



1984

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

North Dakota State Bar Association

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

**Grand Forks, North Dakota  
June 16-17, 1983**

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**OFFICERS**

**H. F. (SPARKY) GIERKE**..... President  
**KERMIT E. BYE** ..... President-Elect  
**PAUL G. KLOSTER**..... Immediate Past President  
**DWIGHT EIKEN** ..... Secretary-Treasurer  
**MICHAEL J. ROST**..... Executive Director

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**THURSDAY  
JUNE 16, 1983**

(Whereupon, the proceedings commenced at 8:25 A.M. as follows:)

**PRESIDENT H. F. (SPARKY) GIERKE:** Ladies and gentlemen, if you will be seated I think we'll get the meeting started.

The 62nd Annual General Assembly of the Integrated Bar of the State of North Dakota is now in session. This is the 83rd Annual Meeting of the State Bar Association.

I would ask that you all stand while Past-President Paul Kloster will lead us in the Pledge of Allegiance to our flag.

**PAST-PRESIDENT PAUL G. KLOSTER:** I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

**PRESIDENT GIERKE:** At this time if you would please remain standing I will call on Father William Sherman of St. Michael's Roman Catholic Church in Grand Forks who will offer the invocation prayer.

**FATHER WILLIAM SHERMAN:** Let us pray. Almighty Father, we are a people of many backgrounds, many races, many faiths, many occupations, many personal desires. Yet from this diversity You have allowed us to fashion an enduring nation. You have blessed us with traditions of justice and compassion. Help us to continue these traditions in our day. Send Your blessing on all who are assembled here. Direct the actions we will undertake. May our endeavors arise through Your inspiration, be carried on through Your help, and may their effect be in accord with Your will. Grant that in all we do we may seek first the common good of our communities, personal well-being of our neighbors, and only secondly may we pursue our own personal desires. May our actions faithful to Your insight bring us peace and happiness in this world and in the next.

Amen.

**PRESIDENT-ELECT KERMIT E. BYE:** Good morning. My name is Kermit Bye. And I'm the President-Elect of the State Bar Association. And according to the Bylaws, with you no longer having any choice in the matter, I become President of this organization on Friday evening. So you're stuck with me whether you like it or not. They give me one other position on this program, and that is to introduce the next speaker. He basically needs no introduction. He's been active in numerous legal, civic, charitable functions throughout the state of North Dakota. And he at this time happens to occupy the position of President of this Association. This is the time on the agenda for the President's message. And before I introduce Sparky I just want to tell you that last week he told me that there was something called the Jack Rabbit Bar Association meeting out in Elko, Nevada, and asked me if I'd like to go with. So he, I, and Mike Rost went out to Elko. Little did I know the great influence that the North Dakota delegation would have at this Jack Rabbit Bar Association meeting. Sparky walked off with the Chancellor-Elect position. And so Sparky come '85 will be Chancellor of the Jack Rabbit Bar Association. Without further adieu, I'd like to introduce to you at this time our President, Herman "Sparky" Gierke.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Kermit. Chief Justice Erickstad, Justices, Judges, officers of the Bar, fellow lawyers.

First I want to take this opportunity to thank you for giving me the privilege of serving as your President-Elect and I represent for the past two years. It has been a most enjoyable, interesting, and challenging experience for me. It has been truly an honor for my wife Judy and I to represent our Association both in and out of the state of North Dakota.

The Constitution of our State Bar Association sets out the purpose and objective of our Association in four parts: First to improve professional competence; second to promote the administration of justice; third to uphold the honor and profession of law; and fourth to encourage cordial relations among the members of the State Bar. These objectives are pursued through the direction of the Board of Governors composed of the Past-President, the President, the President-Elect, seven District Bar Presidents, the Secretary-Treasurer, the Law School Dean, and the ABA Delegate.

I have had the privilege during my year as President to serve with a truly outstanding Board. It has been particularly helpful to have on the Board our last two Presidents, Phil Johnson and Paul Kloster. I would also like to specifically recognize those who will be completing their terms on the Board at the close of this annual meeting. They are Secretary-Treasurer Dwight Eiken of Williston, Immediate Past-President Paul Kloster of Dickinson, Northeast Central District President Gary Lawrence of Northwood, South Central District President Norlyn Schulz of Bismarck, and Northwest District President Dick McKennett of Williston. To all of you, your dedication, cooperation, and hard work are deeply appreciated.

Our Board is charged with the responsibility of making decisions with regard to the direction that our Association should be taking, to include what programs and services are feasible for an Association such as ours. However, the actual delivery of these services to the members of our Association, and the public, are accomplished through the hard work of the standing committees of our Association. Later this morning and tomorrow afternoon the chairmen of these committees will be reporting to you with regard to activities of their committees during the past year. Accordingly, I will touch on only a few of the committee activities.

This year we decided to emphasize improving our Continuing Legal Education Program under the direction of the CLE Committee and our Assistant Executive Director Barb Cichy. Paul Kloster reported to you last year that we had taken steps to merge the administrative functions of CLE, which had formerly been handled by the University of North Dakota, into the State Bar office. This has been, I believe, very successfully done. I have received very good reports on our programs, particularly the intensive Trial Advocacy Program held in Fargo. In addition to the fact that we are offering quality programs for the membership, the consolidation of administrative functions in the Bar office, together with the increased use of the educational telephone network, has put CLE's financial condition in the black. We very much regret the fact that Barb Cichy will be leaving the Association after this annual meeting. Her efforts on our behalf this past year are very much appreciated. And we wish her well in all her future endeavors.

In early 1983 a computer was purchased for the SBAND office. This computer was purchased by the State Bar Association for use by our staff, as well as the CLE Commission, with the lion's share of the funds, \$10,000, being contributed by the CLE Commission. We are hopeful that this addition to our office will enable us to more efficiently monitor compliance with CLE requirements, and, in general, provide better service to our members. Our office is working with the Law Office Management Committee on forming some informal computer and word processor groups so that there can be an exchange of ideas and information among our members pertaining to the use of the equipment.

We are also working with this Committee on conducting an economic survey. This information should be very helpful to our members, and accordingly you are urged to respond to the survey forwarded to you with the May edition of *The Gavel*.

At the Western States Bar Conference ABA President-Elect Wallace Riley of Michigan spoke on the subject of lawyers and the economy. The bottom line is that these difficult economic times are going to be felt by our profession just as they are in other professions and businesses. This points up the need to make our services more readily available to the public. I believe that our Association is doing an excellent job in this regard through our Lawyer Referral Service. We are currently making 150 to 200 references per month, and have in place four pro bono panels; one general practice panel, one panel for assistance to the elderly, one bankruptcy panel, and one divorce panel. This program is a particularly good one as it is helpful to both the public who need the services and in many instances to the lawyers who are getting the referrals.

Another area I would like to touch upon this morning is the legislative session. I feel that we had a very successful legislative session as an Association. Our legislative policy this last session, as I submit it has to be in future sessions, was to consider very carefully the items that we could support or oppose. We received some criticism that we were not as visible as we might be. However, as an integrated Bar we must confine our lobbying activities to those issues that favor all our members. During this past session we supported several bills that were introduced by the Section on Real Property, Probate and Trust Law. These bills involved what all of us perceived to be improvements in the area of mineral conveyances and reservations. We also supported a bill allowing renunciation by a personal representative — an improvement in our probate law.

I feel that there was excellent cooperation this past year between our Association and the Judiciary. This was particularly true during the legislative session. Through our joint efforts we were able to see passed a very much improved Judicial retirement bill. This is an item that has been supported by our Association for many years. Also, through our joint efforts the Judiciary budget was approved. Included in that budget was funding necessary

to meet the disciplinary requirements. It was pointed out to the Legislature that the Bar's contribution to this process goes far beyond the \$58,000 in direct payments that we make; it involves countless hours donated by the lawyer members of the two Inquiry Committees and the Disciplinary Board.

On the subject of discipline, you will be pleased to hear that, notwithstanding the increasing number of attorneys in our Association, disciplinary complaints are on the decline. These matters will be dealt with in more detail by the two Inquiry Committee chairmen.

One other piece of legislation leads me to the subject of a very important decision that you members have to make at this meeting. We were able to have the cap on our license fees raised from \$150 to \$200. This issue will be presented to you by President-Elect Bye in conjunction with his proposed budget. In this regard, however, I'd like to make a few comments. In visiting with members of other Associations around the United States of comparable composition and size, I'm always very proud of the way in which our Bar stacks up. I suggest that if we are to continue our role as a leader among small State Bar Associations in providing services to our members and to the public, it's necessary that the dues increase be approved.

Last October our Association participated in ceremonies held in the auditorium of the New Heritage Center in Bismarck welcoming new members to the Bar. For those new members who are here, we'd like to extend to you a special welcome. We solicit your involvement in the work of your Association, and invite special attention to the Young Lawyers Section.

Last year Paul reported to you that the North Dakota Bar Foundation was in existence and was awaiting approval from the IRS as a Section 501 (C)(3) exempt organization. I'm pleased to report that this approval has been received. I would like to acknowledge that this was accomplished primarily through the efforts of Garry Pearson. We thank him very much for his efforts in this regard. The initial programs approved for the Foundation are law-related education for the public, and support of the University of North Dakota Law School. I hope in this coming year to work in President Bye's administration in looking into IOTA, that being Interest On Lawyer Trust Accounts, as a means of funding for the foundation. We have always felt that the funds available in a Bar our size would be insignificant. However, President Tom Foye of the South Dakota Bar Association advised us at the Jack Rabbit Bar meeting that they are implementing the program in South Dakota, and that a survey there showed an average daily balance in lawyers' trust accounts to be \$640,000. Even at five percent, this would generate \$32,000 annually, assuming that we had good participation from the members of the Bar.

In closing my report, I'd like to again warmly thank all the Board of Governors, the committee members, Mike Rost, Barb Cichy, the State Bar Association staff, and last, but certainly not least, all of you members for your support during this past year. On Friday evening I will pass the gavel to an extremely capable person, Kermit Bye. His contributions in many areas, particularly the legislative session this past year, were invaluable. He will give excellent leadership to our organization. I'm looking forward to serving on the Board of Governors again this next year, and in any capacity that I can in the years to come.

Again, I want to thank you for the honor and privilege of serving as your President. I feel that we have an excellent Association, and I'm very proud to be one of you. Thank you.

(Applause.)

**PRESIDENT-ELECT BYE:** Thank you, Sparky.

On behalf of the Board of Governors, I want to congratulate you on a very successful year. And I know I speak for everybody that has worked with you during your year as President of this Association. I think you've done a very fine, capable job of leading this Association. And I want you to know that it's been a personal pleasure not only of mine but all of the members of the Board of Governors to have served under your able leadership.

**PRESIDENT GIERKE:** Thank you very much.

**PRESIDENT-ELECT BYE:** If I might just make a brief announcement. One of my responsibilities as the incoming President is to make committee appointments. And, as Sparky said in his address, largely the work of this Association is through the standing committees and sections of the Bar Association. We have in the past issues of The Gavel had a form for filling out for those people who are interested in serving on committees, and we've gotten a large number of responses. I have somewhat purposely held off making those appointments until after the conclusion of this meeting. And I would like to once again reiterate anybody that is interested in serving on any of the number of committees of our Association please ask Bea at the registration desk for a form. Just merely fill it out and get it to her, and we will certainly take your requests into consideration. If that is too much work, just come on up and tell me and we'll try to accommodate you wherever possible. I do know, and I should point out, that in some instances it will not be possible to appoint everybody to their first and possibly even their second choice. There are some committees where the request to be on them has been overwhelming. And because of the policy of the Bar Association, attempting to keep costs and expenses down, we must necessarily limit the membership. But I want all of you to understand that we want your participation, and we certainly like to know where your interests lie. And we will try to make every effort to accommodate you under those set of circumstances.

Do we have our Executive Director in the room? Continuing on with the clean sweep that the North Dakota delegates made at the Jack Rabbit Bar Association meeting last week, not only was Sparky elected Chancellor-Elect, but our own Executive Director, Mike Rost, was elected Secretary of the Jack Rabbit Bar Association. So I would imagine that means that the Jack Rabbit Bar Association, which is a very serious group of lawyers from six inter-mountain and plains states, no doubt the headquarters of that organization will be moving here to North Dakota in the very near future. Without further adieu I would like to present to you our Executive Director and the incoming Secretary of the Jack Rabbit Bar Association, Mike Rost, for some annual announcements. Mike.

(Applause.)

**EXECUTIVE DIRECTOR MICHAEL J. ROST:** Thank you very much, Kermit. It's hardly the type of thing that needs an introduction. I'm going to move pretty quickly with some announcements. The Real Property, Probate and Trust Law Section will be meeting in the LaSalle Room of the Westward Ho today at 10 o'clock. North Dakota Bar Foundation, which was originally scheduled to meet in the Governor's Room, will be meeting in the Diablo Room, which is right next door, also at 10 o'clock today. The meeting of the North Dakota Trial Lawyers Association has been canceled. CLE Commission will be meeting in the Governor's Room today at 3 o'clock. The Pattern Jury Instruction Committee will be meeting today at 2 o'clock in Room 109 of the Law School. The Business and Corporation Law Section will be meeting today at 10 o'clock in this room, some segment of it, as will the Law-Related Education Committee will be meeting in this room at 10 o'clock. The Unauthorized Practice Committee as well will be meeting at 10 o'clock in this room, as will the Central District Bar Association, the Northwest District Bar. And I guess we'll be pretty crowded in here at that time. That's between 10:00 and 11:00

today. We also have several sponsored cocktail functions this afternoon. If you don't have an invitation, please stop by the registration desk and pick those up. And that's all the announcements at this time. Thank you.

**PRESIDENT GIERKE:** Thank you very much, Mike.

I have an announcement of a few appointments. I have appointed Randy Lee to act as Parliamentarian for this meeting. I've appointed Wes Argue, Vern Neff and Paul Kloster as the Resolutions Committee. I've also appointed Jack Sherman and Vivian Berg as Election Proctors.

The Court Reporter for this meeting is Mr. Norman Mark of Fargo. In order that the Reporter is able to credit all remarks, and provide an accurate transcript of the meeting, it is requested that all comments made from the floor be preceded by your name and your hometown.

The Chair at this time will entertain a motion that the rules be suspended, and that the minutes of the last annual meeting not be read, but that they be accepted as filed in the Executive Office of the State Bar Association and as published in the Law Review. Do I have a motion to that effect?

**MR. ROBERT A. FIEDLER:** Bob Fiedler. So move that the rules be suspended.

**PRESIDENT GIERKE:** Bob Fiedler.

Is there a second?

**MR. RAYMOND R. RUND:** Second.

**PRESIDENT GIERKE:** Second. Ray Rund of Finley.

All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

**PRESIDENT GIERKE:** The Chair will next entertain a motion that the rules be suspended and that the Committee reports not requiring positive action from the General Assembly be accepted and adopted without formal motion from the floor upon filing of the report with either the President or the Executive Director. Copies of the reports should have been included in your convention packet. If they were not, they certainly can be made available to you. In addition, most reports will be given orally this morning and tomorrow afternoon. Is there such a motion?

**MR. ROBERT A. FIEDLER:** So move.

**PRESIDENT GIERKE:** Bob Fiedler. Second?

**PAST-PRESIDENT KLOSTER:** Second.

**PRESIDENT GIERKE:** Paul Kloster. All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

**PRESIDENT GIERKE:** Finally, the Chair will entertain a motion that the past practice of resolutions and new business calling for positive action by the General Assembly be offered on the first day, that is this morning, and that they will be laid over and acted upon at the second business session, which will be tomorrow afternoon, and that this be adopted as a House Rule. Is there such a motion?

**MR. J. PHILIP JOHNSON:** So move.

**PRESIDENT GIERKE:** Phil Johnson. Second?

**MR. C. NICHOLAS VOGEL:** Nick Vogel.

**PRESIDENT GIERKE:** Nick Vogel.

All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

**PRESIDENT GIERKE:** One of the fine traditions that we have at our annual meetings is the appearance before the Association of the Chief Justice of North Dakota's Supreme Court to report to us on the state of the judiciary. Chief Justice Erickstad has served the state of North Dakota in this capacity with great ability and diligence for over ten years. This coming year he will honor North Dakota by serving as President of the National Association of Chief Justices. Would you please stand and welcome the Honorable Ralph J. Erickstad, Chief Justice of the North Dakota Supreme Court.

(Applause.)

**CHIEF JUSTICE RALPH J. ERICKSTAD:** Thank you very much, President Gierke, President-Elect Bye, members of the Board of Governors, Executive Director Rost, and other participants in this 1983 annual meeting of the State Bar Association of North Dakota. I am very pleased to be invited to speak to you again this morning. I believe that these annual conferences of the Bar provide excellent opportunities for the discussion of issues of justice with which we are all very much concerned.

I congratulate the lawyers and their spouses of Grand Forks, and Grand Forks County, and all those who have had a part in making this conference such a great success, for their fine efforts.

I address this morning some of the subjects which I called to your attention in June of 1982, to describe the progress which has been made to date, and to submit some areas for future study.

The Supreme Court case load is growing. Since 1975 it has increased by over two hundred percent. In 1979 there were 208 new cases filed. In 1980 there were 294 new cases filed. In 1981 there were 309 new cases filed. This level was confirmed in 1982 with 308 new cases filed in the Supreme Court. This reflects an increase of nearly fifty percent in just three years.

As you know, the Supreme Court has no control over the number of cases appealed to it, nor do we anticipate a decline in the cases filed in this Court.

We work, we think, very hard to stay current. And we have been completely current just prior to the September term of each year for nine straight years. We expect to be, or hope to be, completely current again this year at that time.

However, we will not be able to sustain this record under these conditions for much longer without accepting a deterioration in opinion quality. We will try mightily to avoid this, but the numbers are against us.

Our concern for the growing case load of the North Dakota Supreme Court is shared by the North Dakota Legislature. In the 1983 session the Legislature passed Senate Concurrent Resolution 4005. This resolution was sponsored by Speaker of the House Tish Kelly of Fargo, Representative William Kretschmar of Venturia and Senator Frank Wenstrom of Williston and Senator Rolland Redlin of Minot and provided for a study of future

appellate court services.

Unfortunately, the Legislative Council, in its recent post-legislative organizational meeting, decided not to undertake this study. Although some may consider this action as a complete rejection, I do not. The Legislative Council is cognizant of the fact that we have four very effective standing committees consisting of lawyers, judges, legislators, and lay persons representing farmers, businessmen, and business people, education and labor, including minorities, that regularly study various aspects of our judicial system.

Recognizing these important forums for the discussion of major policy issues, we have asked the Court Services Administration Committee, chaired by Bill Strutz of Bismarck, to undertake an in-depth study of this subject. I am confident that the members of this Committee can help us with this problem as they have helped us with so many others.

The state funding of district court services has been in place during this biennium, and the new county courts became effective on January 1, 1983, pursuant to the county court judgeship elections held last November. This process went very smoothly.

These twenty-six county judgeships open a new era in flexibility in providing court services. The teams of Judges in each judicial district, County Judges and District Judges, with the Presiding Judge of the judicial district, will be able to work cooperatively together to dispose of all cases with promptness and thoroughness.

The application of the Docket Currency Standards to the county courts will help us in this effort.

The district courts have experienced increases in total civil and criminal case filings of twenty-four percent in four years. This is a substantial change with which they are coping well.

Municipal courts have experienced increases in total cases of seventeen percent in four years. Of this total, criminal traffic cases have increased during this period by thirty percent.

Pursuant to the new Judicial Article, North Dakotans are presently committed to a court system which includes the services of lay Municipal Judges. We have twenty law-trained Municipal Judges and approximately 133 active lay Municipal Judges functioning today. This compares with approximately 365 municipalities in the state.

To support lay Municipal Judges the Supreme Court has approved an Administrative Rule, AR 17-1982, which permits a lay Municipal Judge, in the Judge's discretion, to request that a substitute legally-trained judge be appointed to act in the lay judge's place by the Presiding Judge of the Judicial District. This rule will most likely be used in the more complex and controversial cases.

As you know, in July of 1981, the Supreme Court established the North Dakota Legal Counsel for Indigents Commission chaired by Bruce Bohlman. He is the defense attorney nominated by SBAND of Grand Forks. Other members are John Murphy of Boudac, nominated by the North Dakota Association of Counties; Cindy Rothe, presently judge and former State's Attorney; John Paulson of Valley City, who is a District Court Judge, and former State's Attorney, nominated by the Chief Presiding Judge Douglas B. Heen; Ralph Vinje of Bismarck, who is defense counsel nominated by SBAND; and Judith Howard, Minot, a defense attorney, nominated by Attorney General Robert Wefald; and Kathryn Dietz, Bismarck, Assistant Attorney General, nominated by Attorney General Robert Wefald.

This Commission is the outgrowth of the foresight and initiative of this State Bar Association. I hope that the existence and work of the Commission is as much a source of pride and satisfaction for you as it is for me.

The Commission has developed procedures and guidelines for the payment of attorney expenses, an eligibility determining process for defendants, defendant reimbursement procedures, and due process procedures for the resolution of conflicts regarding attorneys' fees. It has also developed a model indigent defense contract, contract specifications, and proposals for a centralized defense contract bidders list. These guidelines and forms have been published and are available upon request from Bruce Bohlman.

As you also know, the North Dakota judicial system presently administers state fund for indigent defense services and prosecution and defense witness expenses for district court cases. Questions have been raised about inherent conflicts of interest, and the propriety of a judge's administration of these funds while presiding impartially on the merits of these cases.

Senate Concurrent Resolution 3009 provided for an interim study of the structure and administration of funds for attorney services for indigent defendants in criminal cases by the Legislative Council. Despite approval by the 1983 Legislature, the Legislative Council, in its recent post-legislative organizational meeting decided not to undertake this study. We have referred this matter to the Attorney Standards Committee, chaired by Malcolm Brown of Mandan, for study within the North Dakota judicial system. Hopefully, with input from all interested sources, the Committee will come up with the answers to resolve this matter in a satisfactory way.

You have recently seen the newspaper articles indicating that the State Penitentiary is filling to its capacity. We know that significant effort is being made through the Director of Institutions, with support from Governor Olson, to provide more capacity both at the State Penitentiary, and at the State Farm on an emergency basis.

Notices have been sent out apparently by the Warden to County Sheriffs regarding possible limitations on transfers from jails to the North Dakota Penitentiary. We all watch this problem with great concern.

This does not appear to be a transitory condition. It reflects deep concerns of the public which are reflected in judicial sentencing practices. If the Warden is forced to double-cell prisoners, it would not only be productive of prisoner unrest and all that that involves, but it would contribute to a substantial potential for lawsuits which could result in federal court intervention in this area.

With this grave potential there is a need for the Bar to assert its leadership in support of an effort to find a solution to this problem. Such an effort could possibly avert an Attica-type tragedy.

I believe that the State Bar Association can be of assistance in lending its voice in support of the creation of a study commission or task force to find the answers to this vexing problem before it is too late.

The Bar, through its leaders, could urge the Governor to create such a commission or task force with a broad base so that it would be representative of all views.

Objectives could include such things as:

(1) A review of the capacity of the North Dakota Penitentiary and State Farm for the present and projected future from a constitutional viewpoint, keeping in mind rehabilitative potential;

(2) The creation of guidelines for cooperative agreements between county jail officials and state correctional officials;

(3) An in-depth study of sentencing objectives with a view toward developing acceptable guidelines; And, incidentally, we do have an active Sentencing Guidelines Committee chaired within the Judicial Council by Judge Smith. And a lot of the knowledge of that committee could be shared.

(4) The creation of a process for informing judges of the current prison profile and the monthly space

available;

(5) A study of the problems of overcrowding looking toward recommendations for long-term solutions; and

(6) The possible use of a well-thought-out early release program which could be administered by the State Parole Board.

Such a commission or task force should not be expected to solve problems overnight that have plagued penologists for centuries; however, it could provide a rational way of approaching these problems so that they can be kept manageable and hopefully be reduced in the near future.

I'm happy to report that the Disciplinary Board of the Supreme Court has been awarded a \$20,000 grant from the American Law Institute and the American Bar Association to establish a Model Lawyer Assistance Program as distinguished from a Peer Review Program for Lawyers. The program, when established, will be on a voluntary basis. And I particularly stress the word "voluntary." And its objectives will be to help young and inexperienced lawyers, and others who are having difficulty, do a better job for their clients.

In ten years we will look back upon this project as a great milestone in improving relations between lawyers and clients for the great benefit of all. This project will provide a compassionate way of helping lawyers be better lawyers. It will permit lawyers to help other lawyers provide better services to clients on an ethical and honorable basis.

With the passage of Senate Bill 2068, the so-called newer District Court Judges and Supreme Court Justices, those justices and judges elected or appointed after July 1, 1973, who are members of the Public Employees Retirement System have had their retirement benefits substantially improved.

On behalf of all, I thank you for your great support of this legislation. It will contribute to maintaining the quality of judicial services.

In conclusion, I thank you all for your help in improving court services in North Dakota. I especially thank your President, Sparky Gierke, and your President-Elect, Kermit Bye, for their great support of the judiciary in the 1983 Legislative Session.

We also appreciate the services of the lawyers who serve as legislators at a tremendous personal sacrifice.

It has been a pleasure for Lois and me to be with you again this year. It is our hope that this convention will be an enjoyable and fulfilling experience for all of you, and that your future will be likewise.

I leave you with this thought, borrowed from the address of Carl Schurz in Faneuil Hall, Boston, in 1859, taken from Bartlett's Familiar Quotations, and I quote:

"Ideals are like stars; you will not succeed in touching them with your hands. But like the seafaring man on the desert of waters, you chose them as your guides, and following them you will reach your destiny."

I thank you very much.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Chief Justice Erickstad. We always are very appreciative of your reports, and, in general, are very appreciative of your participation and cooperation in the activities of our Association.

The next items on the agenda are the committee reports. And without having any lengthy introduction of each of the committee chairmen, I would just like to reiterate that these are the people who really get the job done for our Association in the delivery of the services to the public and to the members of our Association. Without their efforts the things just wouldn't get done. And we appreciate it very much.

Before moving into the committee reports, I see that we have a guest waiting in the wings. And at this time it's my pleasure to introduce to you the Honorable H. C. (Bud) Wessman, Mayor of the City of Grand Forks. Bud.

(Applause.)

**MAYOR H. C. (BUD) WESSMAN:** Thank you very much, Mr. President. It's a pleasure to be here.

I'm sorry I'm a little bit late in arriving. Having been in Denver over the past few days at the U.S. Conference of Mayors, I want you to know that I've been doing the very same thing that you people are doing today, which is deliberating and perhaps sneaking a little bit of relaxation as well. As a matter of fact, I was coming home last evening, I was flying rather late. I understand a lot of you were doing the same thing. But I was using an airplane. And so we got in I guess about 12:30 or so.

This 83rd Annual Meeting, however, of the State Bar Association I think looks to me to be a very exciting meeting, and it certainly looks to me to be the sort of thing that again I would expect from a group of learned individuals such as I find to be in the legal profession. Having spent the past few days in Denver, I had the opportunity — one of the panels was chaired by Maynard Jackson who is also an attorney, as well as a former Mayor, and he talked in terms of antitrust and the implications of antitrust to cities. And I'm sure that many of you are aware of the problems and the potentials in this area. And it was interesting to me that, again as I listened to him and as I listened to that group, I became very cognizant of the need that we have for, again, legal assistance in almost every facet of municipal activity, and, in fact, in almost every facet of our daily lives.

One of the speakers pointed out that, as Mark Twain had said, the difference between the right word and the almost right word is like the difference between the lightning bug and lightning. And I suspect you people would relate to that quite well.

Again I want to welcome you to Grand Forks. I want to thank you for coming to this city. Mr. Bye, I would wish you good luck in the coming year. Kermit was the man who told me that you have arrived as a true politician when you can sit down with a lobbyist and drink the lobbyist's booze and eat his or her food and vote against him. Well, Kermit, I've not yet arrived, because I do not do a very good job of drinking the booze. And with that in mind, good luck to you.

**PRESIDENT-ELECT BYE:** Thank you.

**MAYOR WESSMAN:** Thank you again for coming to Grand Forks. Enjoy your stay here. We're glad you're here. We like to think, and I think it's true, that the quality groups that come to Grand Forks give us more as a city, not only from the standpoint of economics, but from the standpoint of knowledge and understanding, than what we give them. So we're glad you're here. And thank you very much for being in Grand Forks.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Bud. We appreciate your warm welcome. And we intend to enjoy it as much as we can.

At this time I'd like to start into the committee reports. And I'll call on Jane Heinley of Fargo, the Chairwoman of the CLE Commission.

**MS JANE C. HEINLEY:** Thank you, President Gierke. I want to take just a moment to thank you for your

services over this past year and to give my special good wishes to Kermit Bye, who is my partner, for his upcoming year as President of the State Bar Association.

**PRESIDENT-ELECT BYE:** Thank you, Jane.

**MS HEINLEY:** The CLE Commission is charged with the responsibility for administering the state's Mandatory CLE Rule; that includes processing Reports of Compliance that are sent in and approving or disapproving requests for credit for CLE courses.

Over the past year the work of that Commission has involved reviewing approximately 260 Reports of Compliance that were turned in by attorneys, and approving 572 applications for course credit. Keep in mind that that number does not include the type of courses that are reported by you attorneys at the end of the year for which you need not send in a special application for course approval; for example, any course which is sponsored by the North Dakota CLE Committee, the State Bar Association, and so on. So the total number of approved courses is far beyond that. There were only eight applications for credit for courses denied.

The level of compliance with our Mandatory CLE Rule over the past five and a half years in which it's been in effect has been extremely high. We find that generally those who have not complied with the Rule have done it either due to oversight, they are not aware that their reporting period has come up, or really unusual circumstances. And we've been able to take care of many of those.

This past year we've taken a new step for the CLE Commission in that we have reported twenty-nine attorneys to the Disciplinary Board who have not complied over the past years. This is the first time we've done that. And some of those are carry-overs from previous years. Most of those twenty-nine people we've been able to take care of favorably. They have found some way to comply with the Rule or have filed for inactive status or there have been other circumstances. There have been only six attorneys who are either still under consideration or who are still being reviewed by the Disciplinary Board. I think that's a remarkable level of compliance for a program which is fairly new.

When I spoke to this group last year I told you that our financial condition was very good. I also told you that one of our long-range goals was to acquire a computer to make the work of the Commission easier. Well, surprisingly, that became a rather short-term goal that we met. And as President Gierke mentioned, we were able to contribute \$10,000 toward the purchase of a computer, which is located in Bismarck at the SBAND offices, and which serves a dual function. First of all, it's used to process and log all of the information needed for our commission to work and, secondly, it's available for the State Bar Association for its general work, too. So we were very pleased to acquire that computer.

I think one of the reasons that compliance with the CLE Rule has been so high in the past has been that the providing of CLE programs has become really a flourishing business. There is no lack of programs to attend, whether you are in a specialty area or whether you want to attend programs of some general interest.

The CLE Committee, which is also headed by my partner, Dan Vogel, has been very instrumental in providing those programs. We also permit credit for video tape programs or for audio tape programs. And you should be aware that the State Bar Association in Bismarck does have a modest library of tapes that are available for attorneys who want to obtain some of their credits that way.

There are some attorneys who in the past have not made use of the inactive status provision of our rule until they become aware of it. Whenever an attorney moves to another state or is intending simply to retire, they may file for inactive status and the CLE requirements are then suspended.

We continue to get inquiries from other states about our CLE Rule here in North Dakota, either from states who are also new in this business of mandatory continuing legal education or states who are considering it. I think that should be considered a real compliment to our state, because we were one of the front-runners in this business. For example, two weeks ago or so I got an inquiry from the state of Iowa, who has had a continuing legal education rule for several years and is considering expanding it. They have allowed credit in the past for audio tape programs and were considering expanding that to include video tapes and wanted to know what our experience had been. And we advised them that from the very beginning North Dakota has permitted some credits for both audio and video tapes. And we've had no problems whatsoever in administering that part of the program.

We are still in the process of getting this computer set up so that it can manage all of the types of information we need for administration of the CLE Rule. I'm not certain whether the computer will be able to match the efficiency of the members of the Commission that I have worked with for the past year. Those people were Wes Argue, Doug Christiansen, Randy Lee, Paul Ebeltoft and James Maxson. Those are some people who really know how to get the work done. And in the coming year we'll have a combined effort of people with that kind of dedication with this new computer.

The purpose of a mandatory CLE Rule in North Dakota is a very simple one; it's to see that lawyers continue their legal education throughout the period of their active practice. And it's been my experience, and the experience of other members of the Commission, that the Rule is doing just that. And I don't think it's doing that just for the small number of attorneys who might otherwise give no thought to continuing their legal education. I think it also serves that purpose for the many attorneys whose practices are so busy that they might otherwise not take the time out that's necessary to attend these programs.

The cooperation of the members of the Bar, as evidenced in the numbers I've read you, I think has been excellent. And I want to thank all the members of the Bar for that cooperation. Thank you.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Jane, for your fine report and, as I have said before, for your work throughout the year.

I'd next like to call on Bob Feder of Fargo, Chairman of the Information and Service Commission. Bob.

**MR. ROBERT A. FEDER:** Before giving our report, I also would like to thank President Gierke for the help he gave us during the year, and to wish our best to the incoming president, and pledge him our support, also.

Our report is as follows:

Dear Mr. President: The Information and Service Committee for the past year was comprised of Mr. Dwight Eiken and Ms. Illona Jeffcoat-Sacco, Williston; Alfred Schultz, John Walstad, Bismarck; Ed Gillig, Grand Forks; Nancy Fay of West Fargo; and me. And it was our pleasure to serve you in the past year.

Our Committee was responsible for considering nominations for the Liberty Bell Award and making a recommendation to the Executive Committee. This year we were most pleased to recommend Miss Brynhild Haugland of Minot to receive the Liberty Bell Award.

We also serve as coordinators of the distribution of the 35th Annual Constitution Awards for North Dakota high

school children. This year over 300 Awards were presented throughout the state.

Our final area of major responsibility during the year was the administration of Law Day.

This year, as in years past, lawyers throughout the state of North Dakota opened their offices for free consultation to the public. Now to our knowledge we are the only state in the Union to do this, and we are very proud that North Dakota lawyers have done this for five consecutive years. The response seemed to be quite good, and in straw polls taken by various county bar associations around the state it appeared that almost every single lawyer participated and hundreds of hours of free advice were given to the public. This year, as in years past, tours of the courthouses were made available.

A new feature of Law Day this year was the combining with various law enforcement agencies in shopping malls to present information booths and disseminate information to the public. Now in Fargo the participants were, in addition to the Cass County Bar Association, the Cass County States Attorney's office, the Fargo Police Department, the Cass County Sheriff's office, North Dakota Highway Patrol, and North Dakota State University's program in criminal justice. The exhibits were very well received, and the lawyers of the Cass County booth reported, for the most part, that the dispensing of free advice was regular and rather heavy throughout the day.

We received a lot of thanks, by the way, when the people came through there. They, most of them, had never had any contact with lawyers before. And they were pleased to find out that we weren't telling them to come to some lawyer's office with their checkbook and be given an answer. So it was a very positive program.

Finally, as a pilot program, your Information and Service Committee conducted a one-hour live phone-in show on the Prairie Public Television network throughout the state called "Ask a Lawyer." The program was very, very well received by the public. And the panel had far more questions phoned in than they could possibly answer.

The response to the various television stations statewide was uniformly positive, and the network is anxious to participate with us next year to have a program on a monthly basis. Now the length of the program, the frequency of the program, and the negotiating skills of the Committee will determine the cost. Our Committee is very positive on this and very strongly recommends the general membership support the funding of such a program next year. This could very well be the very least expensive, but yet the most effective, bit of public service in the disseminating of information that we could possibly provide.

The cost has been temporarily or preliminary budgeted, I understand, by the Executive Committee for a very small amount. And I hope that all of you will vote for the dues increase that is going to be presented to you. It's something that we need very much in order to promote this program. The program has done us a lot of good. A tape of the program has been brought here to Grand Forks, and it will be left with Mike or Barbara. And if there's a three-quarter inch machine around here you're more than welcome to view it.

In closing, the Committee wishes to thank publicly our Executive Director, Mike Rost, and his assistant, Barbara Perry Cichy, for the excellent help they provided to us throughout the year. Thank you very much.

(Applause.)

**PRESIDENT GIERKE:** Thank you, Bob, for your fine report. Needless to say, Information and Service is a very important facet of our Association.

Next like to call on Jim Geyer of Dickinson as Chairman of the Unauthorized Practice Committee.

**MR. JAMES D. GEYER:** Thank you, Mr. President. Fellow members. Happily, unauthorized practice does not seem to be a major problem in our state. I understand that some states have full-time attorneys working on the problem. I think that we've had four or five attorneys working on the problem. I think that we've had four or five inquiries concerning possible unauthorized practice in the last year.

I'm not going to go into great detail. You have my report. I would merely suggest that if you come across activity which you suspect is unauthorized practice of law, that you inform the judge, if this is a matter involving a court hearing, and, secondly, I suggest that you contact Mike Rost, who is the Secretary of this Committee, and let him know so that the Committee can coordinate any assistance that may be necessary. The Committee has no enforcement powers, so we act more as a clearance agency than anything else.

Thank you very much.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Jim.

I'd next like to call on Randy Lee of Grand Forks, Chairman of the Group Insurance Committee. As they say in rodeo circles, Dan Twichell, you're on deck.

**MR. RANDY H. LEE:** Thank you, Sparky, President-Elect Kermit.

In your meeting materials, registration materials, you got a package that's topped off by a letterhead from Pancratz, Yuill, Wold, Johnson & Feder. If pages in that packet were numbered, page 7 would be the report, the beginning of the report, from the Group Insurance Committee. Naturally all have read it, and I need not take any time with it here. I will summarize briefly.

First I'd like to point to and thank the members of the Committee on behalf of everyone in the room, myself and Sparky for the work done over this year. The members are listed at the bottom of the report.

And as for summary, first as to disability, our disability plan over the last five to eight years has become weaker and weaker as time has gone on. That was because we were not competitive. One of the chief things we've done this year is to make our disability plan effective by reworking the policy itself offering more alternatives and options in the coverage that you can purchase through it and by lowering significantly the premiums at the low age range. That has also had the effect of increasing, although not as much, by percentage the premiums at the high end of the age range. In order to accommodate and protect those who have been participating in the disability plan, disability income protection plan, through the Association, however, we have made sure that those persons are able to elect to maintain their current coverage at the currently guaranteed premium rates. So we do not think anyone can be harmed by the changes that we recommended to the Board of Governors that it approve our disability income protection plan, and which changes the Board of Governors did approve. Bob Diers is here. He, of course, administers that plan and sells the insurance. If there are any specific questions with respect to coverage, I'm sure that Bob can address those with you as the meeting proceeds. I think you all know him or recognize him from past meetings.

The second item to be summarized, professional liability insurance, we do have — I hesitate to call it a problem, because Bob would have to get equal time, then. There is, however, a difficulty in North Dakota with professional liability insurance coverage, that marked by the fact that the Poe Plan, written through Guaranty Insurance Company, will no longer either be available for renewal or new coverage. Unfortunately, of course, it was the cheaper of the two sponsored plans, which means that there are a lot of North Dakota lawyers who are on that plan. We have recommended, I have recommended, to the Board of Governors, and the Board of Governors

accepted that recommendation, that Bob be allowed to go ahead and make arrangement for substitute coverage, underwriting of those plans on the same premium rates with a substitute carrier, and that has been effected. And so there should be no difficulty for those presently on Poe Insurance, professional liability coverage, for making that change, if, indeed, that is what you wish to do.

Reminder always that we do not purport, on the Insurance Committee and through the Association, to be marketing the only insurance in the state in which you might have an interest. All of you know, some of you are, local agents, and know of other coverages which you think are better and more economically efficient for you. And we would never suggest to you that you ought to not use them. But it is a service that we provide.

Your suggestions, recommendations, are welcome, and will be accepted. I will take them. Any member of the committee will take them. And watch for the new committee member lists to be published in *The Gavel* so that you can see who else you might write.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Randy.

Next call on Dan Twichell, West Fargo, Chairman of the Law Office Management Committee.

**MR. DANIEL R. TWICHELL:** Thank you, Sparky. Kermit. Good morning. Members of the Committee besides myself are Bob Dahl, James Coles, Jerry Engelman, Dwight Eiken, Tim Davies, Ken Pringle, who, as you know, passed away this year, Dan Wentz and Gordon Schnell.

One of the things or one of the emphasis we've had has been on the Legal Assistant Program. And nationally it is recognized that the Legal Assistant Program is probably one of the best tools available to the legal profession, both in getting the work done, and doing it economically. And, as we reported last year, we did get great cooperation from Moorhead State University in implementing a curriculum for legal assistants. That first class will be graduating in 1985. And there may be some people available in 1984. And that's not too far away. Our function has been to work with the school. But also our function is to work with the lawyers in North Dakota and western Minnesota so that you will accept these graduates when they are available. And so it is very imperative that those of us that have legal assistants try to improve that program, and those of you who do not should implement it.

This afternoon Cullen Smith from Texas is going to be talking to us about office management. And I'm sure that legal assistants will be brought up during that program. And so if any of you have questions I'm sure he would be delighted to answer them for you. But it is a very important part of the national scene, and should become a very important part in North Dakota.

Along with that, we have some responsibility to see that certain information is given to you through seminars; such as a couple years ago when we had J. Harris Morgan here, and last year when we had Kline Strong. And this year, as I mentioned, Cullen Smith from Texas is going to be here. Not through our Committee. We're very delighted that the CLE Committee has scheduled him in for two reasons: First of all, it saved us a lot of work; and, secondly, we're delighted that the CLE Committee and the Bar Association recognizes that we do need a lot of information regarding office management and legal economics. And so I hope that all of you will stay around for that program this afternoon and have a chance for Mr. Smith to discuss these matters with you. He's from Texas and there are a lot of other people from Texas and all over the United States who have been working as evangelists in this area. And I was privileged to be with a group of them about a month or two ago. And I learned something while I was in Texas that I didn't know before, and that is that George Washington was born and raised in Texas. Probably most of you didn't know that. And it was out around Lubbock someplace. And one day his daddy noticed that one of the mesquite trees had been chopped down, and so he rounded up young George and asked him about it. And George said, "Well, I chopped it down. I cannot tell a lie." And his daddy said, "Well, George, if you can't tell a lie you better get the hell out of Texas." Well, anyway, they got up around Virginia, and the rest is history. But, anyway, we're delighted with this program, and we're going to try to bring you more programs along this line.

One of the things we have done this year, and I want to particularly thank Mike Rost at this point for the great help he's given us, one of the things we did this year was to conduct an economic survey. The response that we received through the questionnaire in *The Gavel* was great. I haven't talked to Mike since I have been here, but the initial response was tremendous. And if any of you have not responded to the economic survey, get a hold of Mike and he can get you some blanks to fill in. It will take you two minutes at the most to fill in. And this will go on a computer. And hopefully by fall we'll be able to, with Mike and with Jim Coles, who's working with him, we'll be able to give you a summary of the legal economics in North Dakota.

One of our members, Bob Dahl, also talked about the possibility of forming user groups. And President Gierke has already mentioned this, relating to computers, word processing equipment, perhaps programs, the idea being that if enough people will respond as to what computer they use, what word processor they use, what programs or software they are using, we can then assemble that and find groups of people who are using similar equipment and office procedures. And from that we would hope to organize users groups who can then meet and compare notes about how bad or how good that computer is or that word processor is and gain from the experience of other people. This is kind of a pioneering effort. There are a couple of other states that are about as far along as we are. But it's kind of a unique thing that Bob has brought up to us. And I don't know that our response was great, but it was, Mike, I think it was very good. And any of you who do have equipment and would like to respond to that, Mike, again, can give you the information that you need to become involved.

We have for some years talked about a desk book. And I'd just as soon not talk about that today. We really have not done anything. It's a mammoth project, and we have put it away for just a little bit. And hopefully we'll get back at it. But it is a big job. And it's a small committee. And it's difficult to get all of this work done.

The American Bar Association has a Legal Economics Committee. Most of you or many of you hopefully subscribe to their publication, which is an excellent one. And this group held its first — it's a long title — held its first Conference of State Economic Chairmen. And it was limited to 100 people. And I was fortunate enough to be able to go to that in Texas. And these are all the people that you hear about; J. Harris Morgan, and people like Cullen Smith although he didn't happen to be there that day. All of the evangelists in the legal economics area were there. It was a tremendous experience, and I just wish that everybody could experience that.

We found that the work of this Committee is expanding tremendously. And we have been talking with Mike from time to time about the possibility of having legal economics or office management become a section of the Bar, and wish we could get a lot more people involved than are presently involved. And we're going to try to pursue that in the coming year. We're going to talk to the Board of Governors about it a little later on.

There is a new program out, as far as North Dakota is concerned, "Lawyer Helping Lawyer." It's a situation where an older lawyer, more experienced lawyer, can be assigned to perhaps somebody that's having some

disciplinary problems, or perhaps somebody that's a younger lawyer, with the idea of that lawyer helping them give, if nothing else, legal economics and office management. And that's another area that we're going to look into.

And, finally, you're all aware, of course, that Ken Pringle, who was on our Committee, passed away this year. And I want you to know that Ken was the real power behind the throne in our Committee. Ken had been on our Committee for many, many years. And we're certainly going to miss him. He also was on the Legal Economics Committee of the American Bar Association for some time. And our Committee is really going to miss him, and this Bar Association is going to miss him, also. Thank you.

(Applause.)

PRESIDENT GIERKE: Thank you very much, Dan.

Next like to call on Dave Bailly of Fargo, Chairman of Inquiry Committee-East. And Mike Halpern is on deck. Dave.

MR. DAVID R. BAILLY: Thank you, Sparky. Distinguished colleagues. Mike Halpern is not on deck. Mike is at home in Glen Ullin today and could not be here. But I will be giving his report as well. I'll start out with Mike's report. I will be giving the reports on the Inquiry Committee-West, East, and also the Young Lawyers Section. And I will make them brief, as each of the reports have been included in your packets.

First of all, I would like to recognize at this time any of the members of the Inquiry Committee-West who are present. And I'd like them, any of them, to stand. Mike certainly appreciated the work. And we owe them a debt of gratitude for the work they have done in the western half of the state. If there are any members of the Inquiry Committee-West, I'd like to have them stand at this time.

(Applause.)

MR. BAILLY: I'd just like to touch on two matters in Mike Halpern's report. Apparently over fifty percent of the complaints which were lodged in the western half of the state against attorneys were in the areas of incompetence, misrepresentation, and delay. Those are apparently three areas that were very important in the eyes of clients from those complaints in 1982, and should obviously be addressed by each of us.

Also he did point out that the 1983 statistics for complaints lodged against our attorneys will be somewhat increased by the addition of the complaints which Jane mentioned earlier dealing with mandatory CLE noncompliance.

The Inquiry Committee-East, I would like to recognize the members of our committee; Warren Stokes of Wahpeton, Mike Nilles of Fargo, Boyd Wright of Grand Forks, Bruce Aarestad of Fargo, Jerry Engelman of Mayville, Jon Fitzner of Valley City, Ted Kessel of LaMoure, and Wayne Solberg of Fargo. These members worked diligently in investigating complaints, in doing a service not only to ourselves, but to the public. I would also like to personally recognize the outstanding work by obviously the paid member of staff of the Disciplinary Board, Vivian Berg, for her outstanding work. In her first year as Disciplinary Counsel I think she's done just an outstanding job, and again a real service to all of us.

I would like to highlight just the final paragraph of my report which reads as follows:

"By way of suggestions to the members of the Bar concerning conduct aimed at avoiding the disciplinary process, it should be stressed that they communicate regularly with their clients, avoid even the appearance of a conflict of interest, assure yourself that you are in strict compliance with the mandatory CLE requirements, that you improve your skills and effectiveness in negotiating prior to litigation, that you pursue each client's matters with diligence and in a timely matter, and that you document all fee arrangements in writing."

The new Kutak requirements do have a provision that all fee agreements will be in writing. So it's something that we darn well better start doing right now with every person, every new client, and every client that we currently have in our offices. It's necessary that we conduct ourselves professionally not only in our own legal practices, but also in our personal lives. The public is watching us very carefully. And I think it's important that we not diminish the exercise of our responsibilities to them.

I submit the reports as otherwise indicated in writing.

The Young Lawyers Section, as in the past years, was fairly inactive. It's interesting, as we listen to the reports today, many of the functions that are taken on by Young Lawyers Sections around the country in various states are taken on by different organizations within our Bar, such as Law Day, such as the Lawyers Desk Book and law office management areas. And I think this is one reason why the real function of the Young Lawyers Section has been substantially invisible over the past few years. I think this will help out, though, in the coming years with the check-off system which has been implemented through the SBAND dues billings. I think with some financial backing through the dues that the Young Lawyers Section will again revitalize. We will be having our annual meeting in conjunction with the Centennial Homecoming at the UND Homecoming in October. And I would encourage anyone that is interested in serving as an officer of the Young Lawyers Section to contact me.

Thank you very much.

(Applause.)

PRESIDENT GIERKE: Thank you very much, Dave. I neglected, in introducing you, to recognize you as the Chairman of the Young Lawyers Section. I apologize for that. And hopefully we'll be able to get some interest in that organization and it will become a very viable force in our Association.

Also in conjunction with your report you made some very nice comments about a nice gal, Vivian Berg. And I would like to at this time ask Vivian to stand up. She's doing a good job and a very difficult job. Vivian.

(Applause.)

PRESIDENT GIERKE: At this time I'd like to call on Dan Vogel of Fargo, the Chairman of the CLE Committee.

MR. M. DANIEL VOGEL: First I want to say that I'm amazed at the turn-out this morning.

There is a written report in your packet of materials relating to this past year's activities for the CLE Committee. I want to thank the other Committee members who have worked hard and who have attended the meetings this year. These people include Boyd Wright, Vern Neff, Phil Johnson, Jack McDonald, Tom Tudor, Ray Rund, Dewey Kautzmann, Barry Vickrey, Jerry Davis, John Olsrud, and Linda Catalano.

I also want to thank Barb Cichy for the outstanding job she has done as our CLE Director this year. She's organized the seminars, she's gotten out the publicity, she has made the arrangements for the speakers we've had. In short, she's handled all the details that make these programs successful. As Sparky pointed out, Barb is going to be leaving our program to get into her teaching endeavors. Is Barb here? No, she's out working.

CLE, in general, remains a highly competitive area. You are all flooded with CLE brochures from all around the country. We hope with our program to continue to provide a minimum number of CLE programs here in North

Dakota at a reasonable cost which will involve a variety of subjects. We'll continue to provide a combination of in-state and out-of-state speakers, and will have programs that are directed to various levels of expertise.

As I mentioned last year, we're expanding the use of the Educational Telephone Network. If you haven't had an opportunity to take in an ETN seminar, I think as an experiment you should do so. It's a very inexpensive way of getting your CLE. And I think it provides an excellent vehicle for presenting highly-specialized topics to the lawyers here in the state that otherwise wouldn't generate too much interest if we all had to travel to some location to get those presentations.

Sparky told you about our efforts to consolidate the CLE administrative functions in the State Bar Office. And I think that has been a major accomplishment of the past year.

Finally, we're in the process of working out a closer working arrangement with the UND Law School. I'm very encouraged by the cooperation we have received from Dean Jerry Davis of the Law School, and also from a new faculty member Barry Vickrey. Barry has a background in national CLE through ALI-ABA. In a small state like ours it's important that we take advantage of the resources that we have. The State Bar and the Law School are both involved in the education business. And I'm hopeful that we're going to increase the building relationship between the Law School and the organized Bar.

Finally, please keep your comments and criticisms coming in on our programs so that we can tailor our presentations to meet your needs.

Thank you.  
(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Dan, for a job extremely well done.

At this time I'd like to call on Ron McLean, the Chairman of the Lawyer Referral Service Committee.

**MR. RONALD H. MCLEAN:** Thank you, President Sparky, Kermit.

It seems no matter how scholarly the article is, or how scholarly the news presentation is, it always seems to begin with this troublesome quote from William Shakespeare, we've all heard it, and from Henry the Fifth: "We begin the new world by killing all the lawyers." And, boy, I hear it all the time, it seems. And it's not a very sophisticated criticism, of course, but the criticism exists. And I think the more sophisticated criticism that you hear once that introduction is made is really the complaint by the consumer groups and the complaint by the people that Nader has, and those kinds of complaints are, "Really, how can the public find a lawyer who has a speciality in the area they are concerned with? And how can they get services delivered to them at a reasonable fee, at a certain fee? And how can they come to know their rights?" I really think that's what the public outcry is all about. And I really think that the Lawyer Referral Service is meant to cover that concern.

North Dakota I guess, as we've heard in some of the reports today, is at the forefront in so many areas of Bar reform and Bar leadership. But this is one area we've been very slow at. We were the 45th state to even adopt such a program. But the program is doing very fine. We are now in our third year. Our membership seems to increase about forty lawyers every year. We're now up to 200. Our retention is no problem. People are staying on. I thought at first that we'd probably get all young lawyers. In fact, we have a problem not having enough young lawyers and enough recent grads. We have many experienced lawyers involved. Some of the problems we were concerned with when we established our guidelines, we thought that the mandatory malpractice coverage would be a touchy issue. We thought that the waiver of Grievance Commission file materials would be a troublesome area. But we've had no complaints about that from any member. And I guess those must have been good lines, because we really haven't been called on the carpet or criticized by the public at all for the lawyers' names we have been giving out and the services that they are giving.

We still have some geographical problems. Usually part of my plea each year is to go through where we have problems. So far, last year I complained at Minot about Minot. Minot increased their membership like times five. I have complained about Dickinson, and Dickinson really helped themselves out. The problem right now we have is Jamestown. If a person calls — and most — a lot of our calls are domestic relations. There is nobody in Jamestown that will take a domestic relations case. I think that's kind of unfortunate.

**EXECUTIVE DIRECTOR ROST:** Fear of the State Hospital?

**MR. MCLEAN:** I don't know if it's a fear of the State Hospital as Mike adds.

In Devils Lake we have a problem, too. I'm sure those will clear up. When I mentioned the areas before in my presentations, those areas have immediately cleared up. We need more members in Devils Lake, we need more members in Jamestown, and we really need more rural members. About 85 to 90 percent of our membership is in the five most populous counties. So we need help there. But I kind of have faith that the rural attorneys are probably already using the same services and maybe it's being delivered without the kind of formal program we have.

We are in the Yellow Pages of all phone books in the state. That's our main source of advertising. Our phone calls are up from about 200 a month to now 300 a month. And we still have a long ways to go. States like Idaho and Nevada, which have about the same population are up to 1,200 to 2,000 calls a month. So we have a ways to go. This program is not at the zenith it can go to. We have a long ways to go yet. But it is growing.

And I appreciate the support that we've gotten from the Bar. And I think the public is participating very well; not only are calls increasing, but North Dakotans, when they make an appointment, show up. Now at the national level the rate is about, oh, only one-third even show up for their appointment. In North Dakota almost seventy to eighty percent of all the people follow through with their appointment and follow through with the half hour fifteen dollar fee.

The next area of concern that our Committee will have this year will be institutional advertising, getting in the Public Service ad. We're going to try to do that. The Bar Association nationwide makes available to us tapes. And that's our next thing we're going to have to get into.

I would like to think the real person that runs our program is Beata Mertz. She handles the calls, and she does a wonderful job. She really makes my committee role a very small one. And she's done a wonderful job. And I think the Bar has also done a wonderful job supporting us. We have some geographical areas that need some help. But otherwise our membership is increasing greatly. And I think it's a good public image matter. And we're cooperating with the state and the public. And I appreciate all the Bar membership support in time and money.

Thank you.  
(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Ron, for that excellent report.

I'd like to call on one more Committee Chairman this morning to give a report, and that is Linda Catalano who

is the Chairwoman of the Ethics Committee and the Executive Director of the Legal Services of North Dakota. Linda, would you please come up and give your report?

MS LINDA CATALANO: Thank you, Mr. President, Mr. President-Elect, —

PRESIDENT-ELECT BYE: Thank you.

MS CATALANO: — Mike Rost. I've got two reports this morning, one of which is in writing. So I'll be very brief. That's the Ethics Committee report.

During the past about eight months since I found out I was Chair of the Committee we've had five requests for ethical guidance. We've issued four letters of guidance, primarily on previous opinions. One letter of request we did not issue. And the Committee has taken the position that if there is a case already in litigation, and there's a request by an attorney to give ethical guidance on a particular situation that arises in a case, we feel it is the role of the judge to make any ethical determinations as to conflict of interest or any other ethical issues. So for the general membership, if you find yourselves in that position, and this has been a traditional policy of the Ethics Committee, we will refrain from issuing an opinion on a case in progress.

The fifth request we had was with regard to debt collection, ethical responsibilities of attorneys. And I have drafted a proposed opinion based primarily on the work of James Vukelic, who is a member of the Committee. And that will be submitted to the State Bar office to be published in *The Gavel* in the near future.

The two main concerns that have been expressed to our Committee about the activities of attorneys engaged in representing debt collection agencies are the relationship between the attorney and the employees of the debt collection agency and the responsibilities that the attorney takes in supervising whatever work those debt collection people are doing, what kind of negotiations or even if they are conducting negotiations without the attorney's knowledge, perhaps sending out letters, form pleadings, without the attorney carefully reviewing those pleadings before they go out.

The second concern is the advertising of an attorney that is doing work for a collection agency part of the time, is on retainer, but is not employed as full-time counsel by a debt collection agency. What is a proper public image for that attorney to give in his or her general practice of law with regard to debt collection activities?

These are the two primary issues that will be addressed in the opinion that we will publish in the near future. This concern was expressed to us by at least one, and more recently two or three, private practitioners in the state of North Dakota, plus I did get a request from the Disciplinary Board on this issue, and more recently in April I addressed the North Dakota Debt Collectors Association. And the President of that Association, Mr. Chuck Tornhave of Fargo, on behalf of the Association also expressed his concern with some of the agencies in the state that they felt were not living up to their ethical obligations as collection agencies. And he was also concerned about the role of the attorney in making sure that those agencies fulfilled their obligations.

During the year there have been other matters, such as discussing what advertising should go in the *Yellow Pages*, office-sharing arrangements. An office-sharing arrangement an inherent conflict of interest in any future litigation that attorneys who are sharing office space, but not case work, would become involved with? We will be drafting an opinion on this, an informal opinion on this, in the future. Suffice to say, I think the census of the Committee is that if it's purely an office-sharing arrangement, mainly a cost-sharing arrangement, but no sharing of confidential files or covering each others' cases, that there is no conflict of interest between one member of one firm clearly identified as one firm and one member of another firm clearly identified as a member of a separate firm who takes cases such as a defender-prosecutor or two sides of a divorce case.

One of the concerns of younger members of the Committee in the past, and continuing into the present, has been the practical ethical considerations that young attorneys face when they come out of law school. We all know that everyone gets a course in professional responsibility. But it really doesn't prepare a lot of young attorneys for the everyday setting up of trust accounts, dealing with clients and clients' spouses, and business partners, that may come into their office at different points in time. Vance Gillette and Bob Harms, two members of my Committee, have volunteered to be on a subcommittee to draw a rough outline, or perhaps even a pamphlet, that could be disseminated to members of the Young Lawyers Section and any other member of the Bar who would be interested in some of the practical problems they have encountered and how these problems should be resolved. We were hoping to include this in the *Desk Book* that was being done by Dan Twichell's Committee. But since it looks like it will be a while before their *Desk Book* gets off the ground, we are hoping to be able to publish something, even if it is just informational in *The Gavel* and they reproduce copies for interested members of the Bar. That's a project we will be working on in the upcoming year.

Lastly, as you all know, the ABA has started to adopt the new so-called Kutak Code of Professional Responsibility. And the Ethics Committee of the State Bar seems to have rather an undefined role in what the State Bar's input is into the development of the Code of Professional Responsibility for North Dakota attorneys. As we all know, that authority rests with the Supreme Court. And in the past it has been the action of the Attorney Standards Committee of the Supreme Court to make recommendations to the Supreme Court on such Code revisions. I expressed these concerns to the staff of the Supreme Court, discussed them with Mike Rost, and I know Mike discussed it with the Board of Governors. And as a result I have been appointed to be on the Attorney Standards Committee. And I'm hoping this will create at least a start of a liaison between the State Bar Ethics Committee and the Supreme Court Attorney Standards Committee and bring these two very important Committees into some kind of a cooperative arrangement so that the Bar in wanting to self-regulate itself, and to have strong formal input into how the development of the Code of Responsibility is initiated in the state of North Dakota, will become a reality.

And, lastly, one of the biggest problems I encountered as Chair of the Committee this year was that no one on the Committee, including the Chair, had a set of prior Ethics Committee opinions issued by North Dakota Ethics Committees. And it makes it very difficult in trying to maintain some kind of consistency and form opinion issuance not to have those. So Mike Rost went back and found all the information he could, which I distilled, and hopefully there will be enough money in our budget to reproduce prior opinions of the Ethics Committee for all the members of the Ethics Committee so that when I ask my members to give me some input before issuing an opinion or a letter that they will have the same kind of retrospective to utilize as you would expect any Committee with that type of responsibility to have. I'm hoping those can be distributed within the next month or so.

Lastly, I would just like to thank all the members of the Committee this year: Robert Harms, James Vukelic, Jim Britton, Steve Lian, Vance Gillette, Doug Herman. And we also had an ex-officio member of the Committee, Joy Wezelman, who I believe is the ABA Delegate for Ethical Consideration. I really don't know what her title is. But I know she did attend some ABA ethical functions during the past couple of years. And she did attend our meetings. She doesn't have a vote. But her input has been very beneficial to us. And then lastly, of course, Mike

Rost, who has been very instrumental in making sure all the information that we've needed to circulate to members has been circulated.

Right now I'd like to switch hats very quickly and give you a brief summary, as I did last year, on the status of Legal Services, Legal Aid, as it's better known, and Legal Assistance of North Dakota during the past year. During the past two or three years, Congress has not been able to get a reauthorization bill passed and to the President. I reported last year on the many changes in the Legal Services Corporation Act, which is our primary funder, which would impact on the type of services we can deliver to clients. Some of those restrictions were more careful documentation and selection of class actions, further abstention from abortion cases, school desegregation cases, representation of illegal aliens, more lax standard on when courts could award attorney fees against Legal Services Corporation or against a local Legal Services program for bringing an action. In the past it had to be totally frivolous and brought for purposes of harassment. The standard has now been reduced to one of reasonableness. That standard has yet to be defined. This is in pending legislation.

One thing that I think would be very interesting again to the attorneys here in North Dakota is that the Board Composition Provision, which is a rider on our appropriation which has the effect of law now, is that a majority of the attorneys on our Board have to be appointed by a state, county or municipal Bar Association. In interpreting that the Legal Services Corporation says you cannot use a multi-county Bar Association, such as the Lake Region Bar Association or the Missouri Valley Bar Association, you cannot use any kind of a Bar Association other than state, county or municipal. And in our state, and many rural states, many Legal Services programs and many members of the Bar are frustrated because there are a lot of informal multi-county, partial-county Bar Associations that are exempted from having any representation on Legal Services boards.

And, secondly, the State Advisory Council, which are appointed by the Governor, are to be given increased responsibilities to comment on refunding proposals by Legal Services programs, and to comment on any alleged violations of the Act, whether or not those violations were addressed to that Committee initially or went up to Washington and were referred back.

With regard to funding, we are still funded at the level we were funded at a year ago. There have been some moves in Congress to reduce that funding and some moves in Congress to increase that funding. Right now Legal Assistance of North Dakota, which covers fifty of the counties in North Dakota, has six full-time attorneys in our four regional offices. As you can see, we're certainly not overstaffed.

The Congress appears to want to increase funding for Legal Services with the provision that there be continued private Bar involvement in the delivery of legal services. In that context, during the past year, as I reported to you last year, we contracted with the State Bar Association for \$4,000 to run a Legal Services Lawyer Referral Service for those who were involved in divorces, noncontested divorces, and attorneys who would agree to handle those noncontested divorces at a reduced fee. And also those attorneys who would be willing to take the overflow of Social Security cases which have come into our office as a result of the new policy of the Social Security Administration to cease or terminate people who have been on disability for a number of years, particularly those with mental disabilities. That panel has been working. It's been working well. And, as Ron said earlier, we could always use more members, especially in the northern part of the state.

The second area where we've been involved in private Bar involvement is during the past year we've contracted with five attorneys in the southern part of North Dakota to fully handle cases that our offices would otherwise handle, but that are geographically distant areas from our law offices. We have a part-time contract with Joanne Ottmar of Jamestown, we have two part-time contracts with Ron Goodman and Steve McLean in Oakes, and we have two part-time contracts, one with John Holm and one with Robert Keogh in Dickinson. Since our offices in the southern part of the state are Bismarck and Fargo, you can see the benefits of having some private attorneys who would be willing to take things, such as domestic violence cases, Social Security cases, Unemployment Compensation cases, and Welfare cases. We hope to expand the contract into Williston within the next month or so. And then perhaps to the northern part of the state during the next year.

Lastly, we have been working with the State Bar during the past year on Continuing Legal Education. We have one staff person who has experience using video equipment. And during the Trial Advocacy Seminar we donated our equipment and the time of our staff people to do some taping of all the role-playing in one of the sections. And there were two cameras available. So I guess you would say we contributed about fifty percent of the video technical equipment and expertise of that session, which I think played a very important part in making that a successful CLE. And we've also video taped some of the Bar's CLE ETN network presentations so that it would be available in the State Bar office to other people who did not get to hear or see those presentations and would be able to do it through video taping.

I think those are the main things I want to address to you. I also want to remind you that there is a second Legal Services Program here in North Dakota, and that's North Dakota Legal Services at the three Affiliated Tribes Reservations. And then LAND has a contract with the UND Law School here in Grand Forks, that we've had for three years, where we fund one clinical instructor to work with the Legal Education Clinical Program there to help students get some practical experience and also benefit client population. I had a chance to meet with Dean Davis yesterday. We had a very beneficial discussion. And I think the program both for the Law School and for our clients is developing very well.

I thank you for taking your time to listen to me. And I hope I didn't run over too long. Thank you.  
(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Linda. We appreciate very much your hard work on the various committees on which you serve in this Bar Association.

I would next like to introduce again to you Robert Feder, Chairman of the Information and Service Committee for the purpose of reading the memorials.

**MR. ROBERT A. FEDER:** These are the members of our Association who have passed away since our last annual meeting: William T. DePuy of Grafton; Alan Foss of Fargo; M. C. Hiaasen of Minnewaukan; A. J. Pederson of Kenmare; Kenneth G. Pringle of Minot; Lawrence E. Watson of Bismarck; Thelma J. Olsen of Minot; and John A. Zuger of Bismarck.

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**WILLIAM T. DEPUY**

a former candidate for Governor, died in October at the age of 79. A graduate of the UND Law School, Mr. DePuy began his career as an Assistant State's Attorney for Benson County. Later he practiced with his father in Grafton, where he remained until his death.

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**ALAN FOSS**

was born in Christine, North Dakota, in 1921. He was admitted to the Bar in 1948 after graduating from UND School of Law. He passed away on January 3, 1983. A memorial donation has been made in the name of Mr. Foss to the North Dakota Bar Foundation by Robert Dahl.

**M. C. HIAASEN**

of Minnewaukan died on March 1, 1983. Mr. Hiaasen was born in 1902 and admitted to the Bar in 1931. He received his legal education at the University of North Dakota School of Law.

**A. J. PEDERSON**

a long-time Kenmare attorney, died on December 17 at his home at the age of 78. A former Kenmare City Attorney, Mr. Pederson was born in Calumet, Michigan, in 1904. He is survived by his wife, son, daughter and five grandchildren.

**KENNETH G. PRINGLE**

of Minot passed away on April 16, 1983. He was active in Bar activities, having been President of the State Bar Association in 1968. He began practice in 1949 with O. B. Herigstad. A memorial donation has been made in the name of Mr. Pringle to the North Dakota Bar Foundation by the Board of Governors of the State Bar.

**LAWRENCE E. WATSON**

A native of Rugby, Lawrence E. Watson moved to Bismarck in 1952. He served with the North Dakota Workmen's Compensation Bureau from 1958 to 1962, and with Job Service of North Dakota from 1962 to 1981. He was 73.

**THELMA J. OLSEN**

died on October 1, 1982, in Minot at the age of 69. She began her practice in 1939 in Bismarck following graduation from the UND Law School. Mrs. Olsen lived in several places during her lifetime, including Cairo, Egypt. She is survived by her husband, one daughter and two granddaughters.

**JOHN A. ZUGER**

was born in Bismarck in 1913, and admitted to the Bar in 1937. A graduate of the University of Minnesota, he was President of the State Bar Association in 1954-1956. He was currently the Bismarck City Attorney. A memorial contribution has been made in the name of Mr. Zuger to the North Dakota Bar Foundation by the Board of Governors of the State Bar Association.

**PRESIDENT GIERKE:** Thank you, Bob. There will be additional or some biographical information with regard to each of these departed colleagues made a part of the permanent record of this session.

At this point, then, I would ask Dwight Eiken our Secretary-Treasurer to come forward for the purpose of reading some resolutions.

**SECRETARY-TREASURER DWIGHT EIKEN:** President Gierke, members of the Bar Association. The following Resolutions, in accordance with the Bylaws of the Constitution, have been prefiled for consideration and action at this meeting. The first resolution;

**WHEREAS,** certain Section and Division Delegates have sponsored a proposed amendment to the ABA Constitution to alter the composition of the Nominating Committee to provide for the addition of Section Delegates, and Division Delegates; and

**WHEREAS,** the proposed amendment would dramatically alter the nominating mechanism for electing the officers and members of the Board of Governors of the ABA; and

**WHEREAS,** the proposed amendment would substantially enlarge the Nominating Committee by almost fifty percent by adding Section and Division representatives who are not democratically elected, and who serve special or limited interests rather than the general purposes of the organized Bar; and

**WHEREAS,** many of the Section and Division Delegates tend to be concentrated in the Washington, D.C., area and not spread evenly throughout the various states; and

**WHEREAS,** the proposed amendment would significantly dilute the weight which each state and the Commonwealth of Puerto Rico and the District of Columbia now receive through their representation by State Delegates who are democratically elected by secret ballots cast by the individual members of the ABA in each jurisdiction with one nominating vote for each jurisdiction,

**NOW, THEREFORE,** it is hereby resolved that the State Bar Association of North Dakota opposes the proposed amendment to the ABA Constitution which would add Section and Division Delegates to the Nominating Committee of the ABA House of Delegates.

The second resolution which has been prefiled reads as follows:

**WHEREAS,** after careful study and consideration of the budget and sources of income, the Board of Governors of the State Bar Association of North Dakota has determined that an increase in the annual license fee is necessary to maintain the Association and the Bar Board;

**NOW, THEREFORE, BE IT RESOLVED** by the membership of the State Bar Association of North Dakota that the annual license fee for attorneys in the state of North Dakota shall on and after January 1st, 1984, be as follows: Attorneys in practice less than one year, \$147.50; attorneys in practice more than one year but less than five years, \$177.50; attorneys in practice five years or more, \$200.

The final resolution which has been prefiled for consideration reads:

**WHEREAS,** experience has shown that the Client Security Fund of the State Bar Association has not served the purpose for which it was originally formed;

**NOW, THEREFORE, BE IT RESOLVED** by the membership of the State Bar Association that the Client Security Fund be dissolved, and that remaining funds be returned to the General Fund of the Association.

Thank you.

**PRESIDENT GIERKE:** Thank you very much, Dwight.

Mike, do you have any announcements to make at this time?

**EXECUTIVE DIRECTOR ROST:** Have two brief additional announcements.

Immediately following this meeting in this room the Northeast Central Judicial District will hold its meeting.

And you are reminded that beginning at 11 o'clock, and maybe sooner, there will be a reception hosted by the Law School Foundation at the J. Lloyd Stone Alumni Center on campus. And there will be buses leaving at 11:00. But if you want to really get a jump on it you can go over even a little earlier. Thank you.

**PRESIDENT GIERKE:** Yes. Kermit.

**PRESIDENT-ELECT BYE:** The East Central Judicial District Bar Association, which consists of the counties of Steele, Traill and Cass, will be holding their Judicial District Bar Association meeting in this room over here to your left and my right in the foyer part of the room. We have very brief business to conduct. We encourage all the lawyers from those three counties to please stay around and participate. Thank you.

**PRESIDENT GIERKE:** I'd like to thank all of you very much for your attendance and your kind attention this morning. And I would ask that before we recess the meeting that all of you would please rise and in a moment of silent prayer we can pay honor to the memory of those departed colleagues whose names were mentioned and read here by Mr. Feder.

Thank you very much. This Assembly is recessed until 1:30 tomorrow afternoon.  
(Whereupon, the proceedings were recessed at 10:20 A.M.)

**FRIDAY**  
**June 17, 1983**

(Whereupon, the proceedings were continued at 1:50 P.M.)

**PRESIDENT GIERKE:** We'll call the Assembly back to order.

And at this time I'd like to resume the Committee Reports and will call on Bob Vogel of Grand Forks, Chairman of the Pattern Jury Instructions Committee.

**MR. ROBERT VOGEL:** I think our report is printed someplace, isn't it? Well, we have been meeting. And we are working. And we haven't progressed as fast as we thought. We thought we'd have the Criminal Rules ready for this meeting. We haven't. We have about two-thirds of them ready, I believe. And I see we have a budget of \$1,000. If you approve that we should be able to get printed what we will have approved at some time during the next year. And we intend to keep going and finish the Criminal Rules and proceed with the Civil before the next annual meeting.

(Applause.)

**PRESIDENT GIERKE:** Thank you very much, Bob.

Next I'd like to call on Bruce Bohlman, the Indigent Defense Commission. Bruce.

**MR. BRUCE BOHLMAN:** Thank you, President Sparky. Anybody that wants, I'll disregard and ignore any comments from about the fifth row back. Anybody in the first five rows, if you want a copy of the Indigent Defense Procedures and Guidelines, we are pedaling them right now. And there was an announcement in the Newsletter about the availability of the Guidelines. And I will leave some copies here perhaps in the front row. And if you want to pick up a copy, please be sure to do so. These Guidelines were prepared by the Commission and deal, then, with the entire gamut of issues on indigent defense ranging all the way from eligibility for appointment of counsel to payment of attorneys' fees, and also recoupment of attorneys' fees.

We are proud of this product. We feel that the Bar Association can be proud of this product, because it resulted primarily from the study that was done by the Bar Association a couple of years ago which resulted in the formation of this Commission and which has now resulted in the promulgation of these Guidelines. I believe that the Association's also being considered for a Harrison Tweed Award from the American Bar Association for its work in this area. So it is something that we can take some pride in as a Bar Association. I'm proud to be associated with the project. So I believe some copies of the Guideline are here. If you want to pick up one now, that's fine. And if you happen to think of it later you can correspond either with myself or with Larry Spears at the Court Administrator's office in Bismarck. And either one of us will be happy to see that you get your copy as soon as possible. So thank you very much. And I will leave these here. Thank you, Sparky.

(Applause.)

**PRESIDENT GIERKE:** Is Joe Michael of Bismarck here? Okay. Joe is the Chairman of the Business Incorporation Section. And he has filed a written report.

Dave Wanner, West Fargo, Chairman of the Real Property, Probate and Trust Section? Okay. He also, I believe, has filed a written report. And I think we covered yesterday on different areas some of the legislation that this Section proposed and was successful in getting passed.

Next on my list is Phil Johnson, Fargo, Chairman of the Board of Directors of the North Dakota Bar Foundation. Phil, do you want to put in a pitch?

In case you guys hadn't noticed he's got a trophy here.

**MR. J. PHILIP JOHNSON:** It's only an excess of modesty that prevents me from calling attention to this trophy which I brought along. I will finally have something to show my children.

I think many of you have seen the brochures which are now available on the sign that was in the registration area with respect to the North Dakota Bar Foundation. As you were no doubt aware, the Foundation was formed and incorporated in April of 1982 as a result of a Special Study Committee initiated by President Paul Kloster. And many of the members of the initial Committee were included as the organizing Board of Directors, and that included Joel Gilbertson of Bismarck, Garry Pearson of Grand Forks, Dave Walker of Valley City, Vern Neff of Williston, Dick Olson of Minot, Arne Boyum of Rolla, myself, Judge Paul Berger of Dickinson, and Chief Justice Erickstad.

The Foundation has subsequently had several organizational sessions in which we have proceeded with the process of adopting bylaws and electing officers. I think I was absent at one of those meetings, which is one of the reasons that I was Chairman. I served initially as Chairman of the Foundation, Joel Gilbertson as Vice-Chairman, and Mike Rost our Secretary-Treasurer serves automatically as Secretary-Treasurer of the Foundation in addition to the Executive Director of the Bar.

The Foundation also, through the auspices of Garry Pearson, who doesn't spend his entire professional life playing golf, submitted an application and received an initial determination as to tax exempt status from the Internal Revenue Service in December of this last year. And on that basis we have commenced the initial activities of the Foundation. We had anticipated that a sum in excess of \$30,000 would be, by action of the Board of

Directors, would be transferred from our former life insurance carrier Union Central Life. Unfortunately, the relationship with our former carrier seems to be not as satisfactory as with our present carrier. And there has been some misunderstanding with respect to those funds. And that matter is presently likely to be in litigation. So that some of the initial operating funds for the Foundation are not presently available. We have received membership contributions from a number of lawyers. And also a major contribution in the form of \$4,000 from legal assistants designed primarily for programs in the area of poverty law. But I will hope that you take a look at the informational brochure of the Foundation and seriously consider in your will or other legal documents keeping track of the Foundation since we now have a vehicle for dealing with educational and charitable programs related to the law in the state of North Dakota. A number of states have foundations, and they've been quite successful in dealing with projects that otherwise perhaps wouldn't get performed.

The new Chairman of the Foundation for the following year will be Paul Kloster. And I'm sure Paul will be in touch with some of you in regard to future activities of the North Dakota Bar Foundation. We look forward to I think developing such areas as memorial funds that could be dedicated as need be for special purposes. And I'm sure the Foundation would consider designated bequests in addition to undesignated. And I hope that in the future you may keep this in mind and perhaps suggest to the Board the Foundation projects that may be appropriate for future activities. We intend to work closely in the immediate future with law-related education and some Law School projects. But we will expand as money and time allow.

Thank you.  
(Applause.)

PRESIDENT GIERKE: Thank you, Phil.

At this time I'd like to introduce to you for the purpose of presenting his budget for the ensuing year, as well as giving us a report on the Fee Arbitration Committee, your President-Elect, Kermit Bye.

PRESIDENT-ELECT BYE: Thank you, Sparky.

A very brief report on Fee Arbitration. As most of you will recall, in previous annual meetings we've set up machinery, adopted rules for a system of fee arbitration attempting to provide yet another alternative between lawyers and clients where the matter of fee comes in dispute. The machinery was put into motion and the fee arbitration system officially began on November 1 of 1981. And, as many of you will recall, we reported at last year's annual meeting that during the first six months of operation six nonlawyer clients and five lawyers had requested that the fee arbitration system be brought into play to resolve a dispute.

During this past year now, from July 1 up through the present time in June of this year, I'm advised by the office that there have been a total of twenty-four requests. And these requests have largely been specific requests for the forms wanting to know information about the fee arbitration system. And of the twenty-four requests that have been made there have been that many packets of information sent out. By and large, these requests have been by clients who have heard about the fee arbitration system. During this past year of the twenty-four requests eight cases actually went to fee arbitration. That is where the lawyer and the client voluntarily agreed to have the matter submitted to an arbitration panel. Of the eight cases that actually went to arbitration, five of them were completed through the decision-making process and a result rendered by the arbitration panel. Two cases fell through the cracks somewhere during the process after the arbitration agreement was entered into. Hopefully the attorney and the client were able to resolve their dispute without the use of the arbitration panel. And as of the present time there is one case still pending. In talking to Barb Cichy, who has been the staff person who has worked with Mike Rost on this, she indicates that there seems to be a good acceptance of this system. We attempted to keep the rules purposely simple and straightforward so that a client wouldn't have to necessarily feel he'd have to engage yet another lawyer to get involved in the process.

The Committee really has no recommendation to make any changes. The system seems to be working. And the old adage, "Don't try to fix something that isn't broken," probably should apply, at least for another year. So I think, and I would hope, that this method of settling disputes between attorneys and clients as it relates to fees will continue to be used where necessary. I think one of the side benefits of this is that it does take some of the load off the Inquiry Committee and the disciplinary machinery.

I would like to thank the committee members who have served with me this year on the Fee Arbitration Committee. I'll be done as Chairman. We'll be making some new appointments to the Committee. I'll have to say, in all honesty, it's not a committee that meets every month. We hold one meeting a year, and try to tie it in during the annual meeting. So if there is anybody that would be interested in serving on that Committee, why please let me know. We'll take your name into consideration when we make appointments for the coming year. So much for Fee Arbitration.

The next matter that I'm going to get into is the budget for 1983 and 1984. In the back of the room on the table, Judge Smith is carefully guarding them, are copies of the proposed budget for 1983 and 1984. And if you haven't obtained one, please do so so you have an opportunity to look it over.

I might point out that the budget-making process consists of working with the staff of the Bar Association, our Comptroller, Bea Mertz; our Executive Director, Mike Rost; and also the President, Sparky Gierke; and myself. We went through the budget quite carefully, spent a considerable amount of time on it, and came up with a budget this year which, if adopted by this General Assembly meeting, would mean that we would approve expenditures of \$257,150.

I might point out that in some categories the amount budgeted is not spent. There's also the converse of that, and that being that there are some items that you cannot always adequately budget for at the beginning of a year. Some committee, for example, may be involved in some controversial or sensitive matter which requires additional meetings. By and large, this budget is pretty much the same as the budget for last year. Those of you who remember what last year's budget of \$210,000 was will say, "Well, I don't think \$210,000, \$257,000 are the same." I do have an answer for that, and the answer is this: We have attempted for the first time in the history of the State Bar Association of North Dakota to pull all the items of money, whether it be income or expense, to come through this budget and to be reflected on our books and records. And just about a \$45,000 difference between last year's budget and this year's budget is reflected in that last year's budget we did not provide for anticipated expenditures for Continuing Legal Education. They were accounted for separately. But we have felt that to be responsible fiscally we should attempt to report all items on one budget. So taking that into account, and taking Continuing Legal Education, anticipated expenditures, into play this year, we have come up with a \$257,000 slightly plus budget.

As you will notice, there are forty-three items. Forty-three separate categories. I just counted that in twenty-one of those we continued the budget in exactly the same dollar amount as this past year, in twenty items we

provided an increase, and in two we provided a decrease.

The increases were mostly in the area of providing for travel for the work of the various committees. Those costs have gone up some. And we've attempted to more accurately reflect what has been spent in the recent year concerning travel. The Bar Association I still think has one of the very best and modest travel expense allowances of any organization that I know. Reimbursement for mileage is at the rate of twenty cents. If you do travel and are gone away from home where you're entitled to meals I think the allowance for a total day, whether it's in-state or out-of-state, is fifteen dollars. We're not proposing any changes in that area. Keeping them the same as they've been for a number of years.

So that is the budget. After myself and Sparky went over it with the staff, we did present it to the Board of Governors at the May meeting. And I am pleased to report that the Board of Governors unanimously adopted this budget. And we hope that you will do likewise.

I'll be more than pleased to attempt to answer any questions you may have with reference thereto. If you don't have any questions, why I would move the adoption of this budget as I have briefly described it to you and as has been submitted here on the printed form that's been handed out.

**JUDGE EUGENE A. BURDICK:** I notice you have for Pattern Jury Instructions \$1,000. If they are published in their entirety during the next year this may come to considerably more than that. I'm not sure about your reimbursement. Are you going to sell them or how are you going to handle that?

**PRESIDENT-ELECT BYE:** Yes, Judge Burdick, we would plan to sell those, as we have done in the past. The \$1,000 item for Pattern Jury Instructions is the exact same amount as it was last year. If this revision is made, and we have every reasonable anticipation that it will be made, we will print them. And we would hope that the costs will at least be covered by the income and it will net out. But in an effort not to try to be a crystal ball gazer on that item, we left it at the same. That was the reason for it.

**JUDGE FRANK J. KOSANDA:** You did show \$700 income on that, too.

**PRESIDENT-ELECT BYE:** Yes. Right. However, I don't think you will find an offsetting expense in this particular budget, because that was paid for in a different accounting period. And so we only had income. That makes us look a little better than it probably actually is.

**MR. ROBERT A. FIEDLER:** Second the motion.

**PRESIDENT-ELECT BYE:** Judge Hunke had a question. Then we'll entertain that second of the motion.

**JUDGE MAURICE HUNKE:** I would just as soon discuss it after that second anyway.

**PRESIDENT-ELECT BYE:** Okay. Then we'll entertain Bob's seconding of the adoption of the report.

**JUDGE HUNKE:** If we're going to vote on the budget now, what license fee structure does the projected income reflect?

**PRESIDENT-ELECT BYE:** Basically if you were to adopt this budget we would also hope that you would consider increasing our dues. And, as you know, there's a resolution that is presently pending and will be voted upon this afternoon, also, which leaves the initial license fee exactly the same at forty dollars, increases by fifty dollars the other three categories; raising the first full year from \$7.50 to 147.50; one to five years 127.50 to 177.50; and more than five years from \$150 to 200. Also leaving the same what's called an inactive Bar Membership fee that applies to those persons who have retired but wish to maintain their affiliation with the Bar Association, and that fee is seventy-five dollars a year. And that one will remain the same.

The income, as you know, from these Bar licenses is apportioned approximately eighty percent to the State Bar Association, twenty percent to the State Bar Board. We are projecting, and you'll notice in the projected income section, license fees of \$187,000. And, as you can see, it's by far and away the largest item of income that we have.

Does that answer your question? Or do you want to know if we've got an income from Bar license fees last year, for example?

**JUDGE HUNKE:** No, that answers my question.

**PRESIDENT GIERKE:** Okay. Thank you very much, Kermit. We have a motion, a second, to approve the budget as submitted by President-Elect Bye. Is there any further discussion? All in favor signify by saying aye. Opposed? Carried. Thank you.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

**PRESIDENT GIERKE:** Having voted at this point to spend the money, I guess I would like to have Wes Argue, the Chairman of the Resolutions Committee, at this time bring before the Assembly the resolution with regard to the increase in license fees.

**MR. WESLEY ARGUE:** Mr. Chairman, there have been three prefiled resolutions that were previously read; one of them is the resolution on the increase in fees, and is as follows:

WHEREAS, after careful study and consideration of the budget and sources of income, the Board of Governors of the State Bar Association of North Dakota, have determined that an increase in the annual license fee is necessary to maintain the Association and the Bar Board;

NOW, THEREFORE, BE IT RESOLVED by the membership of the State Bar Association of North Dakota that the annual license fee for attorneys in the state of North Dakota shall on and after January 1st, 1984, be as follows: Attorneys in practice less than one year, \$147.50; attorneys in practice more than one year, but less than five years, \$177.50; and attorneys in practice five years or more, \$200.

The Resolutions Committee moves the adoption of this resolution.

**MR. ROBERT A. FIEDLER:** Second.

**PRESIDENT GIERKE:** Seconded by Bob Fiedler.

I guess I would like to remind you at this point that anybody who wishes to speak, we'd like to have you rise, give your name and your hometown.

Is there any discussion on the resolution? All in favor signify by saying aye. Opposed?

The aye's have it. Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

**PRESIDENT GIERKE:** Wes, would you like to continue with the reading of the resolutions?

MR. WES ARGUE: Second prefiled resolution deals with makeup of the division of delegates at the ABA Convention as follows:

WHEREAS, certain Section and Division Delegates have sponsored a proposed Amendment to the ABA Constitution to alter the composition of the Nominating Committee to provide for the addition of Section Delegates and Division Delegates; and

WHEREAS, the proposed Amendment would dramatically alter the nominating mechanism for electing the officers and members of the Board of Governors of the ABA; and

WHEREAS, the proposed amendment would substantially enlarge the Nominating Committee by almost fifty percent by adding Section and Division Representatives who are not democratically elected and serve special or limited interests rather than the general purpose of the organized Bar; and

WHEREAS, many of the Section and Division Delegates tend to be concentrated in the Washington, D.C., area and not spread evenly throughout the various states; and

WHEREAS, the sponsored amendment would significantly dilute the weight which each state and the Commonwealth of Puerto Rico and the District of Columbia now receive through the representation by State Delegates who are democratically elected by secret ballots cast by members of the ABA in each jurisdiction with one nominating vote for each jurisdiction;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the North Dakota State Bar Association opposes the proposed Amendment of the ABA Constitution which would add Section and Division Delegates to the Nominating Committee of the ABA House of Delegates.

Mr. Chairman, the Nominating Committee moves the adoption of this resolution.

PRESIDENT GIERKE: Is there a second to the motion?

JUDGE JON R. KERIAN: Second.

PRESIDENT GIERKE: Second. Judge Kerian. Any discussion? All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

MR. WESLEY ARGUE: The third prefiled resolution.

WHEREAS, experience has shown that the Client Security Fund of the State Bar Association does not serve the purpose for which it was originally formed;

NOW, THEREFORE, BE IT RESOLVED by the membership of the State Bar Association that the Client Security Fund be dissolved, that remaining funds be returned to the General Fund of the Association.

Mr. Chairman, the Resolutions Committee moves the adoption of this resolution.

PRESIDENT GIERKE: Very well. Is there a second to the motion?

MR. DWIGHT EIKEN: Dwight Eiken.

PRESIDENT GIERKE: Second. Dwight Eiken, Williston. Any discussion on the motion? Orlin Backes.

MR. ORLIN BACKES: How much is in the fund now?

PRESIDENT-ELECT BYE: About \$26,000.

JUDGE EUGENE A. BURDICK: Are any claims pending?

PRESIDENT GIERKE: I don't believe that we have any pending claims at this time.

JUDGE KERIAN: Mr. President.

PRESIDENT GIERKE: Yes.

JUDGE KERIAN: What was the purpose of the Security Fund and why is it not doing its job?

PRESIDENT GIERKE: Well, I'll speak to that briefly. And perhaps Jack Sherman, who has been working very closely and put in a lot of hours on it, can amplify what comments I would make. The purpose of it is to provide a fund to reimburse a client for his loss of funds as a result of dishonest conduct on the part of the lawyer; such as embezzlement of funds from a trust account. That just being one example. And I think it was somewhat of a public relations effort on the part of the Bar Association. And it seems that what we're witnessing is claims being made for things that would be better handled as a fee arbitration problem, or being filed on a matter that perhaps constitutes legal malpractice. And because of the narrow nature of the fund we're having to turn down many of the claims. And probably are ending up with negative net results as far as public relations are concerned. Now that's what comment I would have in response, Judge. And if you'd like to hear more response, I'm sure Jack Sherman would be able to do so. Yes, sir.

JUDGE KERIAN: President Gierke, I know of only two times when the fund has been utilized. And in both instances the parties, the lawyers, did not have insurance. I believe they were both deceased at the time that the claims were made, that the discovery, in fact, was made, that perhaps they had taken or embezzled monies belonging to a client. They left no estate. And here were these clients that were entitled to money. And the fund has paid them. I think that to dissolve this is fine if we are going to require everybody that is to be licensed to practice law to maintain malpractice insurance or to keep aside their own funds in case a claim is made for which they must pay out for their wrongdoing. But I think that the fund is important and should stay even though it may be onerous and burdensome to maintain and to perhaps answer people or sift through the claims to see whether or not there are such claims as should be paid by the fund. I think the fund is important, if for no other reason, than public relations. But I think it is a bandage of trust that we present to the public and therefore these few instances where the fund can be a source to pay for somebody's wrongdoing, criminality, I think it should be maintained.

PRESIDENT GIERKE: Yes. Jack. Jack Sherman. Why don't you come up?

MR. JACK SHERMAN: If I might respond to some of those inquiries. I think that, first of all, so far as malpractice claims are concerned, that's not what we're talking about. It may be that a lot of the claims filed are more on a malpractice basis than as to fraud or other dishonest conduct. And so mandatory malpractice insurance doesn't have anything to do with it.

I suppose that you could consider the possibility of requiring every lawyer in the state to carry a fidelity bond. But I think that that might be resented by many of the lawyers that consider themselves to be honest.

I think that one of the real problems is the matter of investigation of these claims. We have been finding that

many of them arise out of matters that have already been considered by the Disciplinary Board. The Disciplinary Board files, however, are confidential. And so, consequently, we have to start from Square 1 with our investigation. And that administration, I think, is one of the most serious problems that is presented.

MR. RICHARD H. MC GEE: What have the other states done on this? A couple years ago this was a big thing all through the nation. Actually it got started back when Herb Nilles was President of our organization. And it started out and that was the beginning of our Client Security Fund. I think we started out then with 10,000. You say it's up to now, what, 20,000?

PRESIDENT GIERKE: Over twenty-seven in the fund.

MR. MC GEE: You have a certain amount of appeal. And we went through it. And Bars throughout the nation have pretty well followed. I just wondered what the other Bars have done. Why are we drifting away from this?

MR. SHERMAN: Why don't you go ahead with that, Phil.

PRESIDENT GIERKE: Phil, would you like to address this issue and perhaps respond to Dick's comment.

MR. J. PHILIP JOHNSON: May I borrow the lectern?

PRESIDENT GIERKE: Absolutely. Forgot your trophy.

MR. JOHNSON: Watch it for me, will you, Bob?

MR. ROBERT A. FIEDLER: I will.

MR. JOHNSON: I would rise to respond to the question about what other Bars are doing. And I would also rise to oppose the resolution. I, as a member of the Board, I voted on this motion, and I voted to oppose the idea of abolishing the fund. I think that there are forty-odd Bars that have Client Security Funds in the United States. Forty-odd State Bar Associations. And we are a member of that group. So the concept has rather broad appeal and substantial history. I think I can appreciate the concern and the frustration that brought this about in that we had a couple of particularly difficult claims that involved some extensive investigation and difficult parties to deal with. And the members that were associated with those investigations felt an understandable sense of frustration and a lack of satisfaction that we were accomplishing anything.

However, the history of the fund has not been such that we have an overabundance of claims. We have had several in recent years, and several that have been paid and I think are entirely justifiable. I think the fund can be, by tightening up our rules, which was one of the suggestions, and limiting the amount allowable on particular claims, I think we can deal with the problem and provide a recourse for people that have justifiable problems; where lawyers have dealt with them in a less than professional fashion where there have been essentially acts of dishonesty. And I think we all should accept some responsibility for that. And I think it comes under our category of self-regulation rather than asking the state to adopt any requirement that all the lawyers be bonded or something of that sort. I think the overall experience of the Client Security Fund has been satisfactory.

There was a question as to whether there was liability that would attach to Bar Association beyond the fund. And I think the history of those that have been involved is that there have been no cases where there has been liability in excess of the assets of the fund as long as the rules were sufficiently specific in that regard.

PRESIDENT GIERKE: Okay. Thank you very much, Phil.

JUDGE FRANK J. KOSANDA: President Gierke, I would like to ask a question. It's been some seven years since I had to purchase a malpractice policy. But I'm wondering now suppose an attorney does take funds from his trust fund that properly belongs to a client. Now is that type of fraud, is that covered under a malpractice policy? Policy is nothing more than a contract. Or is that an exception to malpractice? Does it have to be something else?

PRESIDENT GIERKE: I think that that would be not covered by the normal malpractice.

JUDGE KOSANDA: You'd have to have a special rider or clause in order to have that situation covered? I can see you could get the policy, promptly take the money, and then it would be the carrier's problem as to how to recover it.

PRESIDENT GIERKE: Judge Burdick.

JUDGE EUGENE A. BURDICK: How is this fund funded in the first place?

PRESIDENT GIERKE: Kermit, do you know the answer to that question?

MR. MC GEE: We fund it out of the Bar Association by setting aside a certain sum each year. I think we started with ten, built it on up to twenty.

JUDGE BURDICK: Then could I ask why this couldn't be a line item in the budget of the Executive Committee to cover future claims? Can you answer that question?

PRESIDENT GIERKE: Well, I think that it — you know, it can be. The question before the Assembly, of course, is whether or not we want to continue to have the fund.

JUDGE BURDICK: Well, that isn't quite it. Because if it can be a line item in the normal budget of the Association there may not be any need to have it as a separate deposit fund.

PRESIDENT-ELECT BYE: Let me speak to that, if I could.

PRESIDENT GIERKE: Kermit.

PRESIDENT-ELECT BYE: Possibly in attempting to answer Judge Burdick's question about if we could provide some amount of money annually in the budget to cover potential claims for client security, I can say this; there is a brand new product coming out in the insurance industry that's going to cover this very situation. We had a presentation made to us just very recently by Northwestern National Life of Milwaukee. Still in the very infancy stages. They haven't exactly come up with a policy. But they are willing to work with each State Bar Association in designing a policy that will address this very issue of client security.

It would be my view that if we don't want to get totally out of the client security business we may want to take a look at having the matter underwritten by a reliable insurance company. And if we should choose to do that, I would say let's not abandon this fund at this time. We have this twenty-three, four, five, six thousand dollars in place. It's earning money. And aside from the public relation value, I think we would be going backwards in what I consider to be a very progressive Bar, and one that's always been at the forefront of having clients and their

interests in mind.

MR. MC GEE: Mr. President, I would move that we defer this to the 1984 Annual Meeting.

JUDGE KOSANDA: Second the motion.

JUDGE VERNON R. PEDERSON: What was the motion, please?

PRESIDENT GIERKE: There was a motion to table, in essence.

MR. MC GEE: Until the 1984 Annual Meeting.

PRESIDENT GIERKE: Dick McGee, Minot. Seconded by Judge Kosanda, Grand Forks.

JUDGE MAURICE HUNKE: Maurice Hunke from Dickinson. This gives me some concern, this whole issue on the amendment to the motion, if that's what it is. I have some doubt whether that's appropriate. Instead perhaps some committee of the Association should study it during the year and report to the next Annual Meeting. Having recently been on the Board, I normally would support anything they propose. Because I know how difficult the issues they have are to deal with. And we even trust management of our Association to them. But I had some involvement with the Client Security Fund, perhaps more emotional and romantic than would be appropriate. And that's why I would like to have some kind of a study by some committee before I vote on it. This came into existence the same year that I was licensed. It was adopted at the first convention that I went to. Everybody felt good about it at the time. Certainly it was received very favorably by the press at that time. There haven't been many claims through the years. Before we abandon it I would like to know more about it. I simply make these comments. Mr. McGee, I think simply to take it up next year at the next meeting we should have a committee, perhaps the Information and Service Committee, I don't know which one would be most appropriate, to study it and give us a report so we know more about it.

PRESIDENT GIERKE: Very well.

MR. MC GEE: I'd have no objection to include in my motion that the Chair, the incoming President, appoint a committee to study this and report back at the Annual Meeting in 1984 as Judge Hunke has indicated that he would like in the motion. I certainly would have no objection to that motion.

JUDGE KOSANDA: Second. I have no objection to that, either.

PRESIDENT GIERKE: Very well. The motion has been made and seconded, then, to defer action on this resolution until the 1984 meeting.

Is there any further discussion on the motion to defer?

JUDGE HUNKE: Point of order. I thought we had a motion to adopt the resolution.

JUDGE BURDICK: A motion to defer it.

JUDGE HUNKE: Now we have the second.

PRESIDENT GIERKE: It's time for you to shine, Randy.

PARLIAMENTARIAN RANDY LEE: It's quite clear that a motion to postpone definitely or to refer to committee takes precedence over the main motion.  
(Applause.)

PRESIDENT GIERKE: Is it debatable? That is another question.

PARLIAMENTARIAN LEE: That's the next column. It is debatable. Both are debatable.

PRESIDENT GIERKE: Very well. Well, is there any further debate? Ted Kessel. Yes.

MR. THEODORE F. KESSEL: Ted Kessel, LaMoure. In the event that a claim is made and the Commission turns it down is there any liability on that by the party that was turned down against this Commission or against the Bar Board?

PRESIDENT GIERKE: Well, I think we might find out before the year's over with.

MR. ORLIN BACKES: Does it provide for a certain limitation per claim?

PRESIDENT GIERKE: Yes. I think our limit is \$10,000.

JUDGE HUNKE: Well, it is completely discretionary with the Board of Governors, however, isn't it? The Board may turn down any claim for whatever reason, including arbitrary reasons. It is not a right that is established for anyone. It's a conscience-salving type of thing.

PRESIDENT GIERKE: That's the position we're taking.

All in favor of the motion to defer until next year signify by saying aye. Opposed? Very well.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

PRESIDENT GIERKE: Wes, you have some additional resolutions?

MR. WESLEY ARGUE: Yes. The rest of the resolutions we have are a lot more controversial than the last one. The Resolutions Committee consisted of three people; Vern Neff, Paul Kloster, and myself. We had two resolutions presented that we threw out; one was to commend the legislature for its adjournment, the other one was one that I presented that would prohibit Garry Pearson from teaching a lady friend of mine how to putt on the dance floor. Neither one was accepted.

Mr. Chairman:

WHEREAS, the City of Grand Forks has most graciously welcomed the lawyers and Judges of North Dakota; and

WHEREAS, the members of the Grand Forks Bar have royally hosted the lawyers and Judges of North Dakota; and

WHEREAS, the University of North Dakota; its President, Thomas Clifford; the School of Law; and its Dean, Jeremy Davis; and its faculty have extended their gracious hospitality and made facilities available for various meetings of the Association, all of which has intellectually and culturally enriched the program and the entertainment of the Annual Meeting;

WHEREAS, Dean Jeremy Davis has emphasized the great spirit of cooperation that exists between the Bar Association and the Law School;

NOW, THEREFORE, BE IT RESOLVED by the members of the State Bar Association of North Dakota. the

City of Grand Forks, the members of the Grand Forks Bar, the University of North Dakota, and the UND School of Law be extended our gratitude and appreciation for their hospitality and friendship for hosting this 83rd Annual Meeting;

BE IT FURTHER RESOLVED that copies of this resolution be mailed to Mayor H. C. Wessman, President Thomas Clifford, Dean Jeremy Davis, Gary Lawrence, President of the Northeast Central Judicial District, Garry Pearson, President of the Greater Grand Forks Bar Association.

Resolutions Committee moves the adoption of the resolution.

PRESIDENT GIERKE: Second to the motion?

MR. J. PHILIP JOHNSON: Second.

PRESIDENT GIERKE: Phil Johnson, Fargo. All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

MR. WESLEY ARGUE: Resolution number two.

WHEREAS, we have an old friend who has rendered a century of service to the citizens of North Dakota and to the members of the North Dakota State Bar Association; and

WHEREAS, it has been a pleasure to participate in a part of the festivities presented by that old friend;

NOW, THEREFORE, BE IT RESOLVED that the State Bar Association of North Dakota wish the University of North Dakota a Happy 100th Birthday.

(Applause.)

MR. WESLEY ARGUE: I move the adoption of the resolution.

PRESIDENT GIERKE: Is there a second?

MR. ROBERT A. FIEDLER: Second.

PRESIDENT GIERKE: Second. Bob Fiedler. All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

MR. WESLEY ARGUE: Ray Rund, how about singing Happy Birthday?

MR. RAYMOND RUND: Bob seconded it. Let him sing the song.

MR. WESLEY ARGUE: WHEREAS, H. F. "Sparky" Gierke, III has dedicated the greater portion of the last two years toward the development and improvement of the State Bar Association of North Dakota; and

WHEREAS, H. F. "Sparky" Gierke, III has been totally committed to our great profession; and

WHEREAS, his lovely wife Judy has been totally supportive and has dedicated considerable of her time and effort toward the endeavors of her husband;

WHEREAS, his rational guidance and wisdom in moderation have assisted in charting the course the Bar Association has taken the past two years and will take in the future; and

WHEREAS, the service rendered by H. F. "Sparky" Gierke and Judy were rendered to the Bar Convention at great personal sacrifice;

NOW, THEREFORE, BE IT RESOLVED that the State Bar Association of North Dakota by these presence does express its heartfelt thanks and appreciation of unsteady service and devotion to the public service made by H. F. "Sparky" Gierke and his wife Judy.

President-Elect Bye, I would move the adoption of this resolution. Ask it to be unanimously adopted.

PRESIDENT-ELECT BYE: Is there a second?

MR. GARY W. LAWRENCE: Second.

PRESIDENT-ELECT BYE: Gary Lawrence.

All in favor? Any discussion? If not, all in favor signify by saying aye. Opposed? Opposite sign nay. Motion carried.

(Whereupon, the motion was presented by President-Elect Bye and passed by the General Assembly.)

PRESIDENT GIERKE: I thought there might appropriately be some discussion there, particularly with the part that dealt with moderation. That resolution must have been written before last night.

MR. WESLEY ARGUE: That ends the report.

PRESIDENT GIERKE: Okay. Thank you very much, Wes.

And thank all of you very much for that kind resolution.

Are there any further matters to be taken up outside of the elections? The schedule calls for a break at about three o'clock or 3:10, and election of officers to take place at 3:30. I would just as soon move into that except for the fact that I think that one of the candidates is — I don't believe he's present. Is Dave Bailly here?

MR. J. PHILIP JOHNSON: He will be absent.

MR. RICHARD H. MC GEE: Three o'clock for that election Mr. President?

PRESIDENT GIERKE: Is it on there three o'clock?

MR. MC GEE: Three p.m. in mine.

PRESIDENT GIERKE: This schedule that I'm working off here shows 3:30. Three o'clock. Are there any other matters to be considered at this time?

MR. ROBERT E. KLEVE: I'm curious about one thing — the membership outside of the state. In other words, the inactive status group. Those people who are not in the state and belong to the Association. Do I understand that it's seventy-five dollars for that?

PRESIDENT GIERKE: I believe that's correct.

MR. KLEVE: What I'm curious about, I have looked it over, and it's been some time since I graduated from law school, and it seems to me it's somewhat sparse. Now I know some jurisdictions where that same type of fee would be around twenty-five dollars. My point is perhaps you're burdening certain areas by an excessive fee, and

that may be one of 'em. I would think that there should be more graduates or law students. I don't have it in front of me. Perhaps Dean Davis could provide me with that information. I would think there would be more belonging to that if perhaps the fee were on the order of, say, twenty-five dollars, as I know some of your dues are. Rather small thing. But it would seem to me that — I don't know, how many graduates do we have from the Law School in a year? I know that I could go down that list and pick out too many of them, which means to me that there is an awful lot that don't belong. My point is that I would like to perhaps pursue that end of it as to whether it might be advisable at some future time to consider lowering the fee as to those persons in the hope that perhaps by lowering the fee you might do like Northwest Orient Airlines did and perhaps increase the business. That's my point. I don't know. I think it might be worth your time.

PRESIDENT GIERKE: Sir, would you state your name?

MR. KLEVE: My name is Robert Kleve. I live here in Grand Forks. I would like, if this could be, that such an issue be pursued perhaps by one of your committees in the following year. It seems to me that too few people belong to the out-of-state.

PRESIDENT GIERKE: Thank you very much. And I'm sure it's a matter which President Bye will consider this coming year.

Anything further to come before the Assembly before we break here prior to the elections? If not, we'll just recess for ten minutes and come back in and have the elections at three o'clock.

(Whereupon, the proceedings recessed from 2:47 to 3:10 p.m.)

PRESIDENT GIERKE: Okay. We'll call the meeting back to order.

Before proceeding with the elections I'd like to thank Norman Mark, Fargo, for his reporting service.

And I also would like to acknowledge Judge Joel Medd who served as liaison between the Law School Research Committee and the Board of Governors and did an excellent job of keeping us informed as to the progress of the Committee. Thank you very much, Judge.

At this time we'll open the nominations for the office of Secretary-Treasurer.

MR. RICHARD H. MC GEE: Mr. President.

PRESIDENT GIERKE: For Secretary-Treasurer.

MR. MC GEE: Oh.

PRESIDENT GIERKE: Dick is ready, I think.

MR. J. PHILIP JOHNSON: Mr. President, distinguished members of the General Assembly of the 83rd Annual Meeting of the State Bar Association of North Dakota. I have fourteen pages of qualifications for this gentleman. And I will restrict that substantially. It is my pleasure to rise to nominate for the office of Secretary-Treasurer Dave Bailly of Fargo, a young man with an excess of energy and community and professional dedication. If there is any organization that Dave has omitted involvement with, I'm unaware of it. But I think many of you are aware that he chaired the Annual Meeting in Fargo a couple years ago and did an outstanding job. And I think that's just one example of his talents. He is presently Chairman of the Young Lawyers Section. And Dave couldn't be here this afternoon because he had to leave to attend a wedding. But I will vouch for his dedication and ability. And I'm pleased to place in nomination the name of David Bailly.

PRESIDENT GIERKE: Thank you, Phil.

Is there a second to the nomination?

MR. WILLIAM L. GUY, III: Second.

PRESIDENT GIERKE: Second. Bill Guy.

Are there any further nominations? Are there any further nominations?

MR. PAUL G. KLOSTER: Move the rules be suspended and the steam roller applied.

MR. ROBERT A. FIEDLER: Second.

PRESIDENT GIERKE: Very well. We have a motion for the steam roller made by Paul Kloster.

MR. ROBERT A. FIEDLER: Second.

PRESIDENT GIERKE: Seconded by Bob Fiedler. All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

PRESIDENT GIERKE: Are you ready to go?

MR. RICHARD H. MC GEE: I'm ready.

PRESIDENT GIERKE: Very well. We will ask for nominations for the office of President-Elect. Dick McGee of Minot.

MR. MC GEE: Mr. President, members of the Association. I'm not as flowery as that previous nominating speaker that just got off the podium here. I guess I taught him too well years ago.

But, anyway, it is my pleasure and privilege to place in nomination Orlin Backes for the President-Elect of your Association for the year 1983-84. Orlin has been a member of the North Dakota Bar Association for twenty years. His current dues are paid. The office paid for them. He comes from Glenburn, North Dakota. He's active in just about everything you can think of. He's the Past President of our Chamber of Commerce out there, he's a past Lion's President, he's mixed up in the Souris River project and a bunch of other things. And he's been very active as a lawyer. I believe him to be a good lawyer. I believe he would make an excellent President for your Association. And sincerely it is that I place in nomination and ask your election as President-Elect, Orlin Backes. Thank you.

(Applause.)

PRESIDENT GIERKE: Thank you very much, Dick. The Chair recognizes Al Wolf.

MR. ALBERT A. WOLF: Mr. President, if there was a job description for the office of President-Elect of the Association it would probably include most of the attributes that Orlin Backes has. With that thought in mind, it's an honor for me to second the nomination of Orlin Backes for President-Elect of our Association.

PRESIDENT GIERKE: Thank you very much, Al.

(Applause.)

MR. ROBERT A. FIEDLER: Mr. President, I move that the nominations be closed, the rules suspended and a unanimous ballot cast for Orlin Backes.

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

MR. JACK SHERMAN: Second.

PRESIDENT GIERKE: Seconded by Jack Sherman, Dickinson. All in favor signify by — Judge Hunke.

JUDGE MAURICE HUNKE: I want to know if the candidate has any plans to change the name of our Association.

MR. ORLIN BACKES: We'll find out when the Supreme Court rules.

JUDGE BURDICK: Point of order, Mr. President. I think you have to ask for further nominations before you can consider that motion.

PRESIDENT GIERKE: Okay. Are there any further nominations?

PRESIDENT-ELECT BYE: That's once.

PRESIDENT GIERKE: Are there any further nominations?

PRESIDENT-ELECT BYE: Twice.

PRESIDENT GIERKE: Are there any further nominations?

PRESIDENT-ELECT BYE: Three times. Excellent. You are doing well.

PRESIDENT GIERKE: Got 'er. Now you have a motion before you to suspend the rules and cast a unanimous ballot for Orlin Backes. All in favor of that motion signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

(Applause.)

MR. ORLIN W. BACKES: I'll keep my comments short. I first off want to thank Sparky for encouraging me to run, telling me that it wouldn't take much time to do the job. I particularly want to thank my partners. Dick says they paid for my dues. They also helped me pay for the cocktail party last night. Sparky and I had a little contest as to who was going to have the best looking barmaid. And when he came he saw mine. If you were there you saw what she looked like. And then Sparky, he was complaining to the bar manager at the motel. And he finally consoled him and said, "I gave you one that would pour drinks faster." So Sparky was in good shape when he finished up with those drinks.

I particularly am active and want to be active in the Bar Association. I think we've got a wonderful Association. And it's a fast-moving organization. Changes coming. And I want to be a part of that and dedicate whatever time it will take to do the job. And I hope that I can follow the footsteps of Sparky. And I know Kermit, and I'll be able to work with him good. And I thank you for your vote.

(Applause.)

PRESIDENT-ELECT BYE: Orlin.

PRESIDENT GIERKE: Thank you very much, Orlin. And congratulations. We look forward to working with you.

Is there anything further to come before the Assembly.

MR. WESLEY ARGUE: Mr. Chairman, I find from Marie Fiedler that I made a grievous error in presenting the resolutions. I forgot to include the spouses. Perhaps personality or perhaps the fact that I do not have a spouse of mine own at this time. However, she just reminded me of that. I would move that we amend Resolution number one to state, "The members of the Grand Forks Bar royally hosted the lawyers, Judges and their spouses."

PRESIDENT GIERKE: Very well. Is there a second?

JUDGE FRANK J. KOSANDA: Second.

MR. ALBERT A. WOLF: Mr. President, I know that Garry Pearson is not here, but I'd like to have someone inquire this evening at the banquet, have a little trouble with the name of the organization here, Greater Grand Forks Bar Association, could you find out for us whether that was designated as such even before Garry Pearson was President?

PRESIDENT GIERKE: I will check on that.

Do we have a second to the motion? All in favor signify by saying aye. Opposed?

MR. PAUL KLOSTER: Nay.

PRESIDENT GIERKE: Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

PRESIDENT GIERKE: Anything further to come before the meeting?

MR. RICHARD H. MC GEE: I move we adjourn.

PRESIDENT GIERKE: Moved by Dick McGee that we adjourn.

JUDGE BURDICK: Second.

PRESIDENT GIERKE: Seconded by Judge Burdick. All in favor signify by saying aye. Opposed? Carried.

(Whereupon, the motion was presented by President Gierke and passed by the General Assembly.)

PRESIDENT GIERKE: The 83rd Annual Meeting of the State Bar Association of North Dakota is hereby declared adjourned.

(Whereupon, the proceedings were concluded at 3:17 p.m.)



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