds will be used to assist in providing legal services to the disadvantaged and for other educational and charitable purposes through the Bar Foundation. Each of you has received written material related to the comprehensive medical program which is a product of the Group Insurance Committee currently chaired by Gary Lawrence. The fine hand of Randy Lee is also evident in the work of this committee. The program as worked out with Harold Diers & Company is the culmination of several years work by the Group Insurance Committee. Underwritten by Nationwide Insurance Company the coverage offered is designed especially for practicing lawyers. This program should prove to be beneficial to the members of this Association in the form of cost savings for group medical coverage.

The Association has continued to support the ALPS Program. While few North Dakota lawyers thus far have taken advantage of the coverage offered by the newly-formed Attorney Liability Protective Society, the organization is also off and writing and seeking applications in writing insurance. It is believed that the ALPS program is a substantial alternative to the professional liability presently being written by private companies, and has had an effect on the rates quoted and the costs charged by the other companies. The Board of Governors has given support to the pro bono program. This is an important area of the law. And each of us must recognize the obligation we as members of the Bar have to see that adequate legal services are available to the disadvantaged as well as to those who are able to pay. Not as much as we would have liked has been done in this area. But I am convinced the leaders of the North Dakota Bar will continue to give this program

high priority and see that it is worked out so that North Dakota becomes a leader in the pro bono program.

The Joint Committee on Civil Legal Services chaired by Mel Webster of Bismarck believes quote "There is significant unmet need for civil legal services for the poor in North Dakota." A resolution will be presented tomorrow for your consideration asking for some financial assistance in determining the extent of the need and for further consideration of the problem.

Lawyer discipline remains a major area of activity. Lawyer members of the Disciplinary Board and the Inquiry Committees East and West continue each year to devote countless hours of their time in administering this significant area. It is hoped that with programs to increase the awareness of lawyers in the many sensitive areas of dealing with clients that the complaints to the Disciplinary Committee will decrease with the advent of these programs.

Continuing Legal Education also continues to be a significant area of activity of the North Dakota Bar. Rebecca Thiem Benson has been Chairperson of the CLE Committee which has provided quality legal education courses for the convenience of the members. This program will continue and will be enhanced. Under the leadership of Jim Hill of Bismarck the CLE Commission has honed its program of compliance with CLE requirements to a cutting edge with the adoption of amended rules to be considered by the Supreme Court this year. In light of a recent court development related to the Integrated Bar continued active lawyer participation in programs of this nature appears to be essential. Substantial work has been done by the Legislative Committee chaired by Greg Bickle in seeking to define its role and structuring its activities. A written policy is now in place and has been approved by the Board of Governors. That policy will be made available to you. And I believe there is a copy of the policy in the loose-leaf that you received at the registration desk.

Finally, I am most grateful and appreciative to the North Dakota Bar for having been given the opportunity to serve as President of the Association. I've always been aware of the duty and responsibility attached to this position, and I hope that during my tenure the good interests of our profession have been served. The work of our Executive Director, Les Torgerson, and his staff has not and should not escape notice. I wish now to publicly acknowledge and thank Les and each member of his staff for their loyal and dedicated work. Also I have been fortunate to have had

interested and diligent colleagues on the Board of Governors. While we've had some spirited meetings the camaraderie and the dedication to purpose has overshadowed all other problems. I extend to the Board, the staff and to all of you my sincere thanks. Thank you very much.

(Applause.)

**PRESIDENT FESTE:** In following the agenda I'm now going to call on Al Schultz, who is the Chairman of the Information Service Committee, to read the Memorials. Al. We'll postpone that function for a few minutes, then.

The next item on the agenda is the introduction of a gentleman who needs really no introduction. The Chief Justice has been active in a leadership role in the judiciary of North Dakota and throughout the United States in the various committee functions that he is involved in on a national basis. I will now call on the Honorable Ralph J. Erickstad to present the State of the Judiciary Message. Justice Erickstad.

(Applause.)

**CHIEF JUSTICE RALPH J. ERICKSTAD:** Thank you very much. Good morning.

**RESPONSE:** Good morning.

**CHIEF JUSTICE ERICKSTAD:** Thank you. Thank you, President Charles Feste, President-Elect Dwight Kautzmann, Secretary-Treasurer Greg Bickle, John Petrick, who I see left the room when I came up here, and members of the Board of Governors, the Executive-Director Les Torgerson, members of the Judiciary, members of the State Bar Association of North Dakota attending this 1988 Annual Meeting, friends all.

This rostrum is on a tilt here, folks. So if I appear to be on a tilt you'll understand. You hear the beat? I hope you're with me now.

It's great to be here with all of you for this meeting. Let us at this time by our applause thank our Minot hosts and hostesses, the Board of Governors and staff, and representatives of the Legal Secretaries Association, — Incidentally, my secretary is the national representative of that group. And I always get special instructions on remembering these people, so let's do that. — who have done so much and are still working to make this convention so enjoyable for all of us. Shall we show our appreciation?

(Applause.)

**CHIEF JUSTICE ERICKSTAD:** They are too modest to

stand, and I did not ask them to do so. But I guess we all know who they are.

The North Dakota Judicial System depends heavily on your support, cooperation and counsel. Your essential support of the North Dakota Judicial System has always resulted from healthy debate and respect for diversity of views. With your support significant improvements have been made in court services in North Dakota. With your continued support we look forward to further progress within the judicial system.

I appreciate this opportunity to speak to you again this year. There are several significant issues facing the North Dakota legal system and the North Dakota Judicial System which are of great importance to us all.

We should not be unhappy that there are issues which require solution. It is only through our cooperative study and common desire to solve our problems that we will make progress in our efforts to provide greater justice within our legal system. In studying today's challenges we will find the answers that will improve our judicial system.

While many topics deserve attention, I have chosen eight from the fourteen contained in my written remarks to discuss with you this morning. I will not repeat them, because I know the time is short. If you will follow along with the printed message you will probably be better able to understand what I am attempting to say to you today. Larry Spears has copies of my printed message for those who may not have picked up their registration material yet.

#### No. I. Improved Appellate Court Services.

We are continuing to experience heavy usage of our appellate court processes. This is graphically disclosed by the increases in cases held over on January 1 of each year in our Supreme Court. There were 200 held over for 1986, 220 for 1987, and 245 for 1988. In 1986 and 1987 we disposed of a total of 357 cases in each of those years. That may indicate that we have reached our capacity to dispose of cases.

Our experience with our temporary Court of Appeals has been positive, and its services have been well received by judges, lawyers and the public.

The three panels of the Court of Appeals appointed to this date have consisted of surrogate judges and active district court judges. Exercising caution, we have formed only three panels and assigned only nine cases, three cases to each panel, by May 1 of



1988. Each panel has received legal research assistance from Central Legal Staff of our Supreme Court.

We've had no problem securing judges or cases for assignment to the temporary Court of Appeals. There seems to be a genuine interest among judges in serving on the temporary panels of the Court of Appeals.

The Kretschmar Subcommittee has recently surveyed all the lawyers and the judges who have participated in the temporary Court of Appeals proceedings. I have read their comments, and for the most part I think they are quite positive. Their suggestions for improving court case processing through the temporary Court of Appeals will, no doubt, be helpful to the Subcommittee in its further study and recommendations regarding the continuation of the services of the temporary Court of Appeals.

Our Clerk of Court, Luella Dunn, and her competent staff will continue to provide all clerkship services for the cases assigned to the Court of Appeals in the same professional manner as Supreme Court cases have been processed over these many years.

As of May 1 of this year all of the petitions for Supreme Court review of the Court of Appeals decisions which had been considered by our Court had been denied.

We will be seeking, in the 1989 Legislature, the removal of the "sunset provision" which terminates the temporary Court of Appeals on January 1, 1990.

Incidentally, I let Senator Maxson win or come in second place yesterday just so that he would have a more friendly attitude toward the Court of Appeals in the future.

We will be seeking in the 1989 Legislature this change. So your support would be helpful and much appreciated.

No. II. The Integrated Bar And Levine Versus Supreme Court of Wisconsin Decision.

You are no doubt aware of the federal district court opinion of February 1988 in the case of Levine versus the Supreme Court of Wisconsin, which is a Federal Court decision. It marks a new and serious challenge to the continued existence of the integrated bar in North Dakota and throughout the United States. It has stimulated interest in careful study and reflection by all integrated bars regarding their purposes and priorities.

Such a study has been initiated in this Bar Association under the great leadership of our President, President Feste. And I

understand Phil Johnson has been appointed temporary Chairman. This will be a very important study.

My impression of the United States District Judge Barbara Crabb's opinion is that the compelling state interest necessary to overcome the burden on the First Amendment right to be free from compelled association will be judged by what the Bar does with fees it collects and whether or not it supports directly continuing legal education, lawyer discipline and matters relating to Bar admission standards.

In light of this reasoning, it is possible that the integrated Bar of our state could strengthen its position if it assumed a great share of the costs of administering the rules of disciplinary procedure. In the 1987-89 biennium the Bar Association is contributing \$60,000 to the joint budget of approximately \$245,000 of the Judicial Conduct Commission and the Disciplinary Board. This does not take into consideration the contribution of the Bar Association in funding the costs of the Inquiry Committees and the contribution of time and talent of its members in serving on the Inquiry Committees and the Disciplinary Board.

A conclusion could be drawn from *Levine versus the Supreme Court of Wisconsin* that the more that a Bar provides in services which support compelling state interests, the safer the integrated bar would be if its mandatory nature is attacked on constitutional grounds. If there is a threshold violation of the Constitution, then the balancing test must be applied, during which investigation all eyes would focus on the identification of compelling state interests and on the service record of the integrated bar in supporting those compelling state interests. It is likely that the more a Bar does in the nonpolitical areas, the more the Bar will be justified in retaining its integrated status.

*Levine versus the Supreme Court of Wisconsin* has generated a significant self-reflection process. Hopefully, wisdom will prevail and the great benefits of an integrated bar will be preserved in our state.

### Item III. Civil Legal Services for the Poor.

Many dedicated lawyers have been troubled by what appears to be a deterioration in public respect for the learned professions generally and the legal profession in particular in our time. It has been a concern to many of you and to me. The very existence of the Standing Committee on Lawyers' Public Service Responsibility of the American Bar Association reflects that concern, which has been a priority to the leadership of the American Bar Associa-

tion for quite some time. That deteriorated or deteriorating public image must be a serious source of disquiet and a topic of special concern in any study of the future of the integrated Bar in North Dakota.

It is my personal observation from over twenty-five years as a Justice and approximately fifteen years as Chief Justice of our Supreme Court that our system of justice works best when all parties are represented by counsel in administrative and judicial proceedings. One of the most compelling state interests for the future of our state and nation, our democratic institutions, and the integrity of our legal system is that all citizens have access to the judicial system. The very basis of civil order and the foundation of perceived justice among our citizens is that each citizen has equal rights. To assure that, each citizen must have adequate access to the judicial system of our state and of every state in our nation.

It is my view that something must be done differently, or additionally, if all citizens of North Dakota are to have practical, as well as theoretical, access to civil legal services in our state. If we do not provide access to our courts and to other dispute resolution forums for our people, the seeds of social unrest and dissension will be sown and inappropriate and antisocial means of addressing legal problems will be the result. This problem will plague us as a society until it is solved. A recent manifestation of discontent with our judicial system is the effort by the group which calls itself, and I quote, "The Constitution Study Club," end of quote, to amend our State Constitution through an initiated measure. I will return to that subject at the end of my remarks.

The solution to the problem of the lack of full and practical access to legal civil services for the poor is an interest of the state of North Dakota. It is a compelling state interest. It is a compelling state interest which requires leadership and advocacy to bring it to the attention of political leaders and the public, to interpret it rightly and to direct attention toward a full, practical and sound solution.

The work of the Civil Legal Services Committee, otherwise known as the "Medd Committee," results from the initiative of the leadership of this very State Bar Association. In 1985 a resolution of the Annual Meeting of the State Bar Association requested, and I quote, that "the Chief Justice and the North Dakota Supreme Court conduct a study to determine the future direction and appropriate mechanisms for providing civil legal services to indigent persons in North Dakota." End of quote. With the encour-

agement of Linda Catalano of the Legal Assistance of North Dakota, and the cooperation of the State Bar Association of North Dakota, the North Dakota Trial Lawyers' Association, and my colleagues on the Supreme Court, the Civil Legal Services Committee was formed under the chairmanship of Judge Joel Medd. The committee members were nominated by the organizations I just described. And if you will look at Appendix A you will see the names of the people who served on that committee. And I think their report was unanimous. At least it was a majority report.

The committee report entitled, and I quote, "A Workable Plan for Civil Legal Services for the Poor in North Dakota: A Practical, Equitable and Political Proposal for Bar Leadership" (February 19, 1988) was submitted by the Medd Committee on April 8, 1988, to the more recently-appointed and expanded Joint Committee on Civil Legal Services, chaired by Mel Webster of Bismarck. (See Appendix B for the members of that committee).

That Joint Committee decided not to recommend the Workable Plan to the Board of Governors or to you at this time, but it decided instead to study it further and to ask the Bar Association to expend funds for a study into the extent of the unmet needs of civil legal services for the poor in North Dakota.

You just heard your President explain that in greater detail. Please see Chairman Webster's report in your notebook.

I think that approach is a reasonable one. And I hope that you will support it. In that way we will learn the actual extent of the need for civil legal services for the poor, and that will help us determine what measures may be appropriate to meet that need. Just as a serious illness may require strong medicine, a mild headache may only require an aspirin. Let's see what the study of civil legal service needs reveals.

There has apparently been a strong reaction by some lawyers to that aspect of the Workable Plan which was designed to provide equity in the distribution of the Bar's leadership responsibility. Some of the adverse reaction may arise from a perception on the part of some people that there is no need or little need for legal services that cannot be taken care of on a strictly fee for services basis or through the current pro bono program.

I'd like to have you think about this a moment. In the Supreme Court we have seen the evidence of the need in the mounting number of pro se appeals to our Court. Please see Appendix C for a breakdown of the type of cases. Some of the pro se cases have involved homestead rights and other important

rights. This is an increasingly serious situation for our Court. It may or may not be the tip of the iceberg. Hopefully, a careful study will reveal the truth. In the meantime, if there are some of you who believe the need exists today, I hope that my remarks will encourage you to continue your voluntary pro bono activities and to expand them. I'm sure Les Torgerson and Sherry Kin, the Director of the pro bono program, would appreciate such an indication about now.

For my views on Items IV, V and VI, please see my printed remarks. I hope sometime you look at them. Those items cover Interest on Lawyers' Trust Accounts, North Dakota Rules of Professional Conduct, and North Dakota Procedural Rules for Lawyer Disability and Discipline.

#### Item VII. Unauthorized Practice of Law.

I commend the Bar Association for its leadership efforts to study and determine appropriate approaches to the sensitive issue of unauthorized practice of law. I wrote this part of my message before I saw today's report or the report which was handed to me today. So you will forgive me for the lack of knowledge in this part of my address. But I'm going to state it anyhow. Our Court looks to the Bar's leadership in this matter. It is a delicate one. The North Dakota Supreme Court presently is substantially linked to the issue of unauthorized practice of law in North Dakota, both as a rule-making body and as an adjudicative body, pursuant to Section 27-02-07, NDCC (See Appendix D) and Section 3, Article VI of the North Dakota Constitution (See Appendix E).

This is not a happy area of the law. Public confusion is possible and misunderstanding of the boundaries between unauthorized practice of law and appropriate citizen mutual assistance exists. The public perception of the motives of the Bar and the judicial system are important issues for sensitive study.

The Bar rightly wants a firm standard of quality legal service for all citizens, but one not so strict as to be seen as motivated by self-interest. Similarly, citizens have a legitimate interest in seeking help with their legal problems. If they are unable to employ legal counsel because they are lacking in funds to employ counsel, and our system has not otherwise provided counsel for them, they and others may see a need for a change which could drastically alter our system to the detriment of all of our citizens.

A few moments ago I had the opportunity to see Chairman Geyer's report recommending that the 1989 Session of the Legislature not be asked to make any changes in the statutes covering

or governing the unauthorized practice of law. I think this decision may be premature. It indicates that because the Supreme Court has indicated no difficulty with the law, apparently has rendered great decisions in this area, it's very rare that we're so highly complimented, but that since we have it all under control we should just let it be. I think that may be a mistake. And I am going to say something now which isn't in either of my messages. And therefore it may be my mistake. But I speak to you from the heart. I sit on the Pardon Board along with other very distinguished people. And we have had the Miska family parading out in front of the penitentiary at the time of the Pardon Board hearings. You don't see that anymore. Know why? Because of one of the recent meetings I moved that Mr. Miska's sentence be commuted as of time served if he would agree to abide by the laws in the future. That was unanimously adopted. He did agree. And I don't believe you've seen the family parading recently.

I think it's an area that deserves further study. And I will not prolong your agony by speaking on it further. But I am one of the five who believe you ought to do a little more in that area. I do not know what the other four believe. But you can talk to them. They are all here. And I'm sure they'd be happy to visit with you on this subject.

No. VIII. Gender Fairness and Court Services.

You may see my printed remarks if you're interested.

No. IX. The Celebration of the Centennial of the North Dakota Constitution.

We are nearing our 100th anniversary of our State Constitution in 1989. The special Constitutional Celebration Committee chaired by Justice Herbert Meschke of our Court is initiating efforts to coordinate the celebration of the centennial of the North Dakota Constitution.

This very Bar Association has undertaken the developments of a series of public service announcements, in cooperation with the major television and radio media of our state, which will be aired in 1989 with the purpose of reminding the citizens of North Dakota of the history of the North Dakota Constitution and its importance in our lives. This is a major contribution to public education. I think Justice Meschke's committee and himself should be applauded at this time.

(Applause.)

CHIEF JUSTICE ERICKSTAD: I wish I could get that kind of appreciation, Justice Meschke. That shows you're appreciated.

Judicial Salaries. No. X.

All judges of North Dakota recognize the initiative and priority advocated by Dewey Kautzmann, President-Elect of your Association, for improved judicial salaries in the 1989 Legislature. We thank him and you for your interest, support and leadership in this important endeavor. Hopefully his cause and yours will be deemed meritorious, and success will be the result.

No. XI. You may, if you're interested, see my printed remarks.

And the same thing for No. XII.

No. XIII. Expanded Media Coverage On An Experimental Basis.

As a result of recommendations to our Court arising out of the work of the Advisory Committee on Cameras in the Courtroom, chaired by Justice H. F. "Sparky" Gierke III, we held a hearing on proposed amendments to Administrative Rule 21.

This hearing was held on April 21 of this year, and on May 25 of this year we adopted amendments to Administrative Rule 21 which will extend electronic and photographic coverage to our trial courts for a two-year period. This experimental period will extend from September 1 of this year through August 31 of 1990.

We look forward to receiving your views as the experiment progresses.

And No. XIV. The Effort By The Group That Calls Itself "The Constitution Study Group" To Amend The State Constitution Through An Initiated Measure.

The ballot title of the proposed initiative measure to amend Sections 10 and 12 of this Article I of the North Dakota Constitution sponsored by a group called "The Constitution Study Club," contains this explanation, and I quote:

"The proposed constitutional amendments would create significant changes in criminal procedure in North Dakota law. It would amend Section 10 of Article 1 of the North Dakota Constitution establishing a citizen's grand jury which would be convened by either the Secretary of State or a county sheriff without prior court approval. This citizens' grand jury would have full investigative and indictment powers. The citizens' grand jury would be convened upon the petition of 25 legal age residents. In addition, the amendment requires all cases involving misconduct to be tried

before a citizens' jury except for the compiling of names for a jury pool. The amendment also prohibits the use of computer equipment in any jury selection process. The amendment also imposes a felony offense for any person who interferes with, obstructs, influences, or otherwise impairs the function of the citizens' grand jury or a citizens' jury trial.

"The amendment also proposes to amend Section 12 of Article 1 of the North Dakota Constitution to authorize a defendant in a criminal proceeding to be represented by nonlawyers. This amendment also changes current law by requiring a jury to be instructed that it has a right to disregard the facts or law when deciding a case.

"The amendment also changes current law by requiring cities, counties and the state to tape record all proceedings in a civil and criminal trial upon the request of one of the parties. The amendment also provides for a felony offense for any person who violates or attempts to violate any of these provisions." End of quote.

I have included the pertinent parts of the proposed measure in the appendix to these remarks as Appendix F.

If the proponents secure a sufficient number of signatures, which I understand to be 26,110, to place this proposed measure on the November 1988 ballot, and if it should pass, our system of law and justice will be greatly affected. Jurors will be instructed that they have a "right of jury nullification." Further, the initiated measure permits parties to be represented in court by persons who are not lawyers.

The proposed measure itself does not say what the "right of jury nullification" means, but the ballot title construes that to mean that jurors may "disregard the facts or law when deciding a case." That concerns me, because jurors may then be deciding cases on whim, caprice, emotions of the trial, and circumstances of the times, rather than the actual facts and the laws of our state. This would not be law or justice as we know it and have come to depend upon it for the preservation of our free way of life.

As the people of our state, in their busy lives, may not have had an opportunity to study the measure in full before they are asked to sign the petition to place it on the ballot, and, further, as there will be no elected state body representative of all the people of the state which has reviewed it prior to its being placed on the ballot, I urge you, if you have not already done so, to consider appointing a task force to study this proposed measure for public informational purposes.



It is possible that some of the concerns which have generated this proposal might largely be alleviated if some reasonable means could be found to provide legal services for those who may today be unable to afford them. In my view, the Bar could appropriately use a vehicle such as the Workable Plan, or some reasonable alternative, to assure counsel services to persons who feel aggrieved and are now, because of lack of finances, unrepresented by legal counsel in our system. This, I believe, would be a much better approach to securing equal rights in our courts and before our administrative agencies than this proposed initiated measure.

Now if some of you think that it is so fantastic and unreasonable that it will never be passed, I would not rely on that.

I'm hopeful that those of you who may be leaning towards supporting the pending General Assembly resolutions, which would have the effect of torpedoing the Workable Plan before it has even had a respectable emergence and hearing and before reasonable amendments have been considered, I hope that you will have second thoughts in light of the possible drastic alternative presented by the sponsors of the initiated measure just described.

Pertinent I think is an article printed in the May 21, 1988, edition of the Bismarck Tribune.

Just because you're going to Arizona is no excuse to walk out now. You have got five minutes left here. He never did listen to me.

This article was written by Sol M. Linowit in a Special to The Washington Post. Please permit me to quote from the last paragraph which reads:

"In short, we as lawyers must be able to say that our concern is with the human and the humane — that we accept our obligation to serve all people in our society — that we are truly committed to the principle of equality of access to the law. In achieving this, we will as lawyers find we have earned and won the respect and gratitude of those we seek to serve." End of quote.

I have appreciated this opportunity to talk with you about some of the progress that has been made in our judicial system and some of the challenges facing us. As I said in the beginning, in studying today's challenges we will find the answers that will improve our judicial system. We are thankful for your support in the past and look forward to working with you for the improvement of court services in the future. At your convenience I look forward to the opportunity to talk with each of you individually,

whether you agree with me or not, to learn of your views and your suggestions for improving our judicial system.

Thanks for listening.

(Applause.)

**PRESIDENT FESTE:** Continuing on with our agenda. I first have to comment that I believe that I alleviated the Justice's handicap of the podium by leveling it. But I want to say that all of us have our handicaps. And somebody asked Bossart, Dave Bossart yesterday what his handicap was. And without batting an eye he said, "Charlie Feste is my handicap." If you see me disappear suddenly it's because I will have tripped over the cord to the microphone that I'm straddling right now.

The round of applause for the Chief Justice's remarks is an indication that they were received and will be reviewed and studied and thought about.

Two years ago this Association, along with a number of the Bar Associations of a number of other states, became interested in an alternative to the professional liability insurance for lawyers. And this Association invested some \$8,000 to seeing that the program got off the ground. It is now off the ground. And the ALPS Program, the ALPS Company, is a viable insurance company. And at this time I'm going to call on Mr. Ray Conger, the underwriting manager of ALPS of Missoula, Montana, to tell you a little bit more in detail how ALPS is functioning. Will you welcome Mr. Conger.

(Applause.)

**MR. RAY CONGER:** Thank you, Mr. President.

Kind of unusual for an underwriter to appear at a function like this. Most of you I'm sure are more familiar with insurance agents and claims people than you are with underwriters. They usually keep us in the rear of the office away from the public. We are kind of like umpires. A famous National League umpire named Bill Clem once had a situation arise in which a guy slid in from third base. The ball arrived from center field at the same time. Dust clouds rose up in the air. When it all settled down the base runner was laying there and he said, "Am I out?" And the catcher looked up with the ball in his hand and said, "Is he safe?" And Clem said, "He ain't nothin' 'til I call it." And that's how she goes with underwriters.

The ALPS situation got started about three years ago. And it was enhanced a great deal by the Federal Risk Retention Act which made it possible for groups to cooperatively find alterna-

tives to what was then a very, very difficult market for professional liability. Since that time, of course, and during the trials that ALPS went through in order to become a viable organization, the situation has changed considerably. The market for professional liability, while it hasn't eased to the extent that some of the other avenues of insurance have, it has ameliorated itself so it's not quite the struggle to secure adequate liability insurance that it was three years ago. Your Association contributed some money to a study group. Then when the ALPS Program was launched it was launched on the basis of forming a mutual insurance company in one state under the Federal Risk Retention Act which then would operate in the ten states that the — or in the nine other states as a risk retention group and would be administered and admitted as a mutual insurance company in the state that sponsored the program. Now most state insurance commissioners, and insurance is regulated on the state level, not federal, until the beginnings of this Risk Retention Act, most of the insurance commissioners in most states were very reluctant to get involved with a risk retention group. Cooperative ventures in insurance have not been singularly noted for their successes. The Nevada Insurance Commissioner evidenced some interest. And so Nevada was chosen as the state of the ten State Bar Associations in which to get this company admitted. Now in order to do that as a mutual insurance company it was necessary to create a surplus. Therefore, the Directors that were finally selected out of the ten Bar Associations agreed that in order to not apply for, but in order to be insured with ALPS, it was necessary for each lawyer to make one \$1,000 contribution to surplus in addition to paying that first annual premium. And so that's how the company got going. Now initially the prospectus called for 3,500 lawyers or \$3,500,000 as contribution surplus. That was amended after a year. Now the Nevada Insurance Commissioner agreed that it would be acceptable to have 2,500 lawyers and \$2,500,000 of contributed surplus. The company then finally received an operating certificate on the 22nd of February from the Nevada Insurance Commissioner and launched its efforts. All the administration, everything except Underwriting and the President of the company, are located in San Francisco, California. All of the advertising, et cetera, that you see about the program, all of the mailings, the premiums collection, is handled out of San Francisco. I sit in Missoula, Montana. And it is my position with the company to decide who we will insure of the applications that are forwarded to me, on what terms

we will insure them; i.e., the size of the deductibles. Will we or will we not grant first dollar defense? Are the limits such that we're willing to write them for this particular firm? And on my approval or disapproval, if it's disapproved, then there's an appeal process to the Underwriting Committee, which is composed of some of the Directors from each state and the President of the company. And if that takes place favorably then the offer is made and the attorney may accept the offer at his desire. And at that time if he has not previously made that \$1,000 contribution it is necessary to make the contribution and pay the premium in order to be insured.

Now we issued our first policy in March, about the 1st of March. And as I stand before you now I think that we have probably written 1,000 — well, no, we have not. We've written probably about 800 lawyers with a total premium of a million dollars. For this program to become viable and succeed we're going to have to have two things; we're going to have to have participation, and, secondly, we're going to have to have some luck through the first year or two. And that's true of every insurance program that ever got started or any risk management process. I think our luck is running fairly well. Of course, if I make a good decision we're going to win, too. And if I'm lucky in the decisions that I make. We have had one claim, and it involved a conflict of interest. Now most of the claims that I see in the applications that I have read have been conflict of interest and docket control; missing a date. Those are the two things that I see. Now I don't want to take up any more of your time. If there are some questions, I'm going to be in Room 116 poolside all afternoon. Thanks for your attention. And I'm glad to be here.

(Applause.)

PRESIDENT FESTE: Thank you, Mr. Conger.

The next item on the agenda is a report of the North Dakota Bar Foundation. And I will call on Joel Gilbertson, the Chairman, to present that report.

(Applause.)

MR. JOEL W. GILBERTSON: Thank you, President Feste.

The North Dakota Bar Foundation is a nonprofit charitable foundation. In addition to other projects the Foundation under Administrative Rule 24 has responsibility for administering the IOLTA or Interest on Lawyer Trust Accounts program. Last year I announced to the General Assembly that the members of the Lawyer Trust Account Committee or LTAC had been appointed.

They have been appointed. And since, I'm pleased to announce today, that the committee has met many times. That they have done an immense amount of work. And, further, that IOLTA is all in all working very well. The committee, the LTAC, which has direct responsibility for IOLTA implementation, is chaired by Judge Allan Schmalenberger of Dickinson, the Vice-Chair is Vern Neff of Williston, Jane Voglewede of Fargo is on the committee, and Senator Rollie Redlin of Minot and representative Kathy Rydell of Bismarck are also on the committee. They've done a tremendous amount of work. And we certainly in the Foundation are appreciative of that work.

As you can imagine, the administrative burden undertaking something like IOLTA in dealing with all the administrative things that have to be done in getting the forms out to the various financial institutions and bringing in the money and keeping track of the money, that administrative burden has been significant. And I want to thank Les and the staff at SBAND for doing just a wonderful job with that in addition to intercepting many questions that come. Finally, as long as I'm handing out kudos, in dealing over the past year or so on the program in our implementation of the program by and large the financial institutions and the banking people have been very good to work with and have been very understanding. As you probably know, when we're dealing with small accounts, accounts that until now were generating no income for anyone, the only income that was generated in the past was income that went to the banks. And that income now goes to IOLTA. And so it's a sacrificing on the part of the bankers as well. They have really been by and large pretty good to work with. We've had a few disagreements here and there. But the people at the North Dakota Bankers Association, for example, have been good about sending out material to the bankers.

I want to report to you today that money is coming into IOLTA. The money is coming in from accounts that, as I mentioned, until this program began were too small to generate income for anyone other than banks. That the quarterly checks we have are not big; however, there are many of them. And you add checks for a couple hundred dollars here and a few hundred dollars there altogether with all the lawyers in the state and we have, as I am standing here, about \$60,000 in the IOLTA account. We're expecting that we've had only one full quarter of income; that is, when the program has been pretty much fully operational. We got about \$30,000 in that quarter. We're expecting 30 to

\$35,000 per quarter. So an annual income after everything is really rolling of somewhere in the neighborhood of \$120,000 to \$135,000. Those are our projections.

You can see that when we're talking about IOLTA it's amazing. That's a lot of money. And we think that this program and that the lawyers of North Dakota through this program are going to have a significant impact on providing legal services and other programs in the state.

The next step will be to award grants. We've been collecting the income. And now it's time to start doing something with it. Towards that end the LTAC has drafted guidelines and grant criteria. The guidelines and grant criteria have been submitted to the Supreme Court. And just recently I'm told, with a couple of minor changes the Supreme Court has adopted those guidelines of grant criteria. What those do is the LTAC will be able to identify the recipients, the grant applicants, general policy type statements, showing preferences to one grant applicant over — type of program over another are in those grant criteria and guidelines. In addition the administrative things, the day-to-day things, like suggested forms. How do I apply? Where do I apply? What kinds of information does the committee need? That's in those suggested grant criteria and guidelines.

The next step will be another difficult task for the LTAC, and that is to decide what grant applicants will be awarded the monies. However, it's a decision, it's a process, that we're excited about, because I think that by next year when we're giving the Bar Foundation report we'll be able to tell you, so it's for you, programs that have been funded by the IOLTA Program, and more importantly we'll be able to tell the lawyers of North Dakota and the people of North Dakota about the largess and the contributions of the lawyers of North Dakota to try to do some more in taking care of the programs that we have in providing legal services to the indigent and in working with other charitable programs throughout the state. All in all IOLTA is working. And for that I thank all of you for your cooperation. It's a new program. And there are always a few points where we maybe stumble a little bit. Thanks so much.

(Applause.)

PRESIDENT FESTE: Thank you very much, Joel.

The next item on the agenda is a report of the Commission for Continuing Legal Education. And will you please welcome Jim Hill, the Chairman of the Commission?

(Applause.)

MR. JAMES S. HILL: Thank you, Charlie.

As the President has indicated, my name is Jim Hill. I'm the President or the Chairman of the CLE Commission. I've been in that position for three years. I'll complete my fourth year and I will be done on the Commission having served six years. I know how Jane Voglewede felt when we approached her last year. I've found it tremendously enjoyable, but it's been a tremendous amount of work.

I do want to recognize the five other members of the Commission: Lee Hagen from Fargo, Dan Buchanan from Jamestown. Both are solo practitioners, yet they have made a tremendous effort to be at every single Commission meeting that I have held. And I think it's a tribute particularly to those who are in a solo practice that have to travel great distances. In addition Mike Ahlen from the Law School, Bill Demore from Bismarck and Nevin Van de Streek from here in Minot have all been consistently great members of the Commission.

This has been a very significant year for the Commission. This is the first year that our Commission has exercised what we refer to as a suspension power. That's a power that has been granted by the Supreme Court to our Commission. We are, in effect, exercising a power that is held only by the Court. We have not taken the responsibility lightly. We have been very cautious and hopefully very judicious in the way that we have responded to the grant and exercise of that power. We, in effect, are enforcing our own, if you will. The Chief Justice in his remarks indicated the significance of the *Levine versus State of Wisconsin* case. This is one of the very significant areas in North Dakota where this Association has the power to exercise a disciplinary function over its own. In the printed materials that I have distributed you will see statistically the numbers have been consistently excellent within the state of North Dakota. Out of some 540 applications they distilled themselves to eight individuals where we exercised the power granted to us to issue letters of suspension or orders of suspension. Out of that eight, seven we have not heard from. There is one case at the Supreme Court level at this time challenging the findings that we made specifically in the extreme hardship category.

Now before the Supreme Court at this time are proposals to change several of the rules that presently govern the CLE Commission. They are not the most substantive changes. Those were generally made last year. What we have done is we have operated for one year under the rules changing from a calendar year to a

fiscal year reporting period. And those rules also gave the Commission the power to suspend. What we have done is incorporated several issues of due process which I think should be included within the rule itself to be sure that in future years the very delicate way that our Commission has handled these particular cases is spelled out in rule. We have also included as a proposal one which would indicate that when a lawyer receives a sixty-day letter which states to them, "You must appear or you will be suspended," we've had so many people that have simply ignored them then on the sixty-fifth day have come in and said, "Here is my report." We have placed into effect and we are proposing to the Court a rule change which would say if an attorney fails to respond to that sixty-day letter that in acquiescence that the lawyer feels that they indeed have not complied with the CLE requirements. We have also modified the appeal process by which an attorney who feels aggrieved by our decision may approach the Court. We had a problem of time frame. We want to provide for a period of time for an attorney to wind up his or her affairs if, in fact, they receive an order of suspension. So we have placed before the Court a proposal that the order of the Commission be effective only thirty days after or received by the attorney. Within that thirty-day period the attorney would have a twenty-day period to petition the Court for a hearing on the suspension order of this Commission. That would stop any chance of an attorney that would be appearing before the Court while being suspended and yet be petitioning the Court. Hopefully that would resolve that process. Because if a person does petition to the Court within the twenty days it's an automatic stay of the Commission's order.

The changes that we have proposed are tied into your booklets. You can review them. I have had nothing but good response from the attorneys that I have dealt with. It's a very minimal problem that I see. But I think that we have, as our President has indicated, finely honed this program. It is an outstanding program, I think. And I think it's a real credit to this Association that it has run as smoothly as it has. The transition has been somewhat difficult administratively. But I think that all of the members of the Commission would agree that it's a very fine way to handle this. And I think it's a credit to the Association that we are now given the power through the graces of the Court to discipline our own. And I look forward to my last year on the Commission. Thank you.

(Applause.)

PRESIDENT FESTE: Thank you very much, Jim.



The next item on the agenda is a report of the Joint Committee on Civil Legal Services. I'm going to call on Melvin Webster of Bismarck to present that report. Mel. Would you please welcome Mel Webster. Like Al Schultz, he didn't stand up.

The next item on the agenda then — we will come back to the report on the committee of — Joint Committee. The next item on the agenda then is the Resolutions. And is Wes Argue in the audience? I'll call on our perennial Chairman of the Resolutions Committee, Wes Argue, to present the Resolutions. Please welcome Wes Argue.

MR. WESLEY ARGUE: Thank you, President Feste.

The Resolutions were pre-published in the May 12th issue of The Note Pad. If you will also refer to your manual, Page 3 after the tab "General Assembly Agenda" and material you will find a copy of the Resolutions that I will read. Resolutions have been pre-filed. All controversial Resolutions have been pre-filed and must be pre-filed thirty days before this meeting. I would ask that the Chairman allow that noncontroversial housekeeping Resolutions be permitted on Friday afternoon. And I would ask for suspension of the rules allowing presentation of housekeeping Resolutions on Friday afternoon.

PRESIDENT FESTE: You're making that in the form of a motion?

MR. ARGUE: I am.

PRESIDENT FESTE: There has been a motion that the rules be suspended with respect to the limited housekeeping Resolutions permitting them to be presented without the thirty-day rule. Is there a second?

You have heard the motion. Is there discussion?

DELEGATE: Question.

PRESIDENT FESTE: All in favor say "Yes." Opposed "No." The motion is carried.

You have read the Resolutions. The Resolutions will be voted upon tomorrow afternoon.

MR. ARGUE: First Resolution was presented by Murray Sagsveen.

WHEREAS, the State Bar Association of North Dakota is an integrated bar; and

WHEREAS, the State Bar Association of North Dakota represents a diverse membership, such as trial counsel, defense counsel, corporate counsel and government counsel; and

WHEREAS, the State Bar Association of North Dakota is an advocate for its diverse membership before the North Dakota Legislative Assembly; and

WHEREAS, federal courts have determined that certain legislative lobbying by integrated bars in other states is unlawful infringement upon members' constitutional rights. . .

NOW THEREFORE BE IT RESOLVED by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting on June 8th to 10th, 1988, the Legislative Committee shall evaluate legislative proposals during the interim and legislation during the session. If legislative proposals or legislation concerns (1) regulation of attorneys, (2) budget appropriations for the judiciary and legal aid, (3) proposed changes, litigation procedures, (4) regulation of attorneys' client trust accounts, or (5) law school and bar admission standards, the Legislative Committee shall advise the Board of Governors and shall recommend which position, if any, that the Board of Governors should take concerning the legislative proposal or legislation. If the Board of Governors takes a position concerning any legislative proposals or legislation, the Board shall designate a representative to communicate the position to the appropriate Legislative Committee.

BE IT FURTHER RESOLVED that the Legislative Committee shall also evaluate other legislative proposals or legislation not within the five categories listed above, which could have a direct or indirect impact upon attorneys and the legislative system. The Legislative Committee may also advise the Board about such legislative proposals or legislation. The Board may designate a representative to appear before the appropriate Legislative Committee to impartially explain the probable legal consequences of the legislative proposal or legislation, but it shall be the policy of the Board to not take a position on the legislative proposals or legislation. Further, it shall be the policy of the Board that the representative of the Board shall respectfully decline to state a personal position and shall not testify on behalf of any other entity concerning the legislative proposals or legislation.

Second pre-filed Resolution is by James S. Hill, Bismarck.

WHEREAS, the State Bar Association of North Dakota is an integrated Bar Association; and

WHEREAS, the State Bar Association, through its Legislative Committee, has adopted a lobbying policy allowing the Board of Governors of the State Bar Association to determine the Association position on various issues; and

WHEREAS, the same lobbying policy has incorporated within it a plan by which a dissenting member may have a portion of his or her dues used in the Association lobbying effort diverted from this use and paid over to the North Dakota Bar Foundation; and

WHEREAS, the "rebate" of that portion of the dues of a dissenting member is diverted to the Bar Foundation as a way of satisfying violation of the free speech of the individual attorney; and

WHEREAS, present lobbying policy with respect to dissenting members does not allow for a direct rebate back to the dissenting attorney;

BE IT RESOLVED by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting June 8th to 10th, 1988, that the State Bar Association of North Dakota policy regarding lobbying be modified to reflect the following: "Any member of the Association may dissent from the position taken by the Board of Governors on any legislative proposal. A dissenting member may have the portion of his or her dues used in the SBAND lobbying effort diverted from this use and either paid directly to the dissenting member of the Association at his or her request or paid over to the North Dakota Bar Foundation at the request of the dissenting attorney. The Executive Director shall calculate the percentage of the license fee that can be used in the lobbying activities prior to the beginning of each legislative session. A dissenting member may note his or her disagreement and cause the percentage of his or her license fee to be paid back directly to the dissenting attorney or to the North Dakota Bar Foundation by notifying the Executive Director in writing of his or her disagreement with the policy taken by the Board in his or her specific request concerning either a direct rebate or transfer to the Bar Foundation.

Resolution 3. RESOLVED: The State Bar Association of North Dakota supports increased public funding for civil legal services to the poor at both the state and federal levels.

Resolution 4. RESOLVED: The membership of the State Bar of North Dakota supports and recommends fair and equitable salary increases for the state's judges.

RESOLVED: The membership of the State Bar Association of North Dakota adopt proposed amendments to the Association's Constitution and Bylaws. Proposed amendments to be introduced to the General Assembly June 1988 and finally acted upon at the Annual Meeting in June 1989.

Another Resolution by Jim Hill.

WHEREAS, the State Bar Association of North Dakota is an integrated Bar Association; and

WHEREAS, the adoption of any plan which would mandate free legal services as a requirement for obtaining a license to practice law in the state of North Dakota has unquestionable significance and importance to each member of this integrated Bar Association;

NOW THEREFORE BE IT RESOLVED by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting on June 8th-10th, 1988, that should there be any present or future proposal to this Association which would require the performance of free legal services as a requirement for licensing in the state of North Dakota that such a plan be voted upon by the licensed membership of this Association by written ballot to be distributed to the office of the Executive Director of the Association and to each member of this Association.

BE IT FURTHER RESOLVED that it is the intent of this Association by way of this resolution to indicate that the Board of Governors of the Association that the membership of the State Bar Association desires a written ballot on any mandatory plan requiring the imposition of a mandatory program requiring free legal services as a condition of licensing.

BE IT RESOLVED by the State Bar Association of North Dakota at its Annual Meeting at Minot, North Dakota, June 8th to 10th, 1988, that while approving of the consent of providing civil legal services for the poor of North Dakota, commonly referred to as "pro bono" legal work, the Association is opposed to the implementation of a "mandatory" plan requiring such legal work as a prerequisite for a license to practice law in the state of North Dakota.

WHEREAS, a number of states have either completed or begun self-investigations of their legal systems in order to uncover and to remedy any inequalities that exist in the treatment of women and men; and

WHEREAS, the state of North Dakota has also committed to equality for all citizens and has an obligation both to determine whether all persons receive equal treatment in its legal system and to remedy any inequalities that may exist; and

WHEREAS, the State Bar Association of North Dakota is also committed to the principle that women and men should receive equal treatment in the legal system of this state;

NOW, THEREFORE, BE IT RESOLVED by the General Assembly of the State Bar Association of North Dakota at its June 1988 Annual Meeting that the State Bar Association of North Dakota supports the concept of a state-wide gender fairness commission (1) to investigate whether and what gender inequities, if any, exist in the legal system of North Dakota and (2) to recommend any changes necessary to assure that women and men are treated equally in the legal system of this state.

One last Resolution.

BE IT RESOLVED by the General Assembly of the Bar Association of North Dakota that the Board of Governors are again empowered to review proposed interim legislation and to review any and all legislation introduced into the 1989 Legislative Assembly; and that the Board of Governors may have representatives appear before and articulate to the legislative committees positions on said legislation. However, the representatives shall disclose that the position being articulated is the position of the majority of the current sitting Board of Governors and that there may be members of the Association that personally object to the positions being articulated.

I have just been informed that the Resolution for amending the Constitution and Bylaws has been withdrawn and will not be presented for your consideration on Friday afternoon.

PRESIDENT FESTE: You've heard the report. Now, Wes, do you make — do you move that the report be adopted?

MR. ARGUE: I would move the report be adopted.

PRESIDENT FESTE: You have heard the motion. Is there a second?

I forgot. Norman has cautioned me or reminded me when you make a remark would you please identify yourself?

Now the motion was made. Could we have the identification of the seconder?

MR. JAMES S. Hill: Second. James Hill, Bismarck.

PRESIDENT FESTE: The matter of the Resolutions is now on the floor. And they will be discussed and debated tomorrow afternoon.

I have a couple of announcements. First I have been asked to issue an invitation to all of you to attend the reception for the Bar Foundation to be held at the McGee Law Office. I'll refer to it as that. And I can't guarantee you that those of you who don't know

Orlin Backes that you will not be solicited for a membership in the Foundation.

The other announcement is that we have out in the anteroom or over to the other side a group of vendors who have taken their time to present material for your observation and perhaps use. So I would encourage you to meet and talk with the vendors and become familiar with their wares.

We now will have a ten-minute coffee break so that you can stretch and freshen your minds.

(Whereupon, the proceedings were recessed from 10:37 to 10:55 A.M.)

**PRESIDENT FESTE:** Would the Sergeant at Arms please go to the door and ask those people outside to come in and join us?

I'm going to depart from the scheduled agenda and add one individual. The Court Reporters Association would like a few moments to discuss a matter that is of significance to them. So I'm going to call on Gail Wells, a court reporter from Fargo, or at least the East Central District, to make a presentation. Please welcome Gail.

(Applause.)

**MS. GAIL E. WELLS:** Thank you. As Mr. Feste said, I'm Gail Wells. I'm a District Court Reporter. And I work in District Court in Fargo. And I'm here on behalf of the North Dakota Shorthand Reporters Association to ask for your help on a very important matter.

Allowing electronic recording in District Courts has been a real concern, and it has been something that we have been monitoring for a long time. We feel that North Dakota's Century Code Section 27-06-01, what we sometimes refer to as the "Court Reporters' Statute," offers a form of job security for court reporters, but more importantly it offers a form of protection for the record, because it states, in effect, that all District Court proceedings shall be taken down by qualified court reporters. And what a qualified court reporter is is more fully explained in the handout that I've given to you. And I have some more at this table up here if you would like them.

Right now what is of concern to us is a proposed bill draft that is before the Court Services Administration Committee that proposes to amend this statute, the Court Reporters' Statute, Section 27-06-01, that would allow for "alternate technical procedures," which is tape recording, video tape equipment, et cetera. And

that would be allowed in District Courts in addition to qualified court reporters. And the exact language of that proposed bill draft is in the handout. It's on the third page. And you can refer to that for the exact language.

Over the years there has been a gradual, but steady, erosion, if you will, of this statute that requires the District Court proceedings be taken down by qualified court reporters because of the fact that right now juvenile court and child support hearings are taken down by electronic means. And also because of the fact that county judges have now been given increased jurisdiction where they can now be assigned District Court cases, civil, criminal trials, as well as other District Court hearings. And this will most definitely affect the quality of the transcripts that are produced of District Court hearings, because the county judges, the majority of them in this state now, use electronic means to make the record. And that is not the most efficient and cost-effective means of making an accurate record. And for this proposed amendment to become law would only continue this erosion process because all District Court proceedings then could be taken down by electronic means or by video tape. And we feel that the transcripts that would be produced from this equipment would not meet the high standards that are now used by qualified court reporters.

The court reporters in this state, of course, are opposed to such an amendment for many reasons, but one of the major reasons being that the system that is now in place of qualified court reporters producing verbatim records works; it's worked in the past, it will work in the future, and it is far superior to any transcript that would be produced from electronic or video equipment. And, in fact, the court reporters would like to see qualified court reporters required in County Courts and in reporting juvenile and child support hearings.

What the court reporters are asking of you is that if you support our position of defeating this proposed amendment we would like for you to convey that support in written form to Mr. Bill Strutz, who is the Chairman of the Court Services Administration Committee, asking that this amendment be defeated. And his address is in the handout.

Also at the back of this handout there is a list of the members of the Court Services Administration Committee. If you know any of them and would have any influence with them, please contact them.

We are hopeful that we can be successful in defeating this

amendment at the Court Services Administration Committee level; if not, we may have to call on you for your support in the legislature if that would be necessary. This issue is currently on the agenda of the Court Services Administration Committee meeting set for September 23rd, I believe. So we would appreciate receiving your support as soon as possible so that the court reports can organize their presentation. If you have any questions I'll try to answer them; if not, thank you for allowing me time on your agenda and for any support you may give.

(Applause.)

PRESIDENT FESTE: Thank you very much, Gail.

I'm going to move around just a little bit on the agenda in the interests of getting to the nominations. So I will call now on Jim Geyer to present the report of the Unauthorized Practice of Law Committee. Jim Geyer is from Dickinson. And he has been the Chairperson of that committee. Jim. Please welcome Jim Geyer.

(Applause.)

MR. JAMES D. GEYER: Thank you, President Feste.

I had planned to make my presentation very short. However, due to a recent dissent to some of our decisions I'll try to explain what we did. The Unauthorized Practice of Law Committee normally is a pretty quiet committee. We have averaged three or four referrals a year concerning an unauthorized practice. The last year you are probably aware that Reverend Craig was convicted of unauthorized practice in Bismarck. This week he was sentenced to ten months in prison in South Dakota for fraud. He stayed true to his principles and appeared pro se in that action, too, as well as the one in Bismarck. As a result of the Craig trial in North Dakota President Feste asked our committee to review the adequacy of North Dakota statutes and case law relative to unauthorized practice of law and to make our recommendations on possible legislative changes. This arose out of Patricia Burke's concern in the Craig prosecution that they had difficulty in defining what an attorney is. And the jury expressed concern that they really didn't understand what the practice of law was.

Through the generous assistance of Dean Davis we had the valuable use of a special study done by law student Elaine Ayers on unauthorized practice statutes in North Dakota as well as across the nation.

Our committee considered that study, looked at the statutes, the laws covering this, and case law. And we recommended to the



Board of Governors that the Bar not pursue any legislative changes in the unauthorized practice of law at this time. We concluded that the present law which was enacted in 1905 is sufficiently clear. It's been adequate for 80-plus years. We thought it was best to leave well enough alone. We didn't think it was broken enough to fix at this time. We feel we have good case law interpreting the statute, and see no strong reason for a new law, new case law, interpreting that new statute. Last Tuesday the Board of Governors approved that recommendation.

My personal view is that a change in the law defining the practice of law would not influence our prominent unauthorized practitioners. They don't have any use for lawyers. They want to change our legal system. They want to do away with us basically. I don't think any change in the statute defining unauthorized practice of law would change what they want to do. They will stick with their principles which are, "We don't want lawyers." That's what we're looking at. In a sense these people are revolutionaries. The Constitutional Study Club wants to basically say, "Anybody can practice criminal law." And I'm sure they would be happy to say that in civil law as well. If large numbers of people are appearing pro se it seems to me it's not because of a definition of the practice of law, it's a problem with our pro bono representation, representation of the poor. If these people can't afford to go to an attorney they aren't going to look at what is a practice of law in any event. And the people at the Constitutional Study Club, I don't think they would care what the definition of the practice of law was. They would still do their own thing. So it's my firm belief that from that standpoint at least there's no reason at this time from our standpoint to try and change the law. I think it protects the public as well as any new law would do. And I think it serves the public. Thank you.

(Applause.)

**PRESIDENT FESTE:** Thank you, Jim, for your report.

We have a number of candidates running for office. And this is the time, that is this morning is the time, traditionally for the nominating speeches. I'm going to make a suggestion that the nominating speeches be limited to one nomination, not more than four minutes, and one second that would be not more than two minutes. This is your meeting essentially, and I don't want to arbitrarily set that. So I would ask the pleasure of the group with regard to how you want to handle the nominating speeches.

MR. LEO F. J. WILKING: Mr. Chairman, I will move that your recommendation be adopted.

PRESIDENT FESTE: You've heard the motion. Is there a second?

HONORABLE EUGENE A. BURDICK: What's the motion?

PRESIDENT FESTE: The motion is that the nominating speeches be one, and be limited to four minutes, and there be one second, and that be limited to two minutes.

MR. GARY R. SORENSEN: Mr. Chairman. Gary Sorensen, Minot. I second that motion.

PRESIDENT FESTE: Is there any further discussion? All in favor of the motion say "Yes." Opposed "No." Motion is carried.

The first office would be the office of Secretary-Treasurer. Please identify yourself, will you please?

MR. THOMAS O. SMITH: Sure. President Feste and members of the General Assembly of the State Bar Association of North Dakota. My name is Tom Smith. And I'm a partner in the Law Firm of Zuger, Kirmis, Bolinske & Smith of Bismarck.

It's my distinct privilege today to place into nomination the name of Rebecca Benson for the position of Secretary-Treasurer of this Association. Rebecca started with our law firm in 1982 after having spent a year or so as an associate with Degnan, McElroy, Lam, Camrud, Maddock & Olson in Grand Forks. Prior to that she was a Law Clerk for Judge Bright of the Eighth Circuit Court of Appeals. Rebecca Benson is the type of person who immediately earns your respect when she joins a law firm. There's a quick realization that the only thing as one of the old guys on the block you have over a person like Rebecca is a few years' experience. She was an outstanding student and scholar and has exhibited the same level of excellence in her practice.

In the past six years or so with our law firm she has quickly established a reputation of excellence in the area of commercial, business and bankruptcy litigation. During the same very short period of time she has developed a very active interest in State Bar Association activities and also the Burleigh County Bar Association. At the present she is President of our Local Bar Association and has recently completed an extended term as Chairman of the very active Continuing Legal Education Committee of this Association.

Her dedication to the legal profession and to the Association is unquestioned. Equally unquestioned is her ability to perform as a

Secretary-Treasurer and a valued member of the Board of Governors of this Association. We are indeed fortunate as an Association to have people of the caliber of Rebecca Benson who is willing to serve and to contribute their time to the work of our Association.

I have considered it to be a privilege to be a partner of Becky in our law firm. It is also a privilege for me to place her name in nomination for Secretary-Treasurer of this Association. And I urge you to vote for her at the election tomorrow afternoon.

Thank you.

(Applause.)

PRESIDENT FESTE: Thank you, Tom. Is there a second?

MR. GARY R. SORENSEN: President Feste, other members of the Bar. My name is Gary Sorensen. I'm from Minot, North Dakota, with the Farhart Law Firm. And it is my privilege and my pleasure to second the nomination for Rebecca Benson. You heard me earlier second the motion to limit this speech to two minutes. It was done for a purpose. That's about as long as I can go.

You wonder in giving a seconding nomination what it is you are supposed to say. And you worry whether or not you're going to say something that might harm the prospects of Becky winning the position of Secretary-Treasurer. And then you think about the kind of person that she is. And that's the way I know Becky. You think about the kind of person she is and you realize that because of her qualities, because of her characteristics, there isn't anything I could say to hurt her. Everything that she has shines through no matter what it is I say or do. But it's important I think to reflect on the kind of person that she is. She is a very strong person. She's a person you can have trust in. She's a person you can have confidence in. I know this because I've known her for many years, not just as a practicing lawyer, I've had a few cases with her, and she is darn good. But also as a human being she has those characteristics that we all respect. She has integrity and she does have a lot of experience as you can see by the short blurb that shows up in The Note Pad about Becky Benson. She's dedicated. She has the desire to improve this system. And some of the speakers who have gone before this morning talked about challenges to the Bar; those that are suggested by the Chief Justice, those that are suggested by other members of the committees that serve the State Bar. I think we need strong leadership in the State Bar. I think Rebecca Thiem Benson will provide that leadership. And again she's a quality person. She's the best person I know for the job of Secre-

tary-Treasurer. And I hope that you along with me will vote for her and support her in that role. Thank you very much.

(Applause.)

PRESIDENT FESTE: Thank you.

The next nomination is for the American Bar Association Delegate from North Dakota.

MR. WADE G. ENGET: I have another nomination for Secretary-Treasurer.

PRESIDENT FESTE: I'm sorry. Any further nominations for the office of Secretary-Treasurer?

MR. ENGET: Thank you, Chairman. Boy, this is my first time in one of these meetings. And by golly they really do run'em through, don't they? I thought that the Soo Line and Burlington Northern were a little bit north of here. But obviously it looked like it went right through here.

Actually I rise to place in nomination, ladies and gentlemen, the name of Ralph Erickson for the position of Secretary-Treasurer of the North Dakota Bar Association.

My name is Wade Enget, and I'm an attorney in Stanley, North Dakota. And I practice in a law firm with my partner Q. R. Schulte, who most of you know as "Kink." Don't ask me where he got that name. I still haven't found out. But maybe you guys have.

Ralph Erickson is a member of the Ohnstad-Twichell Law Firm in West Fargo. He graduated from law school with me back in 1984. I've known Ralph now for approximately seven years. Again let's not get his name mixed up with the Chief Justice of our Supreme Court Ralph Erickstad. He's not, I don't think, being placed in nomination.

I'd like to place again the name of Ralph Erickson. Mr. Erickson has been involved, as I said, with the Bar Association for approximately the four years that he's been out in practice. Before that time he was involved with the Student Bar Association at the Law School. And he was President of the Student Bar Association there during his third year of Law School. Since the time that he's been out this past year he's the out-going President of our Young Lawyers Division of the State Bar Association. He's also served on other committees within this Bar Association. I believe that this is a very important job. I believe also that in working with Ralph in the past that he does pay attention to detail. He's very committed. And if you know Ralph this is a big job and he's a big guy for it. So I think that Ralph is again qualified for it. I think

you will find that he knows a little bit about this Bar Association, and will do whatever is necessary to uphold the integrity of this organization. Again it is my pleasure to place in nomination the name of Ralph Erickson for the position of Secretary-Treasurer for the North Dakota State Bar Association. Thank you.

(Applause.)

**PRESIDENT FESTE:** Thank you, Wade.

Ralph, for your benefit that was not a Freudian slip. I'm simply trying to move things along. And I just forgot. I'm sorry.

Is there a second?

**MR. EDDIE G. KOPPERUD:** Chairman Feste, members of the Bar Association, friends. My name is Eddie Kopperud. I'm from Grafton. I've known Ralph for a number of years; since he and my daughter Lisa attended law school together and graduated, as I said, four years ago. And they are practicing law together in West Fargo. And so I've known Ralph somewhat socially and as a friend. I believe Ralph is very capable of serving this position. He's conscientious and would do a good job. And so it is with a great deal of pleasure that I second the nomination of Ralph Erickson as Secretary-Treasurer of the State Bar Association of North Dakota.

(Applause.)

**PRESIDENT FESTE:** Thank you very much, Eddie.

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

The next office then is the office of American Bar Association Delegate. Mr. Kenner.

**MR. HARRIS P. KENNER:** President Feste and members of our State Bar Association. My name is Harris Kenner of Minot. And I do indeed consider it an honor and a good privilege to be able to place the name of J. Philip Johnson in nomination for reelection as the State Bar Delegate to the American Bar Association House of Delegates.

And I want you to know that Minot is proud of J. Philip Johnson. Philip Johnson was born here in Minot fifty years ago. And he was raised in Minot. He graduated from Minot Model High School. And for the first three years of his college he attended what was then Minot State College, later transferring to UND. He has a wife Joanne, and they have two sons; one is eighteen years old and the other is twenty.

Now Mr. Johnson graduated from law school in 1962. And he

spent his first three years serving the military. But since 1965 he has established a simply fantastic impressive record of dedicated service, involvement and accomplishment in our State Bar Association activities. I know there's a lot of you in the room that have worked hard in our Bar Association, too. But I feel confident that there probably isn't anyone in this room that can outdo Mr. Johnson's record of positions held in this Association. I remind you that he is a former Secretary-Treasurer of this Association, having served in 1966 and 1967. I remind you that he is a former Past President of this Association, having served in 1980 and '81. He is a former Past President of our North Dakota Bar Foundation, having served in 1982, 1984. He has served as Past Chairman of the Supreme Court Advisory Committee on Appellate Rules. He is Past Chairman of the Continuing Legal Education Committee. He is Past Chairman of the Specialization Committee. He is Past Chairman of the North Dakota Continuing Legal Education Commission. He is Past Chairman of the Real Property, Probate and Trust Law Section of our Association. He was a member of the Citizens Committee for the New Judicial Article. He was Chairman of the Attorney Discipline Subcommittee. He's Past Chairman of the Rules Subcommittee. In 1981 and 1982 he served on an accreditation team of the American Bar Association that evaluates law schools. Since 1979 he has served as our State Bar Delegate to the North Dakota Judicial Conference. He is a member of the North Dakota Constitution Celebration Committee. He's a member of the ABA Annual Fund Committee. He's a Fellow of the American Bar Foundation. He has served as our State Bar Delegate to the American Bar Association House of Delegates now since 1982. And I could go into another list of community activities for Mr. Johnson. But we're concerned with Bar activities. So for these past twenty-three years Phil Johnson has given so generously of his time, his talents and ability to the services of this Association and our profession. He is willing and desirous of continuing as our State Bar Delegate. And I sincerely hope that you will see fit to cast your vote for his re-election. Phil and I both thank you for your vote.

(Applause.)

PRESIDENT FESTE: Is there a second?

MR. ROBERT A. FEDER: Robert Feder of Fargo.

PRESIDENT FESTE: Chair recognizes Robert Feder.

MR. FEDER: Thank you, Mr. President, members.

I rise to second the nomination of J. Philip Johnson. Because

time is limited, I will not be able to explain in detail the great accomplishments of this man. Suffice it to say, however, that both his parole and probation officers have not had occasion to take corrective action. Likewise, with the exception of that one incident involving the sheep in the lobby of the Hyatt Regency his fidelity to his wife of over twenty years remains unquestioned. Because he wears long-sleeved shirts now exclusively, there's absolutely no evidence whatsoever of any drug-related problem, and since his employment of deodorant, he is less of a loner. He is steady and secure, so long as he takes his medication, and is a favorite at ABA conventions, particularly when he hands out the "Free Bob Snyder" buttons.

I could go on, but before leaving you to your ballots, I do say, in all sincerity, that in the long association I've had with Phil, and I've known him for twenty years, and I have been his partner now for twelve, I've recognized, as have most of you in this room that have had the privilege of working with him or observing him work, his brilliance, his temperance, and his dedication to our Association.

As a litigator, I don't often find need to come and sit at the knee of someone who is a nonlitigator, primarily an office lawyer. But with Phil, there is an exception. He has a brilliant mind and his measured advice is eagerly sought out and appreciated. He listens, he carefully weighs, and then he explains with a superb analytical approach the issues at hand. This is the way he has served us in our Association for many, many years. This is the way he has served us with great respect as our ABA delegate.

He has served us well and the respect with whom he has worked is well known both here and at the ABA level.

I ask you with all sincerity to show your respect and support for Phil and return him to the office of ABA Delegate. Thank you.

(Applause.)

PRESIDENT FESTE: Thank you, Robert.

Are there any further nominations for the ABA Delegate? Chair recognizes Orlin Backes.

MR. ORLIN W. BACKES: I tried to beat Harris up here to make sure I wasn't left out. But I guess our President's learning that we have good competition in our Association.

It is a pleasure to nominate an outstanding and effective leader of our Association as State Bar Delegate to the House of Delegates of the American Bar Association. Dave Peterson, who

has been in the private practice of law in Bismarck since 1976, is a very successful and well-known lawyer. He is a recognized trial lawyer throughout our state. In my years working with the State Bar I don't know of a more effective leader for our profession, and therefore it is an honor to nominate him for the House of Delegates of the ABA.

Dave was raised on a farm near Carpio, North Dakota, in Ward County, also, Harris. He graduated from UND Law School in 1968 and was Editor in Chief of the Law Review. Dave has been active in all aspects of the legal profession; serving on the State Parole Board for three years, the Board of Governors for three years, and the North Dakota Criminal Justice Commission. He has been Past President of the State Bar Association, Past President of the North Dakota Trial Lawyers, and the North Dakota Council of School Attorneys. Dave is currently a member of the Joint Procedures Commission, the State Bar Association Bylaw and Constitution Revision Committee, the South Central Judicial District Case Management Committee, the American Bar Association, the North Dakota and American Trial Lawyers Association.

I have known Dave personally for over twenty years having first tried cases where he represented the opposite party in the late 1960s. Since my association with Dave I know he enjoys his work as a trial lawyer, and is dedicated to the improvement of the legal profession. Dave will work hard and be an effective new voice for the State Bar Association as an ABA Delegate. I saw some pins around last night or tags that said, "Why not Johnson?" Maybe we can say, "Why not Peterson?" since that's the slogan that comes out of Minot, "Why not Minot?" But we'll use a new slogan. It's because of Peterson the State Bar Association will be well represented in the American Bar Association. I encourage your vote for Dave Peterson for ABA Delegate.

(Applause.)

PRESIDENT FESTE: Thank you, Orlin.

MR. RICHARD H. MC GEE: Do you suppose you could get a legal pad for Orlin so he doesn't have to use some other paper?

Go ahead.

MR. ROBERT SCHNEIDER: I'm Bob Schneider. And I'm presently free. I don't know if any of you will ever need a lawyer. Hopefully you won't. A few years ago I did. And I got one. And he did a fair job. We went all the way to the United States Supreme Court. And Dave did a wonderful job. And didn't even charge me his normal rate of \$25 an hour. I've been in practice



now I guess for about eleven years. And I'm a pretty good litigator by my own admission. But when I think of the word "mentor" I think of someone that knows more than you do and is willing to share with you what he knows. And we started out in Bismarck green as grass out of law school. And even back then, in fact, it's been eleven years now, we called Dave for advice. And we've always freely gotten the advice. Dave is my man, I'll tell you. He is my idea of a lawyer. I mean look at him. He looks like a lawyer. I don't know why he asked me to be a seconding speech. But I'll tell you I am honored, I am thrilled, to be able to get up here and say, "Listen. If you want someone to represent this State Bar on a national level, there's nobody better." Thank you.

(Applause.)

PRESIDENT FESTE: Thank you, Bob.

Are there further nominations for the office of ABA Delegate? Seeing no one rise we will then proceed to the office of President-Elect. Are there nominations for the office of President-Elect? Chair recognizes Phil Johnson.

MR. J. PHILIP JOHNSON: Mr. President, fellow members of the State Bar. Following your advice I have confined my notes to a yellow pad.

I'm Phil Johnson of Fargo. And I rise to nominate Christine Hogan of Bismarck as President-Elect of the State Bar Association of North Dakota.

I think there are expectations that we expect we want to be met when we elect a President for our State Bar. We expect a person of unquestioned personal character. I support such a person. We expect a record of serious commitment and dedication to professional and community service. I support such a person. We expect personal intelligence, educational achievement, and an articulated expressiveness. I support such a person. We expect good judgment, good sense, and a broad view of the needs and obligations of the practicing Bar. I support such a person.

I have worked with Christine Hogan when she served as Secretary-Treasurer of the State Bar, and as a member of the Board of Governors. I have watched Christine Hogan while she chaired one of the most important and hard-working committees of the past five years, the Committee on the New Rules of Professional Conduct. Here is a person who displays intelligence, good judgment, and an ability to work with the most independent-minded of professional groups, the lawyers. Here is a person who has a broad vision of her profession and a personal dedication to law as a

profession and not merely as a business. As you can see from her picture over here, she retains a youthful appearance primarily through exercise and good nutrition. But Chris has been in practice and government for more than thirteen years and has great experience and maturity. Chris has one characteristic I have not emphasized. She is a woman. I would not urge and do not support the idea that we must now elect the first female President of the State Bar. I do support and urge your support for Christine based upon her personal qualifications and her accomplishment and her sense of dedication to her profession. This is a person well-qualified and well-dedicated to serve the oldest integrated bar in the United States of America. Thank you.

(Applause.)

PRESIDENT FESTE: Is there a seconding nomination? Orlin Backes.

MR. ORLIN W. BACKES: Coming back up.

PRESIDENT FESTE: With the same paper?

MR. BACKES: Same paper. The bad thing about writing on the back of the State of the Judiciary Message is I wrote it during the Judge's speech.

I stand to second the nomination of Chris Hogan as President-Elect of the North Dakota State Bar Association. I can tell you she has a fantastic hospitality room; Room 117. Go through. Corona beer with lime. One vote for each beer. It's just fantastic. So make sure you see her hospitality room.

No. 2, while we were there Paul Kloster was visiting with the members of her firm and said, "How can she get the time with all the other activities she has to be President of the Bar Association?" And some of the members says, "Well, that shouldn't be a problem because Tim Durick has agreed to expand his week from two days to three days a week in working to take care of it. So we have no problem with Chris taking the time to be the President-Elect."

Chris is already a leader for our Association and our profession. She has worked hard. This past year I worked with Chris when she chaired the Special Committee on the Constitution and Bylaws for our Association. And on the Law School Committee. And she is one of the best members and one of the best chairs of those committees. She will bring a real credit to our profession as a President of the Bar Association. Her work in chairing as Phil Johnson mentions, the Special Committee for Drafting the North Dakota Rules of Professional Conduct, and as the Chairman of the

State Judicial Nominating Committee, has really demonstrated her ability to lead our Association. I encourage your vote for Chris. Thank you.

(Applause.)

PRESIDENT FESTE: Thank you, Orlin.

Are there further nominations for the office of President-Elect? Chair would recognize Dave Peterson.

MR. DAVID L. PETERSON: Thank you, Mr. President. Mr. President and members of this Association. It is my privilege to rise and place in nomination for President-Elect of this Association the name of Jack Marcil. I first met Jack when we started law school together at UND in 1965. We will have been members of this Association for twenty years this July. I particularly like to attend sessions such as the Bar Association meeting where Jack also attends because so far as I know he is probably the only member of my class that has more gray hair than I do.

Jack was a very serious student of the law. And after graduation that seriousness of study, work and diligence has carried through in his practice and is evident to all who have met him, opposed him, and worked with him in his practice. When he left law school and graduated he assumed a position with the Attorney General's office for a short time and then moved to Fargo to practice with the Tenneson, Serklund, Lundberg & Erickson Firm. And he has practiced there nearly twenty years this year.

Jack has been a very active member of the legal community, and also the community in general in Fargo. He has served as a part-time Special Assistant Cass County States Attorney, he has served as President of the Cass County Bar Association. He's also been a member and active member of the Board of Directors of the North Dakota Council of School Attorneys. He served as President of the North Dakota Trial Lawyers Association, and is a member of the North Dakota Court Services Committee. He's also, of course, a member of this Association, the Minnesota Bar Association, North Dakota Trial Lawyers Association, the Minnesota Trial Lawyers Association, the American Trial Lawyers Association. He is certified as a civil trial advocate by the National Board of Trial Advocacy, and he's also a Fellow of the International Academy of Trial Lawyers.

Jack has, almost in every instance where he has involved himself in community activities and Bar activities, he has assumed positions of leadership. And he has done a wonderful job in those positions of leadership. He's also been an active duty person in the

United States Army from 1963 to '65. He lives in Fargo with his wife Kathy, who's the owner and Vice-President of a company in Fargo known as the Employee Assistance Program Consultants, Inc. They have two children; Jackie, a nurse in Phoenix, Arizona, and a son, Mike, who was a senior at Fargo South High this past year.

Jack has a very unique ability, in my opinion, to meet people. And I believe that Jack would be a tremendous asset and a tremendous representative for our Bar Association not only on the local and state level, but also at the ABA level. His years of involvement in Bar matters and in his own practice make him uniquely qualified to be President- Elect of this Association. He will be an articulate and effective spokesman for our Association. And I solicit your support for Jack for the position of President-Elect.

Thank you very much.

(Applause.)

PRESIDENT FESTE: Thank you, Dave. Is there a second? Chair recognizes Kermit Bye.

MR. KERMIT EDWARD BYE: Thank you very much, President Feste.

For the record, my name is Kermit Bye. And I am here and I am pleased and honored to have the opportunity to place a seconding nomination behind the name of Jack Marcil for the position of President-Elect of this Association.

For some of you newer people here you shouldn't get the idea that this is some kind of small closed clubby organization in spite of the fact that I was just keeping track. Harris nominated Phil, Phil nominated Chris, Orlin nominated Dave, and Dave nominated Jack. Jack actually had two people lined up to give seconding speeches for him, Tom Rutten of Devils Lake and myself. We drew straws, flipped a coin, and I ended up winning. And that's the reason that I am up here.

Jack called me early on when he decided to run and asked if I would support him. And Jack and I go back all the way to the days when he was in the Attorney General's office and I worked in the Capitol building. And I remember in those days when he was fresh out of law school he was a guy that stood out as somebody that was a hard worker. I've known him now in the private practice for about nineteen years. And I have found being on the opposite side of Jack to be a very capable, dedicated, hard-working and most importantly a competent lawyer.

Now when Jack called me he said, "I want to send some information over to you so that you will have all of the details of all of the things that I have done." And I said, "I'd appreciate that." And the next day a letter arrived. And Jack is with an excellent law firm in Fargo. And it takes the top third of a page just to identify who they are. Then the addresses on this letter take up the middle third. And the bottom third talks about Jack's very beautiful wife Kathy. And over on the second page he devotes about a top third of the page to his children. And then as a tag line he says at the bottom, "By the way, information about me is contained in my biographical sketch in Martindale-Hubbell." And so I took a look at it. And, Dave, you're absolutely right. All those good things that you did say about Jack are right here in Martindale-Hubbell. And I also compared Jack to the other recent Past Presidents. And he has slightly more column inches in Martindale-Hubbell than anybody who has run since I ran. And so I can assure you that Jack meets, at least in my humble estimation, the qualifications to serve this organization well.

Now I think one thing that really goes unnoticed in the office of the President of the State Bar Association of North Dakota is the extraordinary amount of time it takes to do a competent job to serve as President. I had been led to believe when I was President back in '83 and '84 that perhaps I could get by by devoting about 10 percent of my time to becoming President. I kept track. And it took me in excess of 25 percent of my time to do a rather modest job in attempting to meet the responsibilities of that office. And in that call that Jack made asking if I would support him I said, "Jack, I want to know one thing. If you're going to be President of the Bar Association will you take the time to do the job that it requires to fill all the responsibilities?" Jack gave me his solemn promise that he would take the time. He says that at age forty-seven with twenty years of practice behind him he's in a position in his firm and he has arrived at a position in his career where he can now take on these added responsibilities. And I know that when Jack makes a commitment like that he will keep it.

He also has another qualification, which may not be an absolute must, but seems to kind of go with the territory. When you look at a person such as myself, Dave Peterson, Charlie Feste, and a few others, he has the requisite color hair. And with that I would encourage each of you to seriously consider voting for Jack G. Marcil for President-Elect of the Bar Association.

If I can make just one more aside comment. I think the State

Bar Association in North Dakota has come a long way. I find it very encouraging that this year all of the positions that are up for election are contested. I think that's healthy. All of the candidates are capable, fine people. And I wish all of them well. Thank you for your time.

(Applause.)

PRESIDENT FESTE: Thank you, Kermit.

We are about ready to adjourn. I have a couple things I wanted to bring out. First, I'd like to thank all of you for your attendance and commend you for your endurance of staying here all morning. This is one of the largest business meetings that I've attended in many years of going to Bar Association Annual Meetings.

The balloting for the Resolutions and for the offices will be tomorrow afternoon during the business session which commences at 2:30. There have been some questions raised about the balloting, whether absentee ballots can be used. There is no provision in our Constitution or Bylaws for that. So it will require a vote by ballot by members who are present at the business meeting tomorrow afternoon.

With that we will stand in recess until 2:30 tomorrow afternoon. Thank you very much again.

(Whereupon, the proceedings were adjourned at 11:49 A.M.)

FRIDAY, JUNE 10, 1988

(Whereupon, the Eighty-Eighth Annual Awards Presentation commenced at 1:05 P.M.)

PRESIDENT CHARLES A. FESTE: I'm going to ask you to give me a portion of your attention. We have a number of awards to present this afternoon. And I'm going to start with them now.

There are a number of the members of the Board of Governors who are retiring after having served a requisite term. And I would like to present awards to those members who are retiring. And as I call your name please come forward. Greg Bickle, Ron Hilden, Charles Orvik and Robert Heinley.

(Applause.)

PRESIDENT FESTE: The Board of Governors spends time as the administering head of this organization. And we thank these gentlemen for the service that they have rendered to the Bar Association for the service on the Board of Governors.

(Applause.)

PRESIDENT FESTE: The next presentation or the next

award is for those lawyers who have performed legal services or rendered legal advice, I should say, I'll get this straight yet. — for fifty years. And we have two such recipients. The first is Joel M. Goplen, who is a country lawyer from Binford, North Dakota, which is located west of Cooperstown in Griggs County. Joel has counseled a countless number of individuals in and around the Binford area during that fifty-year period. He also served as a County Justice for Griggs County for some twenty years. He is here with his wife Winnifred and his daughter. And will you all three stand up? And, Joel, if you will come up I will present you with the award.

(Applause.)

PRESIDENT FESTE: There are four lawyers who are members of the Association who are receiving the fifty-year certificate, two are here and two are not here. The other lawyer who is here represents somewhat of a contrast from a country lawyer, if you can have that situation in North Dakota. Mart Vogel is a practicing lawyer in Fargo. And you heard Bob Raven's discussion last evening about "mentor." I would describe Mart as a mentor. He has been a mentor not only to the lawyers in his office, but a mentor to a number of other lawyers in Fargo and throughout the state of North Dakota. Moreover, Mart both figuratively and literally is a lawyer's lawyer. And I would like to have Mart and his wife Lois be recognized. Mart, will you come forward?

(Applause.)

PRESIDENT FESTE: It is a substantial event and a delightful event for both Joel and Mart, and also for Charles Crane from Mott, North Dakota, who is one other recipient of the fifty-year certificate, and another lawyer, Mr. S. W. Hagen, who lives in California. And we recognize all four of these gentlemen, particularly those two who are here.

We have some awards that we present to lay people who are active in Bar Association activities through the role that lay persons play in the various boards or committees. First is an award to Richard Stern of Fargo. Richard is not here. But he serves on the Disciplinary Board.

On the Judicial Conduct Commission is Janet Maxson of Minot. Janet is here, I believe. And, Janet, will you come forward and receive your certificate?

(Applause.)

PRESIDENT FESTE: Other awards go to Doreen Yellow

Bird of New Town, North Dakota, who, as with Janet, sits on the Judicial Conduct Commission.

On the Judicial Nominating Committee the name of Richard Walstad has become very familiar over the last six years. Dick is retiring as a member of that committee having served as an appointee I believe of the Governor for these past six years. Dick is not here. But we will see that both Dick and Doreen receive their certificates.

Let's give them all a round of applause.

(Applause.)

**PRESIDENT FESTE:** The Bar Association functions through various committees or commissions that exist within its framework. Each year it is traditional to present an award to the committee chairperson who has demonstrated outstanding ability. This year I am very happy to present the Committee Chairperson's Award to James Hill of Bismarck, North Dakota. Jim serves on the CLE Commission and has been on that commission for five years, the last two as Chairman. Jim has one year to serve. And I would like to just point out that the CLE Commission, the amount of time and the effort that Jim has devoted to this work is really substantial. And he has done an excellent job. And we would like to recognize him for that service now. Jim, would you come forward, please?

(Applause.)

**PRESIDENT FESTE:** The Bar Association awards makes a presentation to those individuals who have achieved significance and played an important role in the pro bono effort of the Association. Michael Hinman, who is a lawyer on the legal staff of Basin Electric in Bismarck, is the recipient of a Pro Bono award for his efforts in the development of the Saturday A.M. Project in Bismarck. Let me tell you a little bit about that project. Michael has been an organizer of lawyers in the Bismarck area who agreed to on Saturday morning come to their office and provide advice and counsel to those disadvantaged persons who otherwise are unable to pay. And we have an award for Mike for his efforts in organizing and setting up that program. And, Mike, will you come forward now?

(Applause.)

**PRESIDENT FESTE:** Another Pro Bono Award goes to one of our jurists in the state. And I'm sure that most of you will agree with me that the Honorable Joel Medd has given untiringly of his



efforts in leadership in studying the status of legal service for the disadvantaged over the past three years and for having chaired the Medd Committee. Joel, would you come forward and be recognized for the substantial efforts that you have made in this very important area?

(Applause.)

**PRESIDENT FESTE:** The next Pro Bono Award is presented to the Attorney General of the state of North Dakota. Nick Spaeth has worked very substantially and was successful in gaining statutory authority for attorneys employed in the public sector to provide pro bono services. And for that effort, Nick, we would like to present you with the Pro Bono Award. Would you come forward and receive it?

(Applause.)

**PRESIDENT FESTE:** The next award we have is a new award this year. And it is a special award, as designated. The special award is to be presented to a news organization that has provided substantial effort to assist in publicizing the work of the Bar Association and to promote a better understanding of the legal system. And the Meyer Broadcasting Company of Bismarck and Minot is the recipient of the Special Award of Merit for its general contribution of time, facilities and technical advice and expertise in the production of a series of public service announcements commemorating the Centennial of the North Dakota Constitution. Here to receive the award for the Meyer Broadcasting Company is Wayne Sanders, General Manager of the Minot office of the television company.

(Applause.)

**PRESIDENT FESTE:** One of our members was involved in this project. And we would like to present a Certificate of Appreciation to Lynn Boughey of Minot for his diligent work in writing the scripts for the Public Service Announcements that were produced by the Meyer Broadcasting Company. Lynn, would you come forward and receive your certificate?

(Applause.)

**PRESIDENT FESTE:** The next award we have is an award called the Liberty Bell Award. The Liberty Bell Award is presented annually by the State Bar Association to a non-lawyer who has contributed significantly to the public's understanding of the law and the legal system. We have a recipient of the Liberty Bell Award this year. The recipient is a native of Minot. He

attended grade school and high school in Minot and graduated from Minot State University. An active family man, Keith Bjornson is married to Judy McMann. He and Judy are the parents of two children, Chad and Tricia. Keith has been active and he was active in sports during his high school career. He has remained active in sports serving as the coach of a Babe Ruth baseball program, and also serves as an assistant coach for the Minot Public School System in the high school. Keith is a teacher at Magic City Campus. And the reason for this award to Keith is because he has been instrumental in the development of a law and justice curriculum in the Minot Public School System. He is presently active and on the statewide law-related Educational Advisory Committee, which has developed a law-related education program for the primary and secondary schools throughout the state. And I understand that the curriculum and the program is just a hair's breadth from being published. The contribution that Keith has made to the public understanding of the law and the legal system for a lay person is truly outstanding. And for this service, Keith, we would like to present you with the Liberty Bell Award. But first I would like to have you and your wife Judy stand and be recognized. And, then, Keith, would you come forward and receive the award?

(Applause.)

**PRESIDENT FESTE:** The next award that we present today is the most prestigious award presented by the State Bar Association. This award is presented to a lawyer who has distinguished himself in the field of law. And I would like to present that award now. Chief Justice Ralph Erickstad was born in 1922 on his parents' farm near Starkweather, North Dakota. And when I have the opportunity to make a presentation like this I'm reminded of a story of one of the members of our Association who was from the Finley area. And he achieved some successes. He said, "Just how far can a boy from Finley go?" And I would apply that here and say, "Just how far can a boy from Starkweather go?" And I would like to tell you how far. Ralph Erickstad was educated in the public schools of Starkweather. He attended the University of North Dakota, and graduated from the law school at the University of Minnesota. During the Second World War Ralph served as a radio operator and gunner as a member of a crew of a liberator bomber in the 8th Air Force. Ralph began his practice of law in Devils Lake in 1949. He served as Police Magistrate, State's Attorney and a State Senator from that district. While in the legislature Ralph's talents did not go unnoticed, for he served as the Assistant Major-

ity Leader in the North Dakota Senate for the two terms he was there.

In 1962 Ralph resigned from the Senate because he had been elected to the North Dakota Supreme Court. He was re-elected in 1972 and in 1982 for ten-year terms. He was elected Chief Justice by the Judges of the District Court and the Supreme Court in 1973. He was re-elected Chief Justice in 1978, 1983 and 1987 for five-year terms.

Ralph is a former member of the State Budget Board, the Legislative Research Committee and the Governors Special Committee on Labor. He was a member of the Task Force on the I quote "Public Image of the Courts" end of quote Williamsburg Conference in 1978. Ralph served five years as a member of the Executive Council of the National Conference of Chief Justices, and is Past President of the National Center for State Courts. This is truly a distinction for a member of the judiciary from North Dakota. And Ralph's work on these National Boards has truly been significant.

On July 2nd, 1987, Justice Erickstad was appointed by President Reagan as a member of the Board of Directors of the State Justice Institute for a term expiring September 17th, 1989. On November 23rd, 1987, Justice Erickstad received the North Dakota National Leadership Award of Excellence from Governor George Sinner.

Chief Justice Erickstad is also a member of several legal associations and veterans organizations. He is a former Council Commissioner for the Missouri Valley Council of the Boy Scouts of America. He is Past Chairman of the Board of Trustees of the Missouri Valley Family YMCA. Justice Erickstad received the Silver Beaver Award from the Boy Scouts of America in 1967. He received the First Distinguished Service Award from the Missouri Valley Family YMCA in 1978. Along with other members of the North Dakota Supreme Court, Justice Erickstad received the Sioux Award from the University of North Dakota in 1973.

Chief Justice Erickstad and his wife Lois are parents of sons John and Mark, both physicians in Bismarck, and have four grandchildren. And one of his sons and one of his daughters in law are seated with Ralph and his family. I would like Lois and the whole family to rise now and be recognized.

(Applause.)

PRESIDENT FESTE: Justice Erickstad, would you come forward and receive this award?

(Applause.)

**PRESIDENT FESTE:** It is truly an honor for me as President of the State Bar Association on behalf of the State Bar Association to present you with this award, the Distinguished Service Award. And in receiving this award you join the ranks of a distinguished group of members of the judiciary or lawyers, including the Honorable Ronald M. Davies, Eugene Burdick of Williston, Robert E. Dahl, formerly of Grafton, North Dakota, Richard H. McGee of Minot, Douglas Heen of Devils Lake, and Vern Neff of Williston. Congratulations again, Justice Erickstad.

**CHIEF-JUSTICE RALPH J. ERICKSTAD:** Thank you.

(Applause.)

**CHIEF JUSTICE ERICKSTAD:** If I may take the liberty of a few moments.

**PRESIDENT FESTE:** You may.

**CHIEF JUSTICE ERICKSTAD:** I want to thank you, Mr. President, and your Board of Governors, and all who have made it possible for me to receive this recognition. And that includes every one of you. In my life I have never accomplished anything without the support of the people around me. And of course I want to acknowledge my family. I'm very blessed. And I would like to introduce them separately in a moment. But I want to acknowledge especially my colleagues on the Supreme Court, both current and in the past, my colleagues in the District Court. Without their vote and support I would not be Chief Justice, and I could not do any of the things you've attributed to me. And without the support of the Bar Association and its spouses and the people of North Dakota I would probably still be in Starkweather raking the leaves about this time. I do say this, that I have a lot of fine and kind friends in Starkweather. And maybe it was the early combination that helped me think that I might be able to do something along this line. You have to have encouragement. And throughout my life I've had that. I've been very fortunate. And so I thank you all very much. And just to tax your patience a little bit if I could have Lois and her mother, Grandma Jacobson, stand at this time. Thank you.

(Applause.)

**CHIEF JUSTICE ERICKSTAD:** And my son John could not be here today. But Sandy, his wife, and their two little daughters are here, Jennifer and Jessica. Would they stand, please?

(Applause.)

CHIEF JUSTICE ERICKSTAD: Mark and Judy. Judy is here with Michael. But Michael's in the terrible two period. And so they are out here in the lobby somewhere. But I want you to know that they are here. Judy and Michael and Mark and Katrin. Would they stand?

(Applause.)

DR. MARK ERICKSTAD: Dad just wants to tell these people we have been functioning under his jurisdiction a lot longer than you have. I just want you to know if you have any problems just talk to me.

CHIEF JUSTICE ERICKSTAD: I don't know where he gets that. But I think it was back in Cub Scouting where he first developed it.

I had one more thought here, and that is that none of us could do anything in this world without additional help, and particularly in our world we depend a great deal on staff. And so if any of our staff are present I would like to have them stand, along with the Judges of the Supreme and District Court. And why don't we have the County Judges and the City Judges stand as well, and all the members who have served on the committees that have worked with the Supreme Court, and every member of the State Bar Association and their spouses and all other friends. Would you all stand up and take a bow? And thank you very much.

(Applause.)

PRESIDENT FESTE: The plaque that was presented to Justice Erickstad, there will be a plaque honoring him for this award hanging in the Capitol along with the other members who have received the award.

We now have reached a point where we're departing from some tradition in that some of these functions used to be at the Friday evening ceremony. But at this time I'm going to for a moment turn the gavel over to our President-Elect Dwight Kautzmann.

PRESIDENT-ELECT KAUTZMANN: Before I start out to present an award that I'm to present this afternoon I'd like to take a point of personal privilege, if you would allow me to.

First of all, Mark Erickstad, I'd like to see you at 5 o'clock.

And I would like to make an observation. I have practiced law in this state for seventeen years. And I find that the Fifty-Year Award has got to be one of the most amazing awards that a lawyer can get in this state. Because as I can recall from the time I took

the Bar Exam seventeen years ago I have had chest pains for the seventeen years. And to be able to withstand fifty years of chest pains is absolutely amazing. But within that framework President Feste made an interesting observation. He talked about a mentor. And I will be honest with you. I have had about seven lawyers that have been secretly my heroes. I have snuck into the back of courtrooms when I have been in their home towns when I have heard that they have been in court to listen and I've snuck out. Most recently I finally got caught by one of them. And I would personally like to congratulate one of my secret heroes who will now become one of my public heroes, Mart Vogel.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: I don't have an address, but I have a scrap of paper. I tore it off the side of the letterhead of the North Dakota Bar Association. And I'd like to read you the names that appear there this year. Dwight C. H. Kautzmann, Gregory L. Bickle, John E. Widdel, J. Philip Johnson, Howard D. Swanson, Robert C. Heinley, Charles D. Orvik, Donald L. Peterson, James S. Hill, Ronald L. Hilden, Leo F. J. Wilking, W. Jeremy Davis. Think of those names. Does that sound to you like a group of men who are a bunch of sheep? Think of the year Charlie Feste had with that group. I sat here at the banquet yesterday afternoon and listened to you roar with laughter over an Italian definition. That was nothing new to the Board of Governors. Charlie heard that word over and over and over again for a year; "Innuendo, Charlie." But Charlie was gracious. Charlie was kind. And Charlie led us very well. He put the coalitions together when he needed them. And he moved the Bar forward, not only within the state, but at the ABA. Charlie didn't say anything last night when he introduced President-Elect Raven to you about the fact that they have become very good friends. I've attended meetings where Raven's come up and said, "Where is Charlie?" That's the first thing he asks me. "Dewey, where is Charlie?" He has helped us within the ABA, he has helped us as a profession. The only problem I had with Charlie is we flew around to all these meetings. I have to be honest with you. I hate to tell on you, Charlie. Charlie wasn't making the meetings. He was off with Raven or somebody. I mean every morning I'd go down with the group of guys that I would go down with and I could never figure it out. ABA's funny. They have these meetings in rooms that are not well lit. 5 o'clock they bring the bar tab and we leave. And Charlie was never at any of those meetings. After about the first three meet-

ings I found out Charlie's going to these meetings where they have got podiums and guys are talking and stuff like that. And our group kept hearing about, "Mothers, don't let your babies grow up to be cowboys." I thought, hey, man, this is a great organization, you know. People love us. The Bar's really up, you know. Charlie's done a wonderful job. We're proud of him. We're sad to see him go. But this award's not just Charlie's, it's Carol's. Because they've been the Presidents of the North Dakota Bar Association. In a little while we're going to be talking about gender bias. So I'm not going to say behind every good man there's a woman, because that's not true. Never been true. It's a team effort. And so although I give this award to Charlie alone in appreciation from the North Dakota Bar Association I want you to know, Carol, it's just as much yours as it is his. Charlie, for one heck of a good year thank you, my man.

(Applause.)

PRESIDENT FESTE: It always becomes difficult to talk. I just wanted to, as I have said before, express my appreciation to all of you, to the members of this Association, for the honor that has been bestowed on me to be able to serve as your President. Thank you very much.

(Applause.)

PRESIDENT FESTE: I have one last function, and that is to introduce Dean Jeremy Davis.

(Whereupon, the Eighty-Eighth Annual Awards Presentations were concluded at 1:35 P.M.)

FRIDAY, JUNE 10, 1988

(Whereupon, the General Assembly proceedings continued at 2:34 P.M. as follows:)

PRESIDENT FESTE: In the interest of time we'll get started. If you want to refer to the agenda that we were following yesterday and will follow today you recall that we did not have the Memorials presented. I will now call on Alfred Schultz to present the Memorials.

MR. ALFRED C. SCHULTZ: Chairman Charlie, and members of the Association. At this time we pay our respects to those of our members who have departed during the past year. We will have Memorials that will be published and will be available in full to everyone, so we won't repeat those. But we do want to recognize these people. I want to give their names.

Robert D. Hartl of Rugby who died July 29th, 1987, at fifty years of age. Robert Hartl served the community of Rugby and the citizens of Pierce County from 1962 until his death on July 29, 1987.

Born and raised in New Rockford, North Dakota, Hartl received his undergraduate degree from the University of North Dakota and graduated from the UND School of Law. He began his law practice in Rugby after being admitted to the North Dakota Bar in 1962. During his career Hartl served as a U.S. Magistrate, Pierce County Justice, Pierce County State's Attorney, as a Tribal Judge for the Bureau of Indian Affairs on the Turtle Mountain Indian Reservation, and City of Rugby Attorney.

Active in the Rugby Emergency Ambulance Association as an EMT and in the Geographical Center Historical Society, Hartl was a Fourth Degree Knight of the Columbus Council 4136. He was also a member of SBAND, the American Trial Lawyers Association, the Benevolent and Protective Order of Elks in Devils Lake, the Fraternal Orders of Eagles and Little Flower Catholic Church.

Robert Hartl is survived by his wife, Gladys, and four children.

Orrin Lovell of Beach who died September 18th 1987, at sixty-four years of age. Orrin Lovell, a longtime Beach, North Dakota, attorney, passed away September 18, 1987. He is survived by his wife, Keziah, four sons, one daughter, and four stepdaughters.

Born in Grand Forks on June 1, 1923, Lovell was raised and educated in Beach. He attended the University of California at Los Angeles, and in 1950 graduated from the University of North Dakota School of Law. He later returned to Beach where he opened his law practice.

Besides being a member of the State Bar Association of North Dakota, Lovell was active in the Beach American Legion, Beach VFW, BPOE Lodge No. 1137, and the Masonic Lodge.

Ross McNea of Bottineau who died July 28th, 1987, at sixty-eight years of age. Ross McNea, active in the community at Bottineau until his death, passed away after a short illness on July 28, 1987. He's survived by his wife, Irene, one daughter, Diane Myrh, three grandchildren, his mother, Dollie McNea, and one sister, Kathryn Crogen.

McNea, born near Westhope, was raised in Bottineau and attended the schools there, graduating from Bottineau High School in 1939, entered the United States Army in 1941 and



served with the medical detachment of the 164th Infantry in the South Pacific. Upon discharge in 1945 he returned to Bottineau and married Irene Slaybaugh in 1947. In 1966 he was elected Bottineau County Judge and Ex Officio Clerk of District Court. In 1975 he was one of two county judges appointed to the North Dakota Judicial Council. He was past president of the North Dakota State County Judges Association, North Dakota Veterans Officers Association, NDSU Bottineau Branch Alumni Association, and the Bottineau County Club. He was a lifetime member of the Bottineau Volunteer Fire Department, of which he served twenty-eight active years, a member of the First Baptist Church where he served as trustee and church secretary for many years, a member of the VFW and American Legion, and served as commander of the latter.

Robert L. Striebel of Mesa, Arizona, who formerly was from the Amidon and Slope County area, died February 2nd, 1988, at seventy-six years of age.

Robert L. Striebel, former North Dakota resident, passed away on February 2, 1988, in Mesa, Arizona. Born at Marmarth, North Dakota, March 23, 1912, he received his Doctor of Jurisprudence from the University of North Dakota and practiced law in Hettinger and Slope Counties until 1979. He also served as Slope County State's Attorney from 1954 to 1978.

In addition to being active in the State Bar Association, Striebel was a member of the Congregational Church, the Masons, the Lions Club, the NE Chamber of Commerce, and the Alpha Tau Omega Fraternity.

He is survived by his wife, Betty, two daughters, Gae Lynn Striebel, and Suzanne Gomez, one son, Edmund L. Striebel, one brother, Ted Striebel, one sister, Beryl Childers, and seven grandchildren, and one great grandchild.

Catherine E. Morris of Bismarck, who was the second lady lawyer ever admitted in North Dakota, died June 5th, 1988, at the age of eighty-nine.

Catherine E. Morris was born in Bismarck, where she was raised and educated, graduating from Bismarck High School in 1917. She worked as a stenographer for Newton, Dullam & Young, and studied law under the direction of Clyde Young. She was admitted to the State Bar Association in 1928, becoming the second woman admitted to the Bar Association. She was a partner with Clyde L. Young until Young's retirement in 1961, and she then started her own firm. She was honored by the Burleigh

County Bar Association for fifty years of practicing law, and was listed in Who's Who in 1959. Ms Morris retired from practice in 1982.

She was a charter member of Zonta Women's International Service Club, and a member of the Pioneer Daughters, American Bar Association, State Bar Association, Burleigh County Association, and National Association of Women Lawyers.

She is survived by one niece.

Robert Chesrown was born on the Number 14 Ranch on Cedar Creek in Morton County on January 20, 1906. He studied law at the University of North Dakota and graduated in 1931. He began practicing law in 1931 with Harry C. and George W. Lynn in Linton and stayed with that firm until 1940. In 1934 he was elected to State's Attorney, a position to which he was re-elected a number of times.

In 1942 he joined the U.S. Army and served in the European Theater in England, Belgium, France, Holland and Germany as a Medical Staff Sergeant.

In 1945 he married Frances Ruth Kremer and returned to Linton to open his law office. He practiced law for fifty-two years, during which time he specialized in trial litigation and probating estates. He also served as legal counsel for KEM Electric Cooperative.

He was a life-long Republican, and was active in the Non-Partisan Republican movement. He was State Chairman of the Campaign Committee, Vice-Chairman of the North Dakota Republican Party, and was twice a delegate to national nominating conventions. He served four sessions in the North Dakota Senate, and was Chairman of both the Judiciary Committee and the Finance and Taxation Committee. He was appointed to the State Planning Committee by Governor Guy, and was later appointed by Governor Link to the Nominating Committee for State Judges.

Chesrown was among the founders of the Linton Hospital and was the corporation's secretary-treasurer for many years. He was also President of the Linton Civic Club and Commander of the American Legion.

Chesrown is survived by his wife, Frances, two daughters, Bonnie Haukness and Sandi Chesrown, a sister, Annie Chesrown, and two brothers Chet and Russell Chesrown and two grandchildren.

I think we should also recognize another lawyer who is not a

North Dakotan, but certainly contributed much towards continuing legal education in this state. I want to call attention to the death of Irving Younger who has passed away during this past year.

And I would like to ask that at this time that everyone stand in a moment of silent prayer on behalf of these people. Thank you. You may be seated.

PRESIDENT FESTE: Thank you very much, Al.

I would like to call on Melvin Webster, who's the Chairman of the Joint Committee on Civil Legal Services for a report of that committee. Would you welcome Mel Webster.

(Applause.)

MR. MELVIN L. WEBSTER: Thank you, President Feste. I'm certain most of you have heard of our committee. Just a brief bit of background regarding the Joint Committee on Civil Legal Services. This is called a Joint Committee because it is composed of individuals appointed by three different entities; the North Dakota State Bar Association has appointed one-third of the members of the committee, the North Dakota Supreme Court has appointed one-third of the committee, the other members of the committee, the other one-third, were appointed by the various legal service organizations within the state.

The committee was first organized and had its first meeting during April of 1987. It's second meeting was on March 4th of this year, 1988. And the primary purpose for that meeting was to receive the report which had been given to the State Bar Association and the North Dakota Supreme Court by the Medd Committee, the Study Committee on Civil Legal Services established by the Supreme Court and the State Bar Association.

At the March 4th meeting the Joint Committee concluded that it needed additional input from all members of the Bar to determine the role of the private bar in meeting the need and to consider before it could make any recommendation to the Bar regarding the Workable Plan. Consequently on April 4th of this year a public hearing was held in Bismarck. Prior to that time a summary of the Workable Plan and the recommendations and principles contained in the Workable Plan were published in The Note Pad. Just a very brief aside. The document itself is a particularly long document which was the result of two and a half to three years of study by the Medd Committee. The expense of reproducing that document prevented the Joint Committee when it received the document from making a copy available to each

member of the Bar. But I believe copies of the Workable Plan are available with each local Bar Association and from individual members of the committee.

There were a number of suggestions received both in writing and through the oral comments at the April 8th meeting. And the committee concluded that additional study was needed regarding many of these comments. For instance, there were comments that the principal exemption be narrowed. There were comments suggesting that the buy-out provision be eliminated. There were objections to the requirement that twenty hours of pro bono be a condition of licensure. The committee was not able in one or two meetings to determine what the appropriate response of this committee should be regarding the Workable Plan. Consequently the committee made some interim recommendations to the Board of Governors. The first of these was that the State Bar Association support increased funding for civil and legal services to the poor at both the state and the federal level. I don't think it's a surprise to anyone that that funding has been severely cut during the past eight years. The committee has also recommended that the officers of the Association and the Board of Governors do whatever is necessary to enhance the current voluntary pro bono program that's in place. The committee still feels the need for additional comment and response by various members of the Bar Association, and has asked that a written survey of all members of the State Bar Association be conducted first of all to determine the amount of pro bono work that is being done, and that an advisory ballot be taken on many of the options contained within the Workable Plan. And, finally, the Joint Committee recommended that the Board of Governors make funds available for a professional survey or study of the extent of any unmet need for civil legal services in North Dakota. Within the committee there is not really any disagreement as to the fact that there is a significant unmet need for civil legal services. It's very difficult to quantify that. A number of individuals have expressed doubt as to whether or not that need actually exists.

The committee has also recommended that the members of the State Bar Association table a resolution which is pending before the Bar Association which would state that the Bar Association is opposed to the implementation of a mandatory plan. The committee has not yet had the opportunity to make any recommendations. This, you know, appears to the committee to be a premature resolution. The committee is sensitive to the concerns

of the members of the State Bar Association. And we would ask that you at least wait until the State Bar Association Committee has had the opportunity to make recommendations regarding the Workable Plan and any modifications to the Workable Plan. The only other thing that I would add is that the Joint Committee welcomes the suggestion of any member of the State Bar Association, or any member of the judiciary, which might help it address the problem which I think all of us recognize is there, that there is a definite need to address the problem of providing equal access to the courthouse.

Thank you.

(Applause.)

PRESIDENT FESTE: Thank you very much, Chairman Mel.

Next I would like to call on Christine Hogan as Chairman of the Constitution and Bylaws Revision Committee for a report of that committee.

(Applause.)

MS CHRISTINE A. HOGAN: Thank you, President Feste.

I will be very brief. And I think I can cut out most of what I had earlier intended to say in the interests of saving some time. This is going to be an interim report of the Constitution and Bylaws Revision Committee. We hope to have a final report and a product to present before you at the General Assembly in June of 1989.

President Charlie Feste convened the special committee on the Constitution and Bylaws last October. At that time he explained to me that we did not have any kind of an emergency in the state with regard to the interpretation of our Bylaws or Constitution, but that it had been a decade since the Bylaws and Constitution have been updated. And some of the provisions were not in use anymore, and that it needed to be looked at again. He convened an exceptionally distinguished committee, and it was my profound privilege to chair it. The committee was composed of Orlin Backes, David Peterson, Kermit Bye, Tim Davies, Judge Jon Kerian, Paul Kloster and Randy Lee. I'm sure you can recognize all these people are certainly experts on our organization's Constitution and Bylaws.

In preparation for our meeting we met with the Executive Director, Les Torgerson, to identify those areas and issues which might need examination and study by our committee since Les, in having to work with the Constitution and Bylaws on a day-to-day

basis, was most familiar with the problem areas and most capable of identifying any problems. With Les's help we identified four major areas that needed our attention. And we developed several objectives. I'll name five of them.

First we wished to delete archaic and obsolete provisions that were no longer necessary due to the passage of time, due to changes in statutes and customs and practices.

Second, we wished to remove all male gender bias in the pronouns in the text.

Third, which is similar to the first, we wanted to bring up to date those provisions which were not completely obsolete, but were simply out of date and in need of clarification.

Next we wished to redraft and edit where necessary to make formal and stylistic changes. Also in that category are changes in tense, numbering and order. And don't be shocked if when you look at the new document it looks completely different. Because we did significantly change the order and the numbering. And the new text does look quite different. But in many instances the text is identical to the old version, although there are certainly several new parts of the text which I will briefly run through.

As I indicated, there were approximately four major areas of study for our committee that we looked into. There are many, many provisions of the Bylaws and Constitution. And other than those four we simply carried those through or made very minor changes. But I will mention four areas. And at least two of those areas we feel require further study, and that is the reason why we are going to present it next year as opposed to presenting it this year. We also felt it might be premature to present it this year, because there are a couple rough edges that we needed to smooth over on those two areas.

I will just briefly mention the subjects that we covered. First is the office of Secretary-Treasurer. The issue with regard to that part of the Constitution is whether or not we should delete that office as being obsolete. The duties of the Secretary-Treasurer are now, in fact, performed by the Executive Director and his staff. Those duties are preparation of the minutes, preparation of the budgets, and the financial reports, et cetera. That has been done for at least several years now not by the Secretary-Treasurer, but by the Executive Director. And there has been a recommendation to simply delete that provision. However, we ran into a little bit of a snag in that regard because the Secretary-Treasurer provision is in the statutes. And we decided that we'd better study that

particular issue during the next year and come up with some alternative ways of addressing that.

Second major issue of change in the new draft is the initiative and referendum provisions of the Constitution. Our current organizational Constitution has very limited initiative and referendum provisions. We have modified these two rather extensively in an effort to attempt to expand the rights of the membership to govern and to refer actions of the Board of Governors and to initiate activities by the Board of Governors. We do not anticipate that these initiative and referendum provisions will be controversial.

Third is the district representative selection. We have suggested new provisions for selection of district representatives. We have attempted to formalize the process of choosing the presidents of the districts as they are now called. I think in many of the districts most of you will recognize the selection process is somewhat haphazard, as you may experience within the next hour or so when you attempt to select your district presidents. Our new documents do provide a formalized procedure to we hope improve that process. We don't anticipate that that is going to be a major concern. The Board of Governors who we presented the draft to last April seemed pleased with that provision. And it seemed to be a welcomed and needed change in their eyes.

The last area that I want to mention, because it is an area that we are still going to address in the next year, is the area of sections. The issue here is whether to incorporate the current policy on sections, at least in a summarized form, in any of the Constitution or the Bylaws. Right now there is a section of the Constitution on the sections, but it does not incorporate the current policies which is in a separate document. So what we intended to do is incorporate the section policies, in the new Constitution or the Bylaws. There is a debate going on at this time as to which document should properly contain those provisions.

Those are the major areas that are going to be in the new draft and we seek your input. I have mentioned the names of the committee members. We seek your comments and questions on the issue during the next year. Thank you very much.

(Applause.)

**PRESIDENT FESTE:** Thank you, Christine. There are a number of copies of the proposed Bylaws, proposed Constitution and Bylaws. If you feel you want to have some input, as Christine said contact Christine or a member of the committee or write for a copy of the proposed Bylaws.

The next item on the agenda, we have a number of the standing committee reports that are being done away with; that is, you have the written material in your loose-leaf. The oral reports will be dispensed with.

We now come to the point for the consideration of the Resolutions which are on the floor. I will first ask if Wes Argue is here.

MR. WESLEY ARGUE: Yes.

PRESIDENT FESTE: Wes, do you have those? Yesterday we suspended the rules for those more mundane Resolutions. Do you want to present those now?

MR. ARGUE: Yes.

PRESIDENT FESTE: Thank you.

MR. ARGUE: Exceedingly difficult job putting the housekeeping Resolutions together. I had to exercise some editorial license. There was one presented Resolve that Joel Loder's Minot Magician designation status be revoked because of his unsuccessful disappearing act.

MR. JOEL LODER: I was under great pressure.

MR. ARGUE: We understand.

DELEGATES: Louder. Speak up, Wes.

MR. ARGUE: Okay. We're talking about the pro bono work and free legal services. Ron Reichert has told me that it's so bad in western North Dakota that they are telling Dickinson stories in Ethiopia.

The housekeeping Resolutions, I will read the housekeeping Resolutions and then ask that they be passed. I believe I have three of them.

Resolution:

WHEREAS, the members of the Ward County Bar Association and others who have put considerable time and efforts into planning and organizing and running this Bar Convention, and

WHEREAS, those persons deserve special thanks for their efforts;

BE IT RESOLVED that the State Bar Association of North Dakota extends a special thanks to those persons involved in the planning and organization and running of this convention, particularly to: Sherry King and Les Torgerson for overall supervision in detail work;

To: Judge John R. Kerian for taking charge of meals and food;

To: Bob Lamont and Todd Cresap for running the golf tournament;



- To: Jim Maxson for the running event;
- To: Dick Halvorson for the bridge tournament;
- To: Carol Larson for organizing the spouses program and floral arrangements;
- To: Mark Larson for organizing the children's program;
- To: Dick Olson for organizing the tennis events;
- To: Orlin and Millie Backes for their work in organizing the Wednesday evening social;
- To: Donald Peterson for his work on the Red Mass;
- To: Bruce Schoenwald for the entertainment;
- To: Lolita Romanick, Mark Larson and Penny from SBAND staff for their help in securing sponsors and filling in where needed;
- To: The Minot Country Club and the Sheraton Riverside Hotel for their fine hospitality and help in organizing all of these events;
- To: The Minot Legal Secretaries for their general assistance during the registration and elsewhere.

Resolution: WHEREAS, the organizations who helped sponsor the 1988 Bar Convention are Software Solutions, Inc., Attorney Liability Protection Society, First Trust Company, Greater Grand Forks Convention and Visitors Bureau, Harold Diers & Company, Incorporated, Michie Company, Norman E. Mark - Court Reporter Service, Northwestern Mutual Life Insurance, Ramada Inn, Grand Forks, Satrom Travel and Tour, United Printing, Inc., Vaaler Insurance Company, Ward County Bar Association, Deck the Walls, Inc., Fisher Motors, Inc., Northern Bottling Company, Professional Education Group, Inc., and the Sheraton Riverside Inn, and

WHEREAS, without their financial support the convention would not have been the success that it was;

NOW THEREFORE BE IT RESOLVED that the annual meeting sponsors be thanked for their gracious support.

WHEREAS, Charles and Carol Feste have served the North Dakota Bar Association during the past year at great personal sacrifice to themselves and their family, and

WHEREAS, the Bar Association has been improved and enriched due to their efforts,

NOW THEREFORE BE IT RESOLVED that the North Dakota Bar Association commend Charles and Carol for their efforts.

Mr. Chairman, I move the adoption of these Resolutions.

PRESIDENT FESTE: You've heard the motion. Is there a second?

MR. ALFRED C. SCHULTZ: Second.

PRESIDENT FESTE: Alfred Schultz. The rules have been suspended for the purpose of these. All in favor of the three Resolutions say "Yes." Opposed "No." Motion is carried.

Thank you very much, Wes.

You have before you in the Resolutions section of your loose-leaf eight Resolutions which were submitted and are now before the floor. We will take them in the order that they are printed. And I would ask your pleasure. They were read yesterday. Do you want them read again?

DELEGATES: No.

PRESIDENT FESTE: Taking, then, Resolution No. 1. Is there any speaking with respect to Resolution No. 1?

MR. MURRAY G. SAGSVEEN: Mr. President. Murray Sagsveen. Was the legislative policy adopted by the Board of Governors on Tuesday?

PRESIDENT FESTE: Yes. Would you state your name?

MR. SAGSVEEN: Murray Sagsveen from Bismarck.

PRESIDENT FESTE: The legislative policy has been distributed in your loose-leaf or if it wasn't in the loose-leaf it has been distributed, was adopted by the Board of Governors at its meeting on Tuesday evening.

MR. SAGSVEEN: I believe that's a reasonable legislative policy. Therefore I would like permission to withdraw my Resolution.

PRESIDENT FESTE: I'm just wondering how we do this. I've looked at the Bylaws. And the Bylaws are silent with respect to this. It's a Resolution that was submitted by you in accordance with the Bylaws. It is before the House. Let's handle it this way. If you will make a motion for its withdrawal.

MR. SAGSVEEN: I move that I be permitted to withdraw my Resolution.

PRESIDENT FESTE: Is there a second to that motion?

MR. FLOYD B. SPERRY: Second.

PRESIDENT FESTE: Floyd Sperry seconded. So it's been moved and seconded. Is there any discussion? All in favor of the motion to withdraw Resolution No. 1 say "Yes." Opposed "No." Motion's carried. Thank you, Murray.

Taking then next Resolution No. 2 submitted by James Hill, April 21, 1988. Is there any speaking on this Resolution?

MR. JAMES S. HILL: Does this microphone work?

DELEGATES: No.

MR. HILL: The second Resolution is one that I introduced. It deals with the lobbying policy. And it requests a change in the policy so that the person that dissents can request that whatever proportionate fee of his or her licensing that goes and is dedicated be directly sent back to that attorney if that's what they want. It gives an alternative for the person to send it to the Bar Foundation. That has now been adopted as part of the policy of the Bar Association. And, Mr. President, under those circumstances, the Board of Governors having approved that as part of the policy, I would move to withdraw Resolution No. 2 dealing with the rebate of the portion of the lobbying fee.

PRESIDENT FESTE: Is there a second?

MR. DAVID R. BAILLY: David Bailly, Fargo. Second.

PRESIDENT FESTE: David Bailly. Any discussion on the motion? All in favor of the motion to withdraw Resolution No. 2 say "Yes." Opposed "No." Motion is carried.

We next have Resolution No. 3. This is a Resolution submitted by the Board of Governors. Is there any speaking on this Resolution? All those in favor of the adoption of Resolution No. 3 signify by saying "Yes." Opposed "No." The motion is carried. That is, the Resolution is adopted. It's already on the floor.

Next is Resolution No. 4 submitted by the Board of Governors. Is there any discussion on this Resolution?

MR. ORLIN W. BACKES: Mr. President, just tell us what they are.

PRESIDENT FESTE: Resolution No. 4: RESOLVED the membership of the State Bar Association of North Dakota supports and recommends fair and equitable salary increases for the state's judges.

If you vote against this it would be like voting against motherhood and apple pie.

PRESIDENT-ELECT KAUTZMAN: Motherhood and apple pie are in real trouble.

MR. BACKES: Maybe we need a cut.

PRESIDENT FESTE: Is there any discussion on this Resolution? Those who favor the Resolution say "Yes." Opposed "No."

DELEGATES: Move for a division of the House.

PRESIDENT FESTE: The Chair has no doubt. Resolution passed.

Next is Resolution No. 5 submitted by James S. Hill, April 26, 1988.

HONORABLE HERBERT L. MESCHKE: Subject?

PRESIDENT FESTE: Any speaking on this?

MR. JAMES S. HILL: Mr. Chairman, may I use the microphone at the podium, please?

PRESIDENT FESTE: Yes.

DELEGATES: This one works.

MR. HILL: Terrific. Jim Hill. I want to turn around so I can see some of your people.

Mr. President, I have two Resolutions. In order to save some time may I speak to both Resolutions?

PRESIDENT FESTE: I think we should take them one at a time.

MR. HILL: All right. One at a time. The first Resolution that you're going to be considering deals with an aspect of the Workable Plan. It doesn't name the Workable Plan in the Resolution. But it contemplates that sometime, somewhere, somebody is going to propose a plan that will make as part of a requirement a pro bono requirement for licensing in the state of North Dakota. Now I've written two Resolutions. We'll talk about the other one a little later. I think it's extremely important with an integrated Bar Association that when we are going to change or at least have the potential of changing the licensing structure by adding certain requirements for licensing that an integrated Bar Association have complete opportunity to see whatever program is going to be attached to your licensing requirement. Back in 1977 the Association at one of its annual meetings adopted the Continuing Legal Education requirement. It's not without a degree of irony that I'm the Chairman of that Commission at this time. But it was adopted by really a severe minority of the integrated Bar at that time. It's turned out to be an excellent program. But there is a very strong feeling in this Association from the people that I have talked with that do not like mandatory concepts of any kind. Mandatory CLE is one of those programs. What my proposal does is it is not intended to tie the hands of the Board of Governors, of which I am a member, what it does is it tells this Association that if the Board of Governors adopts or proposes any type of plan which is going to envision a requirement of pro bono work as a condition of licens-

ing that it be put to a vote of the Integrated Bar Association by written ballot. It's a very simple motion. This is a means by which we get to the membership of this Association. And I am a firm believer that with respect to an integrated Bar Association if you do not want to come to these types of meetings in order to protect yourself from measures of this nature or vote in favor of these types of things you shouldn't have to do that. We are an integrated Bar Association and it is a requirement that you be a member of the Association. I think there's nothing wrong with such a substantial type of program to have the membership vote on any type of proposal. Why do I propose it now? There is going to be a lot of people getting up here telling you it's premature and you don't have to worry about it. Well, I'm a concerned person, I guess because I've seen some change of position of the Association on some very critical issues. I don't want to get into old battles, but I was vocal in some aspects two years ago. I sought a Board of Governors' position change, and the position voted on by the General Assembly was not what was later presented in the legislative proposal. I want to be certain that the Board of Governors understands what this Assembly wants if there's going to be any type of proposal which ties a licensing and a mandatory pro bono program. I don't think there's anything wrong with that. And I think it's something that this Association should do.

Mr. President, I move the adoption of the Resolution.

PRESIDENT FESTE: No motion needed. The Resolution is on the floor. We will vote on it. I don't know, I'm going to make a couple of observations and leave it up to the Association. But you asked in your Resolution for matters of this nature to be submitted to the membership in terms of a written ballot, so to speak. I find no provisions for that type of action in the Constitution or the Bylaws of the Association. I think that it would appear that may be having the effect of amending the Bylaws or the Constitution, which would be inappropriate under the circumstances.

MR. HILL: Mr. President, I read the Constitution, too. You can find a lot of things omitted from the Constitution. But I don't think there is anything within the Constitution of this organization which stops the General Assembly from voting on certain matters. This is only a Resolution indicating that if a proposal is going to be put to the membership that it be done by written ballot. That's all it's asking you to do. A written ballot of those individuals authorized to practice law in the state of North Dakota, ergo they are members of this integrated Bar Association. I think to defeat it on

some type of a nebulous statement, "It's not in the Constitution," would end up being an affront to the members of the Association.

**PRESIDENT FESTE:** I don't want to get into a personal debate with this. But I'm simply pointing out that we are — we have — we're an organization. We are not a statutory organization. We're not a nonprofit corporation. We have to have some guidelines and standards from which we operate. And they would be the Constitution or the Bylaws.

Is there any further speaking on this Resolution?

**MR. DAVID L. PETERSON:** Mr. President, members of the Association. I'm Dave Peterson from Bismarck. I stand before you personally opposed, I guess, to singling out any particular area for a favored ballot. This is about the 20th Annual Meeting that I have attended. And as I look around the room this afternoon, this is the largest crowd I've ever seen at the final meeting, final business meeting, of the Bar Association. I think that's very healthy. And I think these issues ought to be debated at the Annual Meeting because I think everybody can hear the pros and cons of the important issues before this Association. And I think that's a far better way to inform the members of the Association and to take positions than it is simply to send out paper ballots to everyone. If they don't have enough interest to come to the meetings and become fully informed, you know, we're no different than any other association. Jim says we're an integrated bar, and that's true. But a member of an integrated bar is no different than a member of any other Association. They should have interest in the Association as all of you folks do or you wouldn't be here today. So I stand personally before you and suggest to you that we should not single out a particular area and start telling or directing the Board of Governors to solicit by ballot something of that nature. Thank you very much.

**PRESIDENT FESTE:** Chair will recognize Phil Johnson.

**MR. J. PHILIP JOHNSON:** I am Phil Johnson from Fargo. And I'd like to join with Dave Peterson in opposition to this particular Resolution. I think it unnecessarily would tie the hands of the Board of Governors and the committees of the Bar that have devoted substantial time and effort to this program. And rather than place this particular Restriction in their path I think we should let them proceed in due course.

**PRESIDENT FESTE:** Any further? Chair will recognize Bob Dahl.

MR. ROBERT E. DAHL: This is apparently a parade of ABA Delegates. I would like to point out to you that North Dakota is the only state in the Union which has an integrated Bar by legislative fiat. All other states in the United States are judicially integrated. It makes a little difference if you are examining your licensing statutes. License is established by the legislature. And all that happens, for example, when you want to raise the dues you have got to go get the statutes changed a little bit. And that's what would happen if you are going to require every time something comes up which ultimately will go to the legislature that you're going to require a written ballot. It's going to make it terribly cumbersome. This is still a relatively small Bar, and smart. I'm glad to belong to it.

MR. LYLE W. KIRMIS: If that is a parade of ABA Delegates this is a parade of partners.

PRESIDENT FESTE: Please identify yourself.

MR. LYLE W. KIRMIS: I'm Lyle Kirmis from Bismarck. I don't think this is voting on every issue. This is voting on one issue for a Bar organization where you're going to require people to have that licensing requirement as part of practicing law and carrying on their profession. The very people who will be the most affected are the people who may feel they cannot afford to necessarily take the time, the cost, to come to the convention. When you're going to require those people to provide the mandatory services as a part of their profession I don't think it's too much to allow them the opportunity to vote on it. This is not on every issue, it's on one issue, that being mandatory pro bono.

PRESIDENT FESTE: Further speaking on the Resolution?

MR. WILLIAM C. KELSCH: Point of information, Mr. Chairman. If the Board of Governors were to adopt a plan would they have the authority to adopt it without a vote of the Assembly either in meeting or by ballot? Would it have to come back to the Assembly?

PRESIDENT FESTE: I believe the Board of Governors has the authority to adopt the plan the same as the legislative policy.

MR. KELSCH: Without a vote of the Assembly?

PRESIDENT FESTE: Yes.

MR. KELSCH: Either at an Annual Meeting or by ballot.

PRESIDENT FESTE: Further speaking on the Resolution? Chair is going to call for a division on this Resolution. So as many as

favor the Resolution, will you stand? Greg, are you going to get your tellers?

MR. GREGORY L. BICKLE: Oh, sure.

PRESIDENT FESTE: We have three or four tellers. You may be seated. As many who oppose the resolution, would you now stand?

You tally their results.

MR. DAVID L. PETERSON: Use your accounting.

PRESIDENT-ELECT KAUTZMAN: He didn't bring the calculator, though.

PRESIDENT FESTE: The motion is 86 in favor and 84 opposed.

The next Resolution is Resolution No. 6. Is there anyone speaking on this Resolution?

MR. JAMES S. HILL: Mr. President.

PRESIDENT FESTE: Chair recognizes Jim Hill.

MR. HILL: Mr. President, I introduced this Resolution with a great deal of thought, contrary to what I've been told by a number of my colleagues. I think I'm reasonably intelligent enough to read the Workable Plan and understand what it means. I also talked to an awful lot of lawyers out there before I did it. I didn't talk to just those people that come to conventions of this nature. I talked with the people that are doing the pro bono work. And I found some very decisive opinions on the part of those people on how they felt about any proposed plan that would tie licensing to a mandatory pro bono program. The first thing that I would ask each of you to do before you vote on this Resolution is to read it. So much has been said about it and what it intends to do and what it will do that I think people are ignoring the actual reading or the meaning or the words of this Resolution. It reminds me of a case that I had in front of Judge Davies some years ago when I was still defending truth and justice with the U.S. Attorney's office. And it was a case where the lawyers had argued vehemently about the instructions of the Judge. And I would get up and argue what I thought Judge Davies was going to be instructing the jury, and my worthy opponents would do the same thing. We did that most of the afternoon. And after the extensive argument Davies looked at the jury and said, "After such a great build-up I'm really excited to hear what I'm going to say myself." I really encourage all of you to take a close look at what this Resolution says. What this Resolution is meant to be is a directive. It's a directive from the Association.



It's an expression of opinion. It's a collective statement of the Bar Association to one of its own committees. Now I understand that the Joint Committee is one apprised of people appointed by three different entities. But the bottom line is that this committee is going to make recommendations to this Association. And when it does I think it's important that they understand how the Association feels about any proposal that would tie a mandatory pro bono system to licensing.

My Resolution says two things; it says first that we approve of the concept. I don't think there's anybody in this room that isn't going to agree that pro bono needs to be encouraged, it needs to be participated in, and there's a real need in our society. It says, however, that this Association is opposed to the implementation of a mandatory plan requiring pro bono as a prerequisite to licensing. I expect in the coming year or so for there to be a pretty strong campaign, informational campaign, by members of the committee to the Bar to explain what is going on. It's interesting that Mel Webster comments that the committee itself is very sensitive to what the Bar says. And I don't doubt what Mel says. Mel and I practice across the street from each other. And I don't think that anything I say will be taken personally, because it's not intended to be that way, Mel. But it's rather interesting here that the committee is now telling us that they are sensitive to what the Bar says, but if you go to the Workable Plan, Pages 125 and 126, you will see the very substantive Constitutional issues that lawyers will be concerned about, specifically, involuntary servitude, things of that nature. And you go to the second page, the last line, it says the committee finds those arguments inapplicable. Now I don't know where the sensitivity came. But apparently it was created after the Bar began to speak. I think it's important for this committee to know that somewhere down the line a plan of this nature may well be presented to it. I think there's nothing wrong with the Association telling this committee as it goes along studying the plan, goes off studying the Workable Plan that it has before it, discusses the mandatory aspects of it, to understand that the Bar Association does not want a plan which is tied to licensing. It's not that they don't want a plan dealing with pro bono. They don't want a plan that's tied to the licensing. To suggest at this point that this Association has nothing to vote on because there is no proposal I think really ignores the very obvious before us. It invites some confusion, I think, with the committee. I don't think you have to be brilliant to figure out that the very integral part of

any pro bono plan would be the consideration of whether it is going to be a mandatory plan. I don't think you have to read the 225- or 250-page document to understand what "mandatory" means. I would suggest to you that you're telling me that the Resolution is divisive, that it is a resolution that is designed to destroy the Workable Plan, that it is designed to torpedo the Plan itself, that if this Plan, if this Plan is so fragile that it cannot possibly succeed without some type of mandatory feature then let's be candid with ourselves, it isn't going to work. If, on the other hand, if you believe that the Plan merits some attention and study, then let the study be conducted without a mandatory feature. I'm not speaking to embarrass Joel Medd or Mel Webster or any member of that committee or those committees. I have candidly spoken to both of them, talked about the matters with them. They don't agree with me, and I don't agree with them. I expect to talk with them after today, and I expect that we'll be friends after today. But I seek to place within this committee's structure the sentiment of the practicing Bar. I don't believe that what I'm attempting to do is going to destroy anything. And I would very strongly urge a serious consideration of this motion before it becomes a divisive issue. Because I think if we don't face it today we're going to spend the next year going through extensive studies. We're going to be back here and we're going to be arguing about the same problem. And we will have wasted one full year trying to figure out what this committee should do. The committee works for the Association at the directive of the Association. And I think in this instance that what I'm proposing is fair. And I would ask that those that stand up in opposition to the motion, I think you should all ask yourself the question, "Can any of those people assure this Assembly that a mandatory aspect of a program will be excluded in the future?" The committee is indicating they are sensitive to what this Assembly and the Association is saying. But I don't think anybody here is going to go on record as saying that there won't be a mandatory feature. Because I honestly believe that the mandatory feature is so important to the Plan that if we don't give direction now we are going to waste at least one year of the study committee's work. I urge a "Yes" vote on the Resolution. I would then suggest that that is a directive to that committee to work in other avenues to improve the legal services report.

MR. MELVIN L. WEBSTER: I work in a small building across the street from Jim. Regarding the issue that Jim brought up concerning the committee's sensitivity, I would like to point out one

technicality. I'm certain this is just an oversight on Jim's part and that we will indeed be friends afterwards. But I have repeatedly pointed out to Jim that there are two different committees. There was a Study Committee chaired by Judge Medd. That committee met for a period of approximately two and one half to three years and issued a report, a report that is now popularly known as the Workable Plan. And that was the quotation that Jim cited to you regarding these Constitutional issues. Let me also point out to you that I was a member of Judge Medd's committee. We could have made that document I suppose several hundred pages long and have recited all of the Constitutional issues. We didn't have the funds or the money to compile that type of a document. The Medd Committee was primarily a study committee. The committee, the Joint Committee, is an implementation committee and the committee which will continue after the Bar Association has determined what it is going to do in regard to the Workable Plan and in regard to the pro bono project.

I just point out in addition that we have just voted on a Resolution which would require any recommendation be submitted to this membership. Not only to the membership which is in attendance here at this meeting, but to the entire membership by written ballot. I think Mr. Hill's Resolution contradicts the spirit of his own prior Resolution which requests that every member of the State Bar Association be given the opportunity to vote on this. The only thing which would be accomplished by this Resolution in my opinion, Jim, is that it would give the Bar Association I think a black eye by making it appear as though the Bar Association is opposed to pro bono. I urge a negative vote on this Resolution. Thank you.

**PRESIDENT FESTE:** Chair recognizes Robert Feder.

**MR. ROBERT A. FEDER:** My name is Robert Feder. I'm from Fargo. I'm Chairman of the Information Service Committee again. And I've been on the committee for about fifteen years. I hope that everybody in this room will agree with me that you were also taught, as was I, that where there is a right there is a corresponding duty. And where there is a privilege there is a corresponding responsibility. I don't care whether we call our licenses rights or privileges. We ought to give something back or do something with it. I guess that's why they call it pro bono instead of pro malo. But when we started an Information and Service Committee to do what we could so that the public would spell "lawyer" starting with an "l" and not with a "d," you know, "damn

lawyers," we tried and we have done I think some good work. We will be the first state in the Union to give — when we were the first state in the Union on Law Day to give free legal services I think it helped. I think it helped our image. When we do what we can on Law Day now and with the pamphlets that you're going to see that the Information and Service Committee has done up in the past year "Ask a Lawyer" and the other programs. We do what we can to show to the public that we want to do what we can, that we're not all "damn lawyers." I'm very, very concerned what is going to happen if Jim's second Resolution passes is that the one sentence that's in here is going to be what is picked up and transcribed over all the media waves. And remember that there hasn't been one meeting here, there hasn't been one function at this convention, that hasn't been covered by the media. And the one sentence in this Resolution that the media is going to pick up and broadcast all around the state is "The Association is opposed to the implementation of a mandatory plan regarding such legal work as a prerequisite to practice law." They are going to combine that with whatever editorial comments they want to make. They are going to make permutations out of it. The upshot is that we're going to go back to being "damn lawyers." I'm very concerned about it. We don't have a plan that we're voting on yet. Obviously it needs work. There are concerns that I have about it. Public service lawyers opting out for financial or health reasons or whatever. But I urge a "No" vote on this Resolution. Because it's our reputation. We have heard Judge Kerian, we have heard Bob Raven, we have heard Charlie. Everybody has talked to us about lawyer bashing hurting our image. We haven't even gotten a plan before us yet and we want to vote it down so the media can say, "Lawyers don't want to do pro bono work in North Dakota. They want to prohibit it to be mandatory." It's not for us. Please a "No" vote.

**PRESIDENT FESTE:** Recognize Harris Kenner.

**MR. HARRIS P. KENNER:** Mr. President. Harris Kenner, Minot. I voted in favor of the last motion. I'm wearing a pro bono pin that was given to me at this convention. And I now move that this Resolution be tabled.

**MR. DAVID L. PETERSON:** Second.

**PRESIDENT FESTE:** Heard the motion. Is there a second?

**MR. PETERSON:** Second.

**PRESIDENT FESTE:** This is a nondebatable motion. All in favor of the motion say "Yes." Opposed "No."

MR. JAMES S. HILL: Takes two-thirds.

DELEGATE: Call for division.

MR. HILL: Call for division.

PRESIDENT FESTE: The Chair is in doubt. Call for a division. Those who favor the Resolution, the motion to table, please stand. A simple majority is sufficient.

MR. HILL: Point of order, Mr. President. I believe it's two-thirds.

PRESIDENT FESTE: No. You may be seated. Those who oppose the motion to table stand. The vote is 108 in favor of tabling and 51 opposed. The Chair rules the motion to table is passed.

We next go to Resolution No. 7. Is there anyone speaking on Resolution No. 7? Chair recognizes Sarah Herman.

MS. SARAH ANDREWS HERMAN: Mr. President.

PRESIDENT FESTE: Blow in its ear.

MS. HERMAN: Are we on now? Is it on?

PRESIDENT FESTE: No.

MS. HERMAN: Mr. President, I'm Sarah Herman of Fargo. Last fall Justice Levine appointed me to serve as the Chair of a subcommittee to preliminarily investigate the issue of gender fairness in the state of North Dakota. The subcommittee members were myself, Cynthia Goulet, Jane Voglewede, Harlan Fuglesten, Marcia O'Kelly, Patti Alleva, and Judge Bruce Bohlman. We have been studying. We have been educating ourselves. We've been doing a lot of reading. We've been doing a lot of discussing, a lot of information gathering. The issue of gender fairness is an issue that is timely. It is an issue that has been considered in many forums recently. It was the topic last year at the Eighth Circuit Judicial Conference. It has been a topic of broad discussion. The issue of Gender Fairness Commissions is an issue that has come up in many states. There are twenty states that have had Gender Fairness Commissions begin to look at the issue and to see if, indeed, their systems are working fairly. Three of the commissions have completed their work. All of the commissions universally have acknowledged that there have been some problems found. There has been much education accomplished. And that the commission, its formation and its work, in and of itself has been of great benefit to the state and to the judicial system.

"Gender fairness" is I guess kind of a new term. My partner Tim Davies doesn't like the term much because he says "gender"

is "words" and "sex" are "people." But "gender fairness" is the term that is used, I guess, in these commissions. And I'd like to read you a couple definitions so you understand what I'm talking about from the report of the New York Task Force Report on Women and the Courts. "Gender bias embraces decisions made or actions taken because the weight given to preconceived notions of sexual roles rather than upon a fair and unswayed appraisal of merit as to each person or situation." And from Lynn Hecht Scaffran, who's the National Director of the Judicial Educational Program to Promote Equality for Women and Men in the Courts, and who incidentally will be speaking at the Bench and Bar CLE this fall, "Gender bias is the making of unjustified or at least unsupported assumptions about individual capabilities, interests, goals and social roles solely on the basis of sexual differences."

What we're speaking about, what we're concerned about, what the commission is about, what I'm asking you about, is fairness. Fairness to men and women who are litigants, who are lawyers, who are witnesses, to every man and woman who comes into our court system in the state of North Dakota. I feel very strongly that we need to have a commission go forward and investigate this issue in the state of North Dakota. I think the commission will serve us well in terms of education and in terms of enlightenment. And I ask your support for this resolution. Thank you.

MR. MART R. VOGEL: Mr. Chairman.

PRESIDENT FESTE: Chair recognizes Mart Vogel.

MR. VOGEL: May I second the Resolution? I'm sure that most of us believe that there is some form of discrimination against women. And I certainly think that this Resolution is one way of proving or disproving that. Though I do second it strongly.

PRESIDENT FESTE: Is there anyone else speaking on the Resolution?

PRESIDENT-ELECT KAUTZMAN: My name is Dewey.

MR. JAMES S. HILL: Who are you?

PRESIDENT-ELECT KAUTZMAN: I rise to support the Resolution. And before we get into all of my major reasons I would like to share a story with you, if I may, about gender bias. Story goes like this. Very devout Catholic fellow died and went to Heaven. And when he got there St. Peter met him at the gate. And he said to St. Peter, he said, "Of all the Saints, of all of the Holy people that have lived on earth, my favorite was the Blessed Virgin. And is there an outside chance that I could see her?"

Because when I was on earth I prayed to her to intercede for me with God." And St. Peter said, "Certainly. About this time of day she's up the block. Two blocks, there's a nice park. And she will be sitting on a bench. You'll see her." He goes. He finds her. He sits down next to her. He introduces himself. He says, "I don't know if you remember me. But when I was on earth you were the favorite of all the Saints, of all the Holy people. I would pray to you diligently to intercede for me with God." She says, "Yes, I remember you. What you say is true." He says, "I have a question that's always bothered me. I would like you to answer it." She says, "What's the question?" He says, "When I was on earth," he says, "every picture, sketch, statue I ever saw of you you always looked so sad." He says, "Why is it that you were always so sad?" And she says, "A lot of people have asked me that question, and I've never answered it. But because you were so loyal to me, and that I know that I was your favorite, I will answer it. But you must promise me that you will never tell anyone what my answer is." And he promised her that he wouldn't do that. She looked at him and she said, "The reason that I am so sad is because deep down I always wanted a girl."

A few years ago when I was up in Federal Court sneaking around I went into Judge VanSickle's office. He wasn't there. I was looking for something to read as the clerks were working on something that I told them, "I don't know what all this is. You guys work it out and I'll sign the opinion." But, in any event, I found a magazine that was distributed to the federal judges. And there was an article about gender bias. And I read it. And after I got done reading it I began to realize that for as sensitive as I thought I was to it, I wasn't. There's not only gender bias against females, but there's also gender bias against men. Doing divorce work you could probably make the argument that if the sole criteria of custody is the primary caretaker, and the mother doesn't work, then there's a definite gender bias against the husband. It works both ways. From reading the article I think I was more sensitized to it.

I have heard things said in court by lawyers, female lawyers to male lawyers, male lawyers to female lawyers, that I don't think they meant to say what they said. I have heard questions propounded to witnesses in such a way that I don't think the lawyers meant them to sound the way they did. It's a lack of sensitivity. I've heard judges say very interesting things. Not because I don't think they did it on purpose, because at the time they just rattled

it off. I'll give you a classic case, one that I had. The judge turned to me, to my client, during his memorandum opinion from the bench and said, and I quote, "I suppose I could give the child to the good-looking blond." Now I want you to know that for the next two weeks when that client came in and we were talking about appeal the very first comment she made to me was "the good-looking blond." It exists very subtly, and sometimes not so subtly, within the system; lawyers, female and male, and litigants. I think it's a good idea that we have a commission and that we take a look at it. If that commission does nothing but sensitize the lawyers and the rest of the people in this state we'll be better for it. And I would hope that you would support it and vote "Yes."

MS. JUDITH E. HOWARD: My name is Judith Howard, and I'm from Minot. And I rise to speak in support of the Resolution. A significant number of women attorneys in the state of North Dakota is a relatively recent phenomenon. At present there are over 200 women in the North Dakota Bar. In many ways North Dakota is such a progressive state. We're on the cutting edge of many ideas. Witness the adoption of our rules, et cetera. There are many other states that have undertaken the adoption of a study of gender fairness in their legal system. If inequalities do exist in the treatment of men and women in the state of North Dakota, let's find out about it. And let's set about doing whatever is needed to rectify it. I would urge your support of this Resolution.

PRESIDENT FESTE: Is there further speaking on the Resolution? Are you ready for the question?

DELEGATES: Yes.

PRESIDENT FESTE: As many who favor the Resolution signify by saying "Yes." Opposed "No." Motion is carried. Resolution is adopted.

We're ready to proceed. Next Resolution is No. 8. Is there any speaking on Resolution No. 8?

MR. DAVID L. PETERSON: Mr. President, I would ask at this time permission to withdraw this Resolution. For those of you who were at the session in Bismarck last year some of these Resolutions, we were standing before you taking positions on them probably, look familiar. Murray and I are even starting to dress alike. If you notice, like Mr. White said, we went to our flamboyant clothes today, we have gray pants.

In any event, the Board of Governors did adopt a legislative policy, a formal policy, which is in your materials on Pages 24, 25,



and 26. And I think that that now articulates the policy. It isn't exactly what I like, and I don't think it's exactly what Murray and Jim like, but it is a policy. And it lets everybody know what it is. And you won't have to listen to us, and Murray and I won't have to dress alike next year.

PRESIDENT FESTE: Make that as a motion, Dave?

MR. PETERSON: Yes.

PRESIDENT FESTE: Is there a second to the motion?

MR. MURRAY G. SAGSVEEN: Second.

PRESIDENT FESTE: Seconded by Murray Sagsveen. Is there any discussion on the motion?

DELEGATE: Question.

PRESIDENT FESTE: In favor of the motion say "Yes." Opposed "No." Motion is carried.

Will the tellers pass out the ballots? The ballots for each office have the names and a place to write in a name if you desire. I think a simple "X" will suffice. Or write in if you want to write in. Remember now you should have three ballots.

MR. RONALD A. REICHERT: Mr. Feste. A point of order. That good-looking blond he was talking about was Bill Zuger.

PRESIDENT FESTE: If you will pass the ballots to your right. On the far side pass them to the left. Separately. If you will pass the ballots for Secretary-Treasurer first that will save the tellers from having to separate all of them when they get them. If you have already done it the other way, let it go.

What is your question? Would you identify yourself?

MR. DAVID R. BAILLY: Second one. What is it?

PRESIDENT FESTE: Secretary-Treasurer. Be the office of ABA Delegate.

PRESIDENT-ELECT KAUTZMAN: Those of you that want to talk about the budget with me, you have in your packet the proposed budget, the proposed budget for the fiscal year 1988-89. I am not going to insult your intelligence, because there shouldn't be anyone in this room that can't read a budget. So I'm just going to give you the bottom line items. Next year we propose and project \$477,450 in income. Turn the page to expenditures we'll see expenditures of \$471,425. Which will mean for the first time in a number of years we are going to have, if we can stay within the budget, a plus of \$6,025. Now the major line item change is, if you look, if you recall the budget from last year, the Dean has pointed out at the luncheon, we took \$20,000 out of Legal Services at the

University. When we did that nobody liked doing it. We're proud of our Law School. We support our Law School. But we can't give 15 cents when we've only got 10 cents. It is our intention, Board of Governors passed a motion unanimously, to go to the legislature this year and under the licensing fees to take out the cap so that he can come back to you next year with a proposed increase in finance of licensing fees. And you people can decide if you want to increase the fee. Once we get our financial house in shape we can go back into projects that we want to do, not just at the Law School, but elsewhere. We're hoping that the legislature is going to agree to do that. At least we think they will. Then at that point it's up to you. We have essentially got a debt. The idea is to get it wiped out.

We also hope that within the year we can do better than the \$6,000 that we project. If we can we might possibly be able to funnel some money or additional monies back into some of the Law School programs where the Dean would like to have them. I urge you to do what the Dean asked you to do at the luncheon. For the past four years, Legal Services, we've pumped in \$80,000, 20 grand a year. The idea behind that was to give all of you better professional services. What's happened is that we find ourselves in a financial crunch. And we find that the Bar is not using the services at the Law School. It would help the Dean an awful lot, it would help Legal Services at the Law School an awful lot, if you would consider tying in to LEXIS and the library. I spoke to the Dean briefly while we were here about a way of selling that program to you. I can't understand why we even have to sell it to you. They are great services. And I can't understand, outside of some of the larger firms that have made commitments, why the smaller firms of the single practitioners are not seriously looking at or using these services. If you would do that it would take a lot of strain off of the Law School and the Dean. I can't urge you enough to do that. I cannot urge you enough for the brethren who are not here that you go out and talk about it with the brethren. At the end of the depositions, before the depositions, wherever you see them. If they haven't got LEXIS in the office, if they are not aware that they can use the library, tell them, ask them, encourage them to use those services. It's a benefit to the Bar. Hopefully next year we can get our house, our fiscal house, in shape and we can go from there. Basically if you have any questions about any of the line items I will endeavor to answer them for you. But, like I said, if we can do what we think we can do we're going to come in for

the first time with a plus 6 grand. We're still going to have a debt. But the idea is to get the fiscal house in shape. It's tough to be a Bar Association without any money. It's tough to do the things we want to do without any money. We'd like to do it without an increase. And if we have to go to you next year for an increase, the least amount of increase that is possible. One of the ways you all can help is the way I just told you and the way that the Dean just told you at the banquet. Excuse me. At the luncheon. Any questions about the proposed budget? Would someone be kind enough to move the adoption?

MR. JAMES S. HILL: I move the adoption. James Hill, Bismarck.

MR. RONALD A. REICHERT: Second.

PRESIDENT FESTE: Bill moved it. Is there a second? You move it.

PRESIDENT-ELECT KAUTZMANN: Fine. That's all right. Just as long as we get the budget one. Second it?

MR. REICHERT: Ron Reichert from Dickinson. That's the first time those two guys have voted together since they were born.

MR. HILL: He's the good-looking guy over here, I think.

PRESIDENT FESTE: Any further discussion on the adoption of the budget? All those in favor say "Yes." Opposed "No." Motion is carried. Budget is adopted.

PRESIDENT-ELECT KAUTZMANN: Thank you.

PRESIDENT FESTE: Other than waiting for the returns of the balloting our meeting, our business portion of the meeting, is finished. And I'm going to now officially turn the gavel over to President-Elect Dewey Kautzmann.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: Thank you, Charlie. I've got just basically a couple things I'd like to share with you. Last year when you people were nice enough to elect me I had an abscessed tooth and you were blessed that you didn't have to hear me say a word.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: From last year I want to thank you all from the bottom of my heart. You made three children in Mandan extremely proud of their father. And you may have saved my marriage, because at least you people indicated I was worthwhile for something.

There is one observation I would like to make. During the course of everything that we have discussed since we came here I have the same concern that I think all of you have, that Judge Kerian talked about, and that the President of the ABA talked about, Mr. Raven. I'm sick and tired of lawyer bashing. And I'm sick and tired of judge bashing. And I think we should stop it amongst ourselves. And I think we should discourage it amongst the public. But what scares me just a little bit is when we talk about the press and the bad effect of things that may happen in the press. My experience for seventeen years in this profession has been that lawyers do the right thing. They stand for due process, they fight for it, at meetings like this and in courtrooms. They try as best they can to protect the public. And we get bashed. But let's not start making decisions, and hopefully we never will, based on what the press's reaction is going to be. Because if that's what we're going to base our decisions on, then we're no better than the public. Running scared stinks. We can handle it from public relations, we can deal with it. But running scared doesn't make it. And I'm not telling you people anything you don't know. All I'm doing is reminding you. And if we would stop doing it amongst ourselves, if we would stop doing lawyer jokes, not amongst ourselves or like when we're here, but when we're at the Elk's meeting or a Moose meeting or whatever groups we belong to, even though we might say, "Well, we're poking fun at ourselves and we show that we can do it." Maybe some of the perception of the public would change. And I'd just like to ask you all to think about it. Again I thank you. And once we get the results from the election I'll announce the winners.

I also remind you that between 4:00 and 6:00 that the North Dakota Bar Foundation reception hosted by McGee, Hankla, Backes Law Firm at the Norwest Center, 15 2nd Avenue Southwest, will be taking place. I encourage you all to attend. There will be a short meeting of the Board of Governors at that law firm to go through some perfunctory material that we have to finish for the convention. One other item that I will bring up at that time before the Board of Governors. Again a good turnout at the Foundation would be appreciated. More so than a good turnout at the Foundation would be if, and it's tough times, Mr. Reichert, and it's hot, the crops aren't doin' too well, but if you all agree to part with some of your money we'd all be really happy to take it.

We're waiting for the results of the election.

(Off the record.)

MR. HARRIS P. KENNER: Dewey, what if there is a tie vote? Then you wouldn't become President yet.

PRESIDENT-ELECT KAUTZMANN: I'm in. I'm in. Why do you think I have been walking around all week smiling?

MR. KENNER: You always have to have a successor.

PRESIDENT-ELECT KAUTZMANN: There is always a chance for a motion to throw me out.

MR. DAVE L. PETERSON: What does it take for impeachment?

PRESIDENT-ELECT KAUTZMANN: I don't know. I will assure you all of one thing; while I'm President this year you will never find me riding around in an open car.

DELEGATE: Thought you were going to tell us you weren't going to get indicted.

(Off the record.)

PRESIDENT-ELECT KAUTZMANN: I have just been informed that we have the tabulations. All races were really close. I will start with the ABA Delegate, from there I will go to the Secretary, from there to the President.

Elected ABA Delegate for I believe it's the next two-year term Phil Johnson from Fargo.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: Elected Secretary for the coming year is Becky Benson from Bismarck.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: And the President-Elect of this Association for the next year is Jack Marcil from Fargo.

(Applause.)

PRESIDENT-ELECT KAUTZMANN: Congratulations to all three of you. And remember what I said. From here we go right to the McGee Law Firm where we will be meeting.

And until next year, to all of you, may the sun shine on your face, may the wind be at your back, and may you be in Heaven three days before the devil goes and dies. We stand adjourned.

(Whereupon, the proceedings concluded at 4:17 P.M.)