



1971

## Proceedings of Seventy-First Annual Meeting of North Dakota State Bar Association

North Dakota State Bar Association

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**PROCEEDINGS**  
**OF**  
**SEVENTY-FIRST ANNUAL MEETING**  
**OF**  
**NORTH DAKOTA STATE BAR ASSOCIATION**  
**MINOT, NORTH DAKOTA**  
**JUNE 23-25, 1971**

OPENING REMARKS, PRESIDENT NILLES  
WELCOMING ADDRESS, MAYOR REITEN

**PRESIDENT'S REPORT:**

It is an honor and a pleasure for me to address you at this Fiftieth Anniversary Meeting of the Integrated Bar Association of North Dakota. As many of you know, the State Bar Association of North Dakota is the oldest integrated Bar in the United States. While there has been some dissent from time to time over the theory of the integrated bar, there can hardly be any dissent when one looks at the operative results of the North Dakota Bar Association when compared with bar associations of other states and other areas. While North Dakota comprises an unusually large geographical area, I think that we can honestly say that the members of this Association have a closeness which is unequaled by any other state association.

In the Integrated Bar, we are all contributing — we are all pulling together — and this has resulted in an esprit de corps which has been envied by many associations, large and small.

I think we all owe a debt of gratitude to those who conceived and founded our form of association for North Dakota. Our founders' foresight has resulted in 50 years of solid service to the public, to the judiciary, and to the law profession itself.

Now what I have to say here will not constitute a substitute for committee reports. Many of the committee chairmen will be presenting oral reports to the Association today and tomorrow, particularly where these reports require some action of the members of this Association. However, it is important that I do bring to you some of the highlights of the activities of the Association during the current fiscal year, so that you will have a comprehensive view of what the Association has done during this past year.

As you know, this has been a busy year; particularly so because the Legislative Assembly of the State of North Dakota was held this year. Many important and far-reaching legislative changes were either made under the direct sponsorship of this Association or under the sponsorship of the Judicial Council, or under the sponsorship of the Unified Court System Committee.

You will recall during the year that, under the able leadership of Hugh McCutcheon, the Unified Court System Study was completed and published. It was most appropriate that this study was completed at this time, in the light of the impending Constitutional Convention, and I am sure that that study will furnish a basis for a reorganization of a more efficient judicial system to serve the citizens of the State of North Dakota.

As a supplement to increasing this efficiency, the Unified Court System Study proposed implementation of the power of the Supreme Court to supervise and administratively regulate the courts of the State of North Dakota. The bill was prepared by Hugh McCutcheon's committee, introduced and passed under the sponsorship of this committee, granting to the Supreme Court specifically broad rule-making power. The Judicial Conference, at its last meeting — the one held immediately prior to the one yesterday — has appointed a committee and is in the process of formulating administrative rules for the court system.

The Judicial Council sponsored and successfully shepherded the passage through the Legislature of a repeal of the trial de novo provision of the appellate statutes.

Judicial salaries were again increased at this Session of the Legislature, with increases for Supreme Court and District Court Judges in the amount of \$2,000. This establishes the District Court judges at a salary level of \$20,000 and the Supreme Court judges' salary at a level of \$22,000, with the Chief Justice's salary being \$22,500. Very frankly, these legislative results were disappointing, but, nonetheless, they marked some progress in our continuing effort to improve judicial salaries in this State.

You will recall that early in December your Association conducted a referendum among the lawyers, setting out various positions relative to the repeal of the so-called filing fee appropriation measure. This measure has been, from a public relations standpoint, a troublesome and oft-misunderstood benefit to the Bar Association. As you know, the Bar Association, for the purposes of supporting public interest programs, has received \$2.50 from all District Court and County Court filing fees, and \$5.00 from the Supreme Court filing fees. These funds have been handled by the Bar Association through its special account for various public-interest programs, and the charge is off made that no other professional association receives any so-called "public money" in support of its activities. The end result, in any event, of the legislative activity was essentially consistent with the overwhelming vote of the lawyers' referendum, and the filing fee appropriation has been repealed effective July 1, 1972. Certain public-

interest programs currently supported by the Bar Association, including fees and travel expenses for the uniform commissioners, the North Dakota Law Review, and a special seminar grant to the Law School, will be henceforth provided by general appropriations adopted by the Legislature, effective for the fiscal year 1972-1973. In the interim, for this immediate coming fiscal year, we will continue to support these public-interest programs.

The no-fault insurance bill, opposed by the members of the Bar individually, the comparative negligence bill, and the bill to repeal the guest law, supported by your Association officially, all failed of passage at this Legislative Session. The defeat of the latter two measures, of course, was disappointing. However, early in the Legislative Session, there was considerable discussion over insurance premiums generally, and particularly in the field of health and accident insurance. Concern on the part of the Legislature was stimulated by a critical report from the Department of Transportation on the functioning of the tort system in the United States, and that report urged the adoption of no-fault insurance on a national basis. Senator Hart introduced a no-fault bill in Congress, and I believe that that matter is still pending. The position of the Legislature can perhaps be summarized by saying that while the North Dakota Legislature was not ready to adopt a no-fault plan as a substitute for the tort system of automobile reparations, on the other hand, it was not willing to agree to an improvement of the tort system by adoption of comparative negligence and repeal of the guest statute for fear that these latter two measures may increase liability insurance premiums. Bob Vogel, Chairman of your Automobile Reparations Committee, from whom you will hear later in today's program, did a commendable job in presenting your Association's views on these very important legislative matters.

The Bar Association sponsored a measure to increase interest rates on judgments from four to six per cent. This measure failed passage in the face of declining bank and loan interest rates; and, on the other hand, the Bar Association sponsored a measure to eliminate the requirement for a transcript in default divorce cases, and this measure passed.

The Bar-endorsed Uniform Jury Selection Act was adopted by the Legislature and will become effective July 1st of this year.

We sponsored a Medical Records Act and, unfortunately, this was defeated when it was amended beyond the scope of an agreed form of bill between the Bar Association and hospital representatives.

The Judicial Council successfully supported a measure to provide judges, on payment of a membership fee only, as distinguished from a license fee — to provide that they would become members of the Association. As you know, judges are prohibited by law from practicing law, and it is somewhat incongruous to require these judges to obtain a license to practice which they cannot use, merely to provide themselves with a membership in this Association. And I'm more than happy to extend to all of the judges a welcome to this Association on a membership, rather than on a license fee, basis.

A bill to establish a statutory attorney's fee schedule in the handling of probates was again introduced at this Legislative Session and successfully defeated in committee, after an able presentation by Ken Pringle of this City.

While it is my view that the Association should continue to confine its legislative efforts to a relatively narrow scope, and, in short, not support or oppose everything that comes along, I still feel that our Constitution and By-laws are unduly restrictive insofar that they provide that no measure shall be opposed or supported unless endorsed by the membership of the Association. As a practical matter, I think we will all agree that it is impossible to anticipate the wide scope of bills and measures that may be introduced in a Legislative Session, at our June meeting. We cannot look that far ahead. A good example of this was the introduction of a bill establishing statutory attorney's fees in probate matters. This bill was handled individually by Ken Pringle, who could not and did not speak as an official representative of this Association. I think that lack of Association authority is detrimental to our position in handling these matters before the Legislature. The Legislative Committee had under consideration the appointment of a committee to completely revise our Constitution and Bylaws, and it is my recommendation that discretion to support or oppose legislative proposals be also vested in the Executive Committee.

This is not intended, incidentally, to be a comprehensive report on legislative matters, but intended to cover only the highlights. Frank Magill has recently prepared and filed a complete report of legislative activities; and, if you wish, this report could be distributed to the members.

In accordance with the authorization granted to the Executive Committee at the latest Annual Meeting, your Association continued the public relations program, and this spring a traveling troupe of public relations specialists, under the chairmanship of Rod Mather, completed a statewide tour, making seven presentations of its program for lawyers only. This tour was a combination of the serious side and the fun side by Dave Bossart and his Bar Players, and you will have an opportunity to see, at the luncheon this noon, a couple of skits that they presented in going around the State and spoofing lawyers on their public relations image. In any event, this Phase II, as we call it, of the public relations program, will continue along with what we call Phase III, subject to the approval of the continuance of this program by the Association. Pat Conmy, your President-Elect and next President, will make a detailed report on this matter at this meeting this morning, and I will not comment further on this aspect of the program.

The Inter-Professional Relations Committee, headed by Russ Nerison, accomplished the incorporation and the operation of the Fair Trial-Free Press Council, and at the February meeting of this Council, the Honorable Obert Teigen, Judge of the Supreme Court, was elected Chairman of that Council, and Jerome Mack of Grand Forks was elected Secretary. A planning grant of \$1,980.00 was received from the Combined Law Enforcement Council, and this organization is now independently established and financed.

In December, a special committee was appointed, with Dan Chapman as Chairman, to review disciplinary procedure and enforcement in the light of the Clark Report, published in June of 1971. This Committee has completed its study, and Mr. Chapman will make a presentation of the results and recommendations at the Friday afternoon business session.

The Uniform Probate Procedure Committee is continuing its study of the Uniform Probate Code, with a view and goal of presenting it for adoption at the next Legislative Session. You will recall that that Committee, at the last Annual Meeting, recommended refraining from introducing this Code at the past Legislative Session because

of, among other things, the impending revision of the court system which would be required under the present draft of the Uniform Probate Code.

The Pattern Jury Instruction Committee has completed a revision of pattern jury instruction. These revisions are currently being mailed to members of the Association and will be received by you shortly.

Defense of Indigents and Legal-Aid Committee, under the chairmanship of Mike Nilles, is working closely with Morrie Garrison, who is the Executive Director of the Fargo Model Cities Legal Aid Office, with the view in mind of expanding legal aid to indigents throughout a major part of the eastern and northern portions of the State.

The Committee on Uniform Laws, under the chairmanship of Judge Burdick, reports that nine uniform acts were adopted by the Forty-Second Legislative Assembly, and I think that that speaks well for the functioning of this Committee and the work that they've done on the local and national basis.

The Law School Liaison Committee, under the able leadership of John Hjellum, successfully supported in the Legislature the College Building Bill, which will ultimately provide for an addition to the Law School, renovation and equipment thereof, in the approximate sum of \$998,000. You know that this is a project which is long overdue, and we owe a debt of gratitude to John Hjellum and his Committee for their fine efforts.

Your CLE Committee, under the direction of Wally Hankla, planned and presented its midwinter meeting at Fargo, with a combination program on trusts and personal injury damages, in December of 1970. Many of you, I'm sure, attended that fine CLE presentation. In addition, that Committee cooperated with the Minnesota CLE Extension Division of the University of Minnesota in presenting a seminar on evidence in Fargo, which, incidentally, was well attended. That same Committee, of course, has planned and will present an excellent CLE program here at this Association meeting.

The Traffic Safety Committee, under the leadership of its Vice Chairman, W. L. Eckes, again co-sponsored the North Dakota Traffic Court Conference in cooperation with the American Bar Association Traffic Court Program and Northwestern University Traffic Institute. The meeting was eminently successful, as it has been in past years.

Our American Citizenship Committee continues to be a highly-valued project and an excellent public relations effort. This year, 222 schools, representing 80.5 per cent of all high schools contacted, participated in this program. 127 lawyers made awards presentations. Of this number, 22 lawyers, located primarily in rural areas, made multiple presentations, with some of these lawyers making as many as four presentations. This program not only performs an important public relations service and effort, but has the advantage of bringing the profession personally into contact with the community on a humanized basis. You will hear more on this public relations approach in connection with Pat Conmy's presentation of proposed Phase III of the public relations program.

Our Grievance Committees No. 1 and 2 have continued during this year to process a seemingly endless number of complaints. One of these committees has reported that lack of communication with clients and failure to complete work promptly are the principal reasons for the complaints, and about 75-to-80 per cent of the complaints do not involve violations of canons of professional responsibility, but were, on the contrary, really in the nature of PR complaints. They were the type of complaint where the lawyer was not handling the client with tact, with skill; they did not involve professional violations as such.

As I have stated before, these are essentially public relations problems of the Bar, which, hopefully, will be eliminated by our continued effort on Phase II and Phase III of the public relations program.

The Procedure Committee will present at this Association meeting, through its Chairman, Len Bucklin, a final draft for the revision of our entire rules of appellate procedure, with a recommendation for their adoption and approval by this Association and presentation to the Supreme Court.

Al Thompson's Ethics and Internal Affairs Committee has promptly and expeditiously rendered numerous opinions on ethics, and has under consideration at the present time some minor revisions of the present code of professional responsibility.

The Law Day USA Committee again sponsored Law Day on May 1st, and many varied and unique programs were presented throughout the State. This Committee again provided an excellent public relations vehicle for bringing lawyers to the community, as well as serving an important public service function.

This year your Association cooperated with the Executive Branch of the State of North Dakota in providing for Governor Guy a Judicial Evaluation Committee under the chairmanship of Bruce Van Sickle of this City. These efforts resulted in the appointment of The Honorable William Beede of Williston, North Dakota, as a District Judge to succeed the late Honorable Eugene Coyne of this City.

Lastly, the Executive Committee, realistically recognizing that the Clients' Security Fund is inadequate at a ten-thousand-dollar level, has authorized the addition to this fund of \$1,000 per year from the Association funds until this fund reaches \$20,000. You may recall that we did make an effort to bond this fund with a ten-thousand or possibly twenty-thousand-dollar deductible. The idea would be that we would buy a bond, so that we would have Clients' Security Fund capacity, say, in the nature of \$50,000, with the first \$10,000 coming out of Association funds. But we found that the cost of such a bond was prohibitive. We were unsuccessful in negotiating with any bonding company to work it out in this arrangement. So the Executive Committee just simply decided that we should go ahead and raise the level of the fund by a contribution of the Association funds to the Clients' Security Fund.

Gentlemen, I have not, in this address, mentioned every activity and every committee function. Some committees were inactive, either because their functions were completed or no activity was warranted because of lack of current problems within the scope of the committees. I merely intended to catch the highlights, and I hope that by omitting the mention of one committee or another, you will understand that this is a highlight-type of thing; and, as I say, some of the committees were not functioning and I have omitted reference to them.

I do wish to extend personally, and on behalf of all of the members of the Association, our sincerest thanks for the unselfish efforts of all of these committees who have so generously donated their services to the work of this Association. Many and grave problems face the legal profession in the immediate future such as improvements of the tort system, no-fault insurance, the Constitutional Convention — and here I might add that we do have a Constitutional Convention Committee, chaired by Herman Weiss, and he has already submitted a preliminary draft for a judicial article to the Constitution.

Now, among the recommendations which I have for further action of this Association are the following:

Number One — and I give this first priority — is a continued emphasis on our PR program.

Number Two, a revision of the disciplinary procedure and enforcement so as to bring about more expeditious and prompt handling of these problems.

Now I do not want to imply from this statement that the members of the Grievance Committees or the Grievance Commissions themselves are not doing a good job, or that they are not putting forth effort, because I can tell you that they are. They are working hard and they are working conscientiously. But I think we have a structure problem in our disciplinary procedure that can be improved so as to more expeditiously handle the matter of clients' complaints. And I think that once we're over that hurdle, we will see things move along with much more dispatch than they have in the past.

The third is continued effort for the improvement of our judicial system. In this connection, I think it is recognized that our judicial system here in North Dakota, which has not seen a single revision until this last Legislative Session, since its inception, has, in a sense, lucked out on virtually all of the problems now facing urban communities in other parts of this country only because of the absence of population density. We have the opportunity now, in a calm, dispassionate manner, to improve this system at a time when we are not required to adopt what might be later regarded as ill-conceived, emergency measures.

Number Four: The tort system, based upon fault, which I, personally, heartily endorse, but confess that it is due for revision, and I would be the first to admit that the tort system has some deficiencies; but these deficiencies are not insoluble deficiencies. Revision of some sort appears to be imminent, and this problem, I believe, presents an opportunity for leadership on the part of the organized Bar.

In closing, I again wish to express my appreciation to all who have participated in the work of your Association this year. Many have contributed to the accomplishments of the year with time, effort and toil. I thank you for permitting me to be a part of these accomplishments, and I sincerely hope that I have in some way aided in a small fashion to improving our profession.

#### REPORT ON UNIFORM ADOPTION ACT

##### JUDGE BURDICK:

President Nilles, members of the Association.

The recent Legislative Assembly enacted the Revised Uniform Adoption Act which substantially alters adoption procedure in North Dakota, and also some of the preludes to adoption, such as the relinquishment of parental rights by a mother to a licensed child-placing agency. A mother may terminate her parental rights to a child without going through court if she signs a relinquishment having the prerequisites of the form that will be available to you here, provided she executes this form in the presence of a representative of a licensed child-placing agency. This isn't a form that can be signed indiscriminately before a notary public or even before an official. It is used in a number of states. And the form itself advises her that she has 10 days in which to reconsider the relinquishment. And if she does not recant and withdraw the relinquishment within that time, she loses control over the child and cannot get the child back unless at some future time the child is still with the agency and the agency consents to the return of the child. This form of relinquishment of parental rights will accompany the placement of the child, much as the decree terminating parental rights does at the present time.

This form is used or this procedure is used in a number of states for the simple reason that many unwed mothers are reluctant to go before a judge and acknowledge parenthood of this child, or even to go before a notary public, but they will sign a release or relinquishment before a representative of a licensed child-placing agency. So this is a new device that is to be used in North Dakota after July 1st in those cases. However, the procedure for petitioning for termination of parental rights is also still preserved. But this is merely an additional means by which parental rights can be terminated. This does not displace the petitioner, but it enables the unwed mother to surrender parental rights to an agency by use of this form.

The new Act also provides some new requirements for the petition for adoption, and this will be more or less self-explanatory, and also requires the filing of a report of the petitioners' expenditures so that the court can cross-examine the petitioners, if he sees fit, with respect to what they have paid to get the child, through birth of the child, and so forth. This is to discourage black market operations and placement and is for statistical purposes to evaluate the costs of adoption.

And probably the most significant feature of the new Act is the use of what is called the interlocutory decree of adoption. While residence of the child in the home is required for a period of six months before a decree can become final, this interlocutory provision would permit adoptive parents to obtain the custody of the child from an agency one day, return home and immediately file a petition for adoption in his local court. The local court could promptly grant the petition and issue an interlocutory decree of adoption, which would become final six months after the date of the order. This would create a relationship of parent and child immediately and protect the child for purposes of inheritance, Social Security benefits, military benefits, etcetera, during that period, where otherwise the child is more or less in a hiatus of uncertainty of whether he is their child or whether he isn't. This procedure is also used in a number of states, and we have now incorporated it in the Uniform Adoption Act which North Dakota enacted. This, of course, does not preclude the form of a final decree of adoption, the form which also is submitted here in those cases where the child has been a resident, has been in the home of the petitioners for the prerequisite six months period before the petition is heard. This final decree of adoption, however, is not used where the interlocutory decree is used. The interlocutory decree becomes final automatically without the use of any further order at the expiration of the six-months period.

##### PRESIDENT NILLES:

Thank you, Judge Burdick. I think we owe a debt of gratitude to Judge Burdick for service that he has rendered in connection with this matter and many other past services. I have recollection, Judge, that we took a tour

and gave a couple presentations, oh, about fifteen years ago, on parental-rights-termination procedures and forms. I remember at that time, why there were just a myriad of types of procedures that were brought, and there was quite a bit of confusion in the State.

## REPORT ON PUBLIC RELATIONS PROBLEMS

### PRESIDENT-ELECT CONMY:

I am sure you're all aware that what we consider to be one of our major problems is this concept of the lawyer's "image" or his acceptance or trust in the community. Back three, even four, years ago this got started in the initial stages, and two years ago we ran a survey, a questionnaire sent out, broadcasts through the State of North Dakota, with a series of questions hopefully designed to tell us where we stood in the public's eye in a number of categories and hoping in this to pinpoint and highlight what our problem areas were, and where our efforts should be directed. Now, the response to that questionnaire on a statistical basis was unbelievable. It was far higher than anyone would have anticipated. And the results of it gave us quite a bit of information.

Based on that survey and our own experience, we felt that perhaps we, as practitioners, were our own worst problem in the public relations area, and that our immediate concern should be to get those of us — and it applies to all of us on any given occasion — make us conscious of how we affect people with what we do and with what we say, to get us aware of what might be automatic reactions on our part and how those automatic reactions hurt us in every-day practice with every client in downgrading the entire image of the profession.

Based on this, we set up what Gerry calls Phase II, which was an internal PR program aimed at making our members aware of what they were doing every day in their daily practice. And we thought the best way to get this message out would be through Dave's traveling troupe, which, incidentally, has done an excellent job. I personally question whether we've been successful with Phase II, and I think we have to continue it, perhaps, in other areas, for the simple reason that many, many of the people whom we hoped to meet, we hoped to get this message across to, are these very people who will never, ever come to any Bar Association function. And the people we want to reach the most are the ones who would, by definition, not be there. And we still have those problems.

Let's just talk a minute about what those problems are. Basically, we are our own worst enemies in that we have members who are absolutely marginal practitioners, they have no office, they operate out of the corner bar, their profound advice is given over the seventh martini. They are not substantial individuals in the community, yet they are lawyers, they are known as lawyers, they come into contact with many more of the general public than most of us do, and they form an image in the public mind of a lawyer as being someone who lives from hand to mouth by his wits and is usually intoxicated.

We have a breed of cats in our Bar who never loses a case on the merits. He loses cases because — and you can run down the list, you know, the judge is a Republican, Democrat, Catholic, Lutheran, Jewish — and he creates the impression in all of his clients that the case wasn't lost on the merits or that justice wasn't done, but that the case was lost because of the corruption and venality of the system, whether it be the court or the opposing counsel. So every client that walks out of his office walks out with the firm conviction that he's living in a corrupt, riddled society, where the judges can be bought and nobody can be trusted. And some people do this as a matter of course.

We have a breed of cats amongst us who will never ever, under any circumstances, compliment another lawyer. Because the other lawyer obviously doesn't measure up to his personal standards, ability, education and smarts. And it's considered good form or automatic by many of our brethren to automatically downgrade or know something bad about every fellow practitioner. And if anyone inquires about them, instead of saying, "He's a fine lawyer. He'll do you a great job," you know, he has to point out, "Well, yeah, he got started in practice because his father gave him a job. No one else would, you know." And right down the line. There's again a whole series of these things. And these responses are again basically quite automatic.

We have a tremendous problem in our own practice with what — using a harsh term — really is incompetence. We are in an era of specialization, whether we like it or not. And there isn't a single one of us here who can perform at a high level of professional competence in all areas of practice. We just can't do it. We have no supermen. Yet, in certain areas we are willing to undertake any type of problem that comes in the door, and sometimes we shouldn't. And I would like to urge to everyone that they be aware of their own limitations, and perhaps do some referral and do some guiding of clients to someone who actually does devote more of his time and his attention and is more knowledgeable in a particular area than you may be. Someone comes in and talks to me about taxes, I tell them I am dumber than they are. The trouble is I can't even prepare my own tax return. And I don't pretend to. There's fifteen other areas. In fact, I've yet to find an area I am competent in. But I've kept that secret.

We have a situation where competency, I think, applies to the generation of a lot of our complaints through probate and through other areas where things that should be completed in five months or six months are completed sometimes in six years. Sometimes they are not completed at all. Where we generate a belief amongst the general public that if they are so unfortunate as to become tangled up with a lawyer, God help them, because eight years later they are still going to be tangled up with him, and maybe never, ever get the distribution out of the probate. Now lots of times things happen where you just can't close an estate. But if that's the situation, keep them informed. But, again, that is a rare situation; and it is not a rare situation where probates aren't closed, where they stay open and they stay open and they stay open. And that, to me, I call incompetency.

All right. We've still got to work within our own Bar in all of these areas amongst ourselves so that we have our members aware that running down the lawyer down the street ruins the image, not only of that lawyer, but of the Association. It's like a salesman who is trying to sell you something, who spends his time completely downgrading his competitor's product. This shouldn't sell anything. I had a car salesman who was selling two lines, running down one of his lines in order to sell me a car in the other one. Well, I wouldn't buy from him because that's wrong. We've got to be aware that sometimes, you know, by God, we lose on the merits. And we can't blame someone else. We've got to take responsibility, and sometimes it's the facts that are responsible. We've got to handle our people

in such a way that we don't leave them with the impression that they are dealing with a hotbed of favoritism, prejudice and corruption. And yet, to many of us, without knowing it, we succeed in creating and leaving that impression.

I think our so-called Phase II program has to continue, and it has to continue not only as an education program, but perhaps tied in to our grievance procedures. I think the proposal of Gordon Schnell that a requirement of licensing be that we also make an effort to continue our legal education is tied in with this, also. It all fits together. And now we do have, under the new ethics rules; we do have incompetency actually as a basis for an ethical complaint now, which we did not have in the past. So, conceivably, in that area we can make progress, except it begs the question, who is to be the judge? And you know, God only knows how we are going to solve that.

Okay. Following up, though, Phase III would be some way, then, of attempting to reach out to the general public with this message of what good, honest, competent, kind, sweet and lovable people we are. There are a number of ways to attempt to do that. And Ted has come up with a proposal, based on his own advertising experience, representing some other lovable clients, like public utilities, that the effective way to do it is not to use the so-called institutional approach. You know, we could spend X amount of dollars and buy a film strip prepared by the ABA, which is designed in bland and innocuous form, to be used anywhere from Florida to Alaska. You can't do that type of thing. His analysis and thinking is that you're basically wasting your money. It has no impact, it makes no impression on any community. What he has, in effect, suggested to us that we do is go into a program where we go, for example, into the City of Fargo. We go to the Cass County Bar Association. We say to the Cass County Bar Association, "We have prepared scripts for eight television presentations on a variety of subjects, ranging from a general discussion of whatever it may be, probate procedure, for example, on right on down to, for example, a discussion on what to expect when you hire a lawyer, what to look for, what to expect to pay, what questions to expect to be asked of you, a timetable to anticipate on a tort, for example, a whole range of activities." And the Cass County Bar would designate member A, member B, member C, member D to go to the local television station with this script — modified if they would desire to make it even better, based on that designee's thinking — and cut a strip, cut a film, make a videotape which would then be presented over that local media, with a local man making the presentation whom they know and can identify with. "Look, he's one of us."

Now, I used Fargo as an example because it's our biggest city. Yet, can you imagine the much more improved impact that this local man presentation has in a smaller community over the media sources that reach the people in that community? Then it's meaningful for the community, they identify the man, they know the man, they know this is something close to home. What the major advertisers, like the utilities and some of the others are doing; for example, if they are stressing service in a TV presentation designed to reach Glen Ullin, and they have a repairman living in Glen Ullin, they will shoot a film of the repairman in Glen Ullin, which they show as part of their commercial. And the people there recognize Joe Schultz, the repairman, because he lives down the street. And it means something to them far better than does the photograph of an actor taken in Minneapolis whom they don't know and they don't care about. And it's this type of thinking that we're talking about. And this program is not limited simply to cutting a film strip. It is designed to include a speakers bureau, for example; again, locally controlled and directed; a whole series of programs, including action programs within that specific community. As, for example, the Bar Association in some areas, the Young Lawyers Section particularly, has provided, in effect, a hot line service for kids in trouble, for drug problems, for any number of things. They provide a referral service, all generated by the local Bar Association, and all designed to provide the service which they feel that community not only needs but will use.

All right. Now this is a helluva lot more work than buying the film strips from the ABA and the paying for three minutes of time for running it or attempting to get your free public service times or attempting to place a little ad in the paper like: "Know your law about making a left turn at an intersection." It requires a lot of effort on the part of the Bar, individually, locally, but it does require the services of someone to see that the scripts are prepared, to see that the administrative arrangements are made for the purchase of time or the donation of time or the placement of articles, to see that the thing is coordinated, so that there is some uniformity across the State, and to just plain ride herd on it to see that these things get done.

And the proposal which we have received from Ted is not in the nature of "Look, I'm Ted Smith. Hire me." It's an approach, a package designed — his thinking is, "This is what I think you should go into. This is what I think should work. Hire someone to do this." And what we basically want to do, I'm going to ask Ted to make a little more detailed presentation of his thinking and of the reason for suggesting this program. And, in effect, what he'll be asking you to do is to say yes or no tomorrow afternoon when that budget — which sits right here on the corner of the table now — when that budget comes up to you for approval, because it does contain in it a \$8,300 item for public relations activities for the coming year within the State. That is, in effect, a five thousand or \$5,300 increase over our previous expenditure level. And that money we spent last year primarily went toward — oh, a lot of it went toward payment of the expenses of our traveling troupe. And I do feel that Phase II is going to have to continue in some form. So, theoretically, this may not even be enough money to make a good start on what we want to do.

I should just point out to you that we are in our usual position of being too few and too poor. It is my understanding that the Florida Bar has like a \$200,000 Bar budget for this PR program. We can only look with envy and wish them well.

I am going to ask Ted Smith to cover any areas I haven't and explain why he has come up with this type of proposal, rather than a proposal which would tend to use "institutional advertising." Ted.

#### PUBLIC RELATIONS PROBLEMS

##### MR. TED SMITH:

There are two phases that Pat mentioned that we've gone through. Phase I, which was the survey, gave us the direction that we should go, which we felt was internal. In other words, to ventilate our own problems in our own laundry room before taking them out to the public.

Phase III, this ongoing external program, the tools for implementing a program like that come quickly. Pat mentioned videotapes, radio interviews, high school seminars, a willing — "willing" speakers bureau, newspapers, public service, are the tools that you need to compliment each other in an ongoing, external PR program. But which tools to use to provide the meaningful visibility that you need in North Dakota, that's the rub. And we feel that the public information programs provided, for example, by the American Bar Association — or there are various advertising services that provide film — are too generic, they are too institutional, and they don't mean much to people in North Dakota. Frankly, this is why we did our own survey. We could have copied, say the Missouri survey or the Texas survey. But we decided we needed to do our own because people in North Dakota are different. The same thinking applies here; that we don't want simply a generic program, a generic videotape that really won't mean too much to that fellow in Hebron. You have to make it real, and that believability must be born of grassroots efforts.

My recommendation is that your external PR efforts be developed with and around your own members, rather than relying too heavily on media, public service or ad campaigns. It would be nice and simple to say, "Ted, knock us out a dozen ads 40 inches in size that we can run in all daily newspapers and every now and then in the weekly papers." And we go back and come next Thursday, you run Ad A, a week later you run Ad B and forget about you. No way to measure results. So we're pretty safe, aren't we? No impact, either. We feel the next step's before the attorneys themselves. Hopefully, they're attuned to a more sensitive self-image by their clients and Mr. Community, by now, to be the instruments in our ensuing public relations efforts, and hopefully that we will be the maestro that will direct these instruments. Our external PR program, headed by the lawyers themselves, would also have the side benefit, as Pat mentioned, of continuing our Phase II in that if they were in the forefront, they are certainly going to have to be more public relations conscious. If we let them off the hook now by simply scheduling generic public service ads, our program would be self-destroying. Attorneys in the larger cities, as Pat mentioned, could do their own local videotapes and radio tapes. Here, again, the maestro has to lead and sell, and it takes a selling job for the local Bar members to do it. When you have local programs by local attorneys, then a generic or institutional statewide public service will have more weight. I'm sure that those of you in Fargo and Bismarck saw the public service spots that the stations ran there that were provided by the ABA. Alone, they don't carry much weight, but working and complementing a local program, they do.

I think next year will be unique to give this a test. The Bar Association President, the public relations firm, and the Bar Association office are all in the same building. We're going to have to do a lot of talking to each other to make this work. And it's a unique opportunity. And so, my recommendation would be to approve the budget and give us the go-ahead for a one-year test to see how it works.

I mentioned earlier how difficult it is to measure results. It's difficult to measure results to see whether Phase II is working. The only barometer that we really have is that the number of complaints that have come into AI's office has substantially diminished. We think it's working. In Bismarck I can see it working; the consciousness of public relations.

Public relations, I think, too, is a bit of a misnomer in this area. It's really client relations, and the word that we really hammered away at is "professional." In this swing through the western part of the State — and I'm sure they did the same thing to the eastern half — was to make the attorney more conscious of his obligation to the profession. In all of our little characters, Igor Idiot, Sam Superior — they were designed to illustrate the foibles that we have in our profession and to try to weed them out. I hope that this afternoon or tomorrow, when you have a chance to review the budget, that you will think of continuing our public relations program. I think it would be a serious mistake to stop now and just say, "Well, let's go back to our press releases, our films, and let that be our PR effort." You would be letting the attorneys off the hook.

#### COMMITTEE ON AUTOMOBILE REPARATIONS

##### MR. ROBERT VOGEL:

The program today said that I was going to talk about no-fault legislation, but it didn't say which side I was going to take. And I am now prepared to end that suspense by telling you that after all the work I have done, that Gerry mentioned — and I haven't done as much as I would have liked to — I am opposed to it. But I must say that in all fairness, that the sponsors of the no-fault legislation have some legitimate grievances. There are some defects in our present system of automobile reparations, and there are some things that ought to be done to improve it.

At the last Legislative Session, as Gerry said, the subject did come up. There was a bill entirely different from any other no-fault legislation. I think it was prepared by some of the law students and introduced rather late, without much opportunity to study it. But we also had a legislative program consisting, in part, of the repeal of the guest law and the comparative negligence, and we got that through the Senate, with the able help of Chesrown and others. And it was a tough bill there, and when it got to the House, it was ultimately killed there, and the reason — the principal reason given for killing it was that we were probably going to be having no-fault legislation in the near future, anyway. So it's entirely correct that this is a subject of concern in North Dakota.

Let me, at the outset, try and give you a factual statement of what no-fault legislation is. I suspect that most lawyers are in the same position I was a year or so ago and really don't know what's involved in no-fault legislation. It goes back to a program proposed by a couple of professors named Keeton and O'Connell sometime back, and there are many plans — and that's one of the difficulties in discussing the subject — that there are a multitude of no-fault plans which differ from each other a great deal. There is all the way from an AIA plan, American Institute of Assurance — American Insurance Association, which is a true fault plan — it eliminates courts from automobile reparations — all the way down to a plan like Puerto Rico's and Massachusetts', which eliminates the courts from small claims, is essentially what it amounts to.

But, anyway, these plans all do have some things in common. One thing they have in common is that an insured and the passengers in his car will collect from his own insurance company for the medical expenses, either



limited or unlimited, and lost wages, limited. There are no unlimited wage plans that I know of. So in a typical plan, you would collect your hospital and doctor bills, rehabilitation expenses, and your lost wages from your own insurance company, and so would the passengers in your car. To that extent, it's a little similar to the medical-pay provision and to the collision coverage that you have, because those are things you collect from your own insurance company.

Another thing that the plans have in common is that they reduce or eliminate recovery for pain and suffering and other incidental benefits, such as that. And that, frankly, is one of the ways that they save the money that's necessary for this.

Another thing that they have in common is that they reduce or eliminate the consideration of fault, of negligence, from automobile accident claims. In other words, the guilty party gets paid to the limits of the plan, just the same as the innocent party. And that, of course, is going to cost extra money to be paying people that don't get paid under the present system; and one of the ways that they do that is to reduce the benefits to the innocent party, as I'll mention a little later on.

Now, as I said, there are two of these plans in effect now; one in Massachusetts and one in Puerto Rico. Puerto Rico, I think, is a special case because the income is much lower there. There are two plans in effect now; one in Puerto Rico, one in Massachusetts. As I was saying, the Puerto Rico plan, I think most of the drivers there were uninsured and probably it is an improvement for them to have this kind of a plan. In Massachusetts, which was the state, you will remember, that had the highest insurance premiums in the nation, they have adopted a limited plan, which, I believe, has this so-called first-party coverage up to \$2,000 of wage loss and covers the medical bills, and so on.

Now you've read reports that it's working in Massachusetts, and you can argue about that, and people do. But let me mention a couple of things about it. First of all, the law that was passed promised a 15 per cent reduction in insurance premiums, and they went to court and the insurance commissioner, and it ended up now that 15 per cent promise is not being fulfilled as to property damage and the collision insurance. It's only a 15 per cent reduction in personal injury premiums that they have and, in the meantime, the property damage and collision coverage has gone up much more than the 15 per cent reduction in personal injury coverage, so the net result is that insurance in Massachusetts costs from 10-to-20 million dollars more now than it did before the plan started.

Another thing about the Massachusetts plan — law, is that there is a great deal of uncertainty there yet. There are constitutional issues being litigated, there are procedural questions that are unresolved, and everybody who has studied it, I think, has come to the conclusion that there are a lot of personal injury claims sitting on lawyers' desks, waiting to be presented when these matters are all cleared up. So the experience in Massachusetts is, at best, inconclusive at this point.

Now what are the benefits that the proponents of no-fault legislation claim? They claim that you'll have reduced insurance premiums. And I'll come back to that in a minute and show you I think that your reduction, if any, will not be in excess of five per cent of the insurance premium, if it's that much. But I point out that this reduction in premium, if it is accomplished, is accomplished in part, as I say, by reducing benefits to the innocent. And if there is a reduction in overhead, including attorneys' fees, it is not going to be very statistically significant, even according to the sponsors. And I'll come to that in a minute.

Another benefit that is claimed is that there will be more benefits reaching the injured persons and less going into the overhead, which, of course, is saying the same thing in a different way. And, to the extent that we are talking about those who are guilty of negligence, that is certainly true. They will be getting more benefit than they get now, but, as I say, I think at the expense of the people who are the innocent victims, who are being compensated now.

And a third benefit that's claimed is that it will reduce judicial delays, a problem which is serious in many states, including Massachusetts, but either does not exist or is not serious in North Dakota. So that's one argument we don't have to worry about.

Now there is another plan that's being talked about a great deal, and that's the Hart plan in Congress. And that is a very broad plan, which pays all the medical expenses, it would pay wages while you're injured and laid up, up to a thousand dollars a month, less, I believe, a deduction for income taxes of 15 per cent; it would pay a maximum of \$30,000 for loss of wages in death cases, and the tort system would apply wherever these damages payable under the plan are exceeded. In other words, you could sue for any extras over what the plan provides. The small claims would largely be eliminated, of course.

Now coming back to the plans generally, what are the drawbacks of these plans? I think I've indicated some. The main one, though, is that the question of fault is ignored or minimized in all of these plans. And I don't believe that the general public wants that. There have been surveys. The largest one, I think, was by State Farm, where they circularized all of their policyholders and got back a good response and asked a whole bunch of questions, asking their attitude toward different aspects of no-fault plans. The answers they got back were, as I remember, in the neighborhood of 80 or 85 per cent of the people favored retaining fault as a measure of payment of money in automobile accident cases. And these plans, too, either minimize or eliminate that factor.

The other drawback, it seems to me, and the other major one, is that to the extent that it gives money to people who don't get it now, it is financing the plan by paying wrongdoers the benefits that now go to the innocent. It's a transference of benefits from the innocent to the wrongdoer, and the public, I don't believe, wants that, either.

Now as to this claim of costs, I have the figures from a rather massive study in New York State which favored no-fault. It wasn't adopted in New York, but the study favored it. I also have figures from California, where the studies by the Legislature opposed, and they have some figures, too. But taking the New York study, which proposed no-fault insurance, I'd like to give you some of the figures that they quote that you may hear elsewhere.

First of all, I would emphasize this: — and this is, I think, very important — that these figures that you read about no-fault are not talking about the total insurance premium dollar. They are talking about that part of the insurance premium dollar that goes for personal injury coverage. And personal injury coverage, roughly, is one-third of your total premium. Two-thirds of your premium goes for property damage and collision and incidental

coverage. So whenever you read figures about the great percentage of saving, and so on, remember that they are talking — or look and make sure what they are talking about, the personal injury portion of the premium, which is roughly one-third. Well, the New York study says that the present system results in giving 44 cents of the premium dollar to the victims of automobile accidents, which is a rather shocking figure. The breakdown of the other 56 cents is 33 cents goes to the insurance company and the agent, and 23 cents goes to the lawyers and the claim adjusters. And that lawyers and claim adjustment expense is on both sides. So when you hear talk about the 25-to-33-to-50 per cent that the lawyers get, remember that the true figure, according to this study, for lawyers and claim adjusters on both sides is 23 cents of the personal injury part of the premium, which means about eight cents of the total premium dollar that you pay.

Now this New York study claims that no-fault would reduce that 56 cents total overhead figure to 43 cents. In other words, a reduction of 13 cents of the personal injury premium, which is about four per cent of the total premium. So the most they claim for reduction of expenses, of overhead, is four cents on your premium dollar, and any other saving that is claimed has got to come out of the benefits that the people are now getting, the innocent victims of the automobile accident.

So there are a number of things I have listed here that ought to be remembered, as you discuss this and think about this subject. Number one, as I said, two-thirds of the insurance premium is for property damage and not for personal injury. And when you think about the property damage aspect, you realize that probably improving the bumpers on automobiles so they could stand a ten-mile-an-hour crash could result in a much greater saving than is claimed for no-fault insurance. And if we didn't have curved windshields that cost — I don't know what they cost — couple hundred dollars, I guess by now, that that would save a lot more money than could be saved by these no-fault proposals, and others.

Fact number two, which some of you won't believe, and I didn't believe it either until Gerry sent me a clipping from the *Wall Street Journal*, is that last year insurance accident costs went down. Nationally, the experience of insurance companies last year was that losses went down, and that some of them are going to reduce rates. That's hard to believe, especially in North Dakota, where the death rate this year is up more than 50 per cent so far. But, nevertheless, it is a fact, and that takes away one of the arguments that insurance companies are getting sky high and unbearably out of sight, and so on.

Number three to remember is that we have no court delays of consequence in North Dakota, and that's one of the big arguments for no-fault elsewhere. "We eliminate automobile cases from the courts, partially or completely," they say.

Number four is another thing that I ask you to think about, even though it may be a prospect that's unpalatable to some of us, and that is that we are going to have national health insurance in the United States rather soon, whether we like it or not — I happen to like it — but whether we like it or not, it is coming. The Nixon Administration has a plan, AMA has a plan, various Congressmen and Senators have plans; something is going to be adopted. And when it comes, all medical bills — substantially, all medical bills are going to be taken care of by that plan and not by automobile insurance. So there is another argument in favor of this no-fault out the window.

Number five is when you hear talk about how lawyers get a third or a half — personally, I've never had a half in my life, I don't think, in an automobile case — but when you hear talk about that, you must remember that I suppose a great majority of claims are settled by claimants themselves, without lawyers. So on those, we get nothing at all. So our percentage of the premium dollar is not 25 per cent or 33 per cent — I mean of personal injury claim is not 25 or 33 or 50; it's far lower.

Let me give you something else to think about that I just read the other day. Who is the worst insurance risk today? An unemployed teenager, I would suspect, isn't it, the highest priced risk? And who is going to be the best risk under no-fault? An unemployed male teenaged driver is going to be the best risk under no-fault. He's going to be the best risk because he's unemployed, so there is no wage loss, and he's young, so he's going to heal fast. So the medical bills will be lower. There's your ideal risk under no-fault legislation. Think about it. It has some interesting ramifications.

And that leads me up to number seven, and that is that all of these plans discriminate against the housewife, the unemployed, the student, the child, because all of those people have no wage loss. And "wage loss" is defined in the plans I have seen as "actual lost wages." Not earning ability, but earnings. So all of these people that have no income are discriminated against by these plans.

Similarly, there is a discrimination built into these plans against anyone earning over a certain figure, and the highest one, I think, is a thousand dollars a month, less income tax. So anybody making over \$12,000 a year is discriminated against on these plans. It's possible under the present system to get a recovery for your lost wages and earning power, and under these plans, your limit would be \$1,000. And I believe in the Hart plan, though I'm not quite sure of this, that you don't even have the right to sue for that excess, even though you get beyond the other things. I may be in error about that, but I don't think you can.

Number nine, I hasten to add for lawyers and others, is that it is very possible that lawsuits will not be diminished at all under the no-fault plan. You are still going to have the right to sue under these — all but one of these — plans for either the excess amount that you've lost over and above the amount you get paid under the plan, or you're going to have a right to sue if your losses are higher than a certain threshold. And the most common one is something like this: \$500 medical bills, above that you can sue; under \$500 medical bills, you can't — a very arbitrary cutting off point, as I am sure you will realize. There are cases like amputations, and so on, where the medical bills are low; thus the consequences are very severe. Some of the plans take care of amputations and allow you to sue for them, and some don't, but lawsuits are entirely possible. There are going to be lots of lawsuits under the terminology of some of these plans over what's an injury to a member of the body. Does that include a bruised heart, a bruised lung? Oh, there are an infinite number of questions that are unanswered, that may not be answered for years and years, and may result in a lot of litigation.

And the tenth number is, I think, when we talk about this subject we are often talking too much about insurance premiums, which are important to us, but they are not nearly as important to us if we are in an accident.

And the thing to remember is that every person is not only a potential and actual insurance premium payer, but he is also a potential plaintiff, and as such, he should have some interest in this topic.

Now, as I've indicated, there are three ways or three arguments in favor of no-fault that just simply don't apply in North Dakota, in my view: Number one is the court-delay argument, which we don't have, except some people say we have in the Supreme Court. Number two is the argument that there are a lot of uninsured motorists running around, and that the no-fault plan would at least provide some coverage in those cases. Well, in North Dakota we have the Unsatisfied Judgment Fund, so that argument doesn't apply. The third argument often used in favor of no-fault is that the premiums are unbearably high. And I suggest that, in North Dakota, though we hate to pay them, that's simply not true here. The premiums in the states that have the problem, like Massachusetts and New York, and so on, are many times as high as they are here.

Now I said at the beginning that there are some things wrong with our present system and some things that we ought to be doing. And there may be some argument about some of these. There was before the last Legislature. But I would suggest that as a minimum program we should be doing these things if we are opposed to the no-fault legislation, and I think we should be.

Number one, we should repeal the guest law. There is no reason why the insurance company of a friend of mine should not have to pay me for injuries that the insurance company of a stranger would have to pay. It just doesn't make sense to me.

Number two, we should adopt comparative negligence as opposed to our present contributory negligence law, because contributory negligence is a harsh rule. If the juries follow the instructions of the court — which they don't always do — but if they did, a person who was, say, two per cent at fault couldn't collect anything from a person who was 98 per cent at fault. Under comparative negligence, if you're 49 per cent at fault, you can collect something, but it will be reduced by the percentage of your own negligence. And that is a much fairer system, I think, than what we have, and it's working in, I think, 12 or 13 other states — I'm not sure of the number — including Minnesota and Wisconsin. It's working and has worked for a long time in some of those states, and I think we ought to have it here. I might say that these things I'm talking about here, I believe are things both the Defense Research Institute and the American Trial Lawyers Association are in agreement on. So that's one argument we needn't have among us.

Number three is I think we should repeal governmental immunity in North Dakota. One friend of mine, lawyer, said yesterday he thinks there is more injustice done under the governmental immunity doctrine than under any other law that we have. And I didn't follow the law in the Legislature. There were two proposals there by the Legislative Research Committee. I think they were both killed, as I remember. And something ought to be done to adopt or to repeal a governmental immunity.

Number four, we ought to be working for safer automobiles, remembering that two-thirds of our dollar goes for damage to automobiles; approximately.

And, number five, and this is a point that I think the sponsors of no-fault or the opponents of no-fault must agree that the sponsors have a point on, and that is that we should — our insurance policies should provide limited first-party coverage for medical expenses, as most of our policies do now, but probably the limit should be higher. But they should also have the innovation of providing limited first-party coverage for wage losses for the insured and the passengers in his car. To that extent, I go along with no-fault. I don't expect everybody to agree with me.

But the main message that I want to give to you is: Let's not finance the assistance to the wrongdoer by reducing the benefit to the innocent, and that is really what no-fault is all about. And I think we don't have to be defensive about being lawyers on this thing. As I mentioned, it's very questionable whether our income will be affected at all by these proposals, but I think, as lawyers, we have the most knowledge about the effect of automobile accidents upon people. And with that knowledge, that nobody else really has, we don't have to be defensive about talking about what we think the automobile reparations system ought to be, and we don't have to be apologetic about proposing no-fault. Because I think our experience shows, and my conclusion is, at least, that no fault is a bad remedy, a regressive remedy. It is not a method of spreading the loss among the people generally, which insurance is; it's a method of making the innocent finance the care of the guilty, is what it really is.

And so, Mr. Chairman, I have completed my remarks, and I certainly hope that this organization will continue to oppose no-fault legislation, and will favor these things that I have talked about, and that the Executive Committee will follow up on this policy.

#### REMARKS OF JUDGE BURDICK RE MR. VOGEL'S REPORT

##### JUDGE BURDICK:

President Nilles and members of the Association:

I think Bob's analysis of this is about 98 percent accurate. It was very fair. There were some inaccuracies about it, to which I may refer briefly, but I think he's given you a very good overall picture of the present status of no-fault insurance plans.

But what I really wanted to tell you about is that the President of the United States, through the Department of Transportation, has asked the National Conference of Commissioners on Uniform State Laws to draft an appropriate no-fault automobile accident claims act, which we will probably designate as the Uniform Motor Vehicle Accident Reparations Act when it's finally prepared.

The show is over so far as whether or not we should have no-fault insurance, and if the states do not come up with a proper statute, I'm sure that the Congress of the United States will. So it's just a matter of getting this thing into its best shape.

And, as Bob has indicated, of course, towards the end of his address, there are areas of no-fault insurance that are perfectly satisfactory to the Bar. Now, one of the points of coverage that he alluded to that is not in the no-fault plan is compensation to the housewife, and so forth, and so on. In the plan that's being developed at this time, work

loss, loss of productive time, is to be included in coverage, contrary to what Bob has information on. I'm sure some plans do not provide for that, but that is contemplated in the plan to be proposed.

And of even greater significance, present thinking is that the traditional tort action will be preserved for actions for pain and suffering, for permanent disability, and for wrongful death, and, generally, for economic loss that is not included within your primary coverage, so that there will still be a wide-open field for litigation in the big cases. Smaller cases will come under your loss of productive time and probably 90 per cent of your medical expense, and this is what we've been informed covers about 98 per cent of the claims, so that only about two per cent, your big major claims, will still go through the ordinary no-fault — correction — the ordinary, traditional fault concepts.

Now this hasn't taken its final form. The Committee's had only one meeting, which lasted for three days. A staff of reporters and consultants is being developed. There will be a 21-member advisory committee appointed, consisting of seven representatives of the insurance industry, seven trial lawyers on the plaintiffs' side, and the seven members of the public at large. And they will be meeting on the 21st, 22nd and 23rd of August with our special committee to draft this Act. The Department of Transportation wants this Act developed immediately. It will have its first consideration at the annual meeting of the Conference in Vail in August and will very likely be promulgated by the Conference in next July; that is, in July of 1972.

And I would recommend, Mr. President, that either the committee which Mr. Vogel chairs or some other similar committee be appointed to follow the progress of the draft of the Conference of Commissioners on Uniform State Laws in advance of its final promulgation, so that suggestions and criticisms can be leveled from time to time as the Committee considers this draft. But so far as the ultimate enactment of the so-called no-fault insurance idea is concerned, I think it's inexorably coming, and we simply have to recognize it. And, as Bob says, I doubt very much that it's really going to affect the loss of income to the practicing lawyer, and in some fields of litigation, they will probably make more money than they made before.

And I'm not going into all of the details of the arguments for and against the thing. I simply tell you that it is having the primary consideration of the National Conference of Commissioners at the present time. A draft will be prepared, and I'm confident that when it is threshed out within the next year, that a product will be presented that will be acceptable to the great body of the profession and the general public.



#### GENERAL ASSEMBLY

1:40 P. M.  
Friday, June 25, 1971

#### REPORT OF PROCEDURES COMMITTEE

MR. LEONARD H. BUCKLIN:

Mr. Chairman, members of the Convention:

The Procedures Committee is going to have its usual published report, but there are just two things that I'd like to bring to your attention at this time.

Number one is the fact that we will be having new Rules of Civil Procedures in this State, effective August 1st. They are the result of the Order of the Supreme Court and the work of the Procedure Committee in the last few years. These will substantially change the present Rules and make our Rules conform to the Federal Rules and substantially update them.

There is one thing in connection with that. I would like to again state something we said before to you and to the Judges, and that is, the Procedure Committee does keep a bank or index of opinions by District Court Judges on rules decisions. We have that simply for our own use; that is, primarily the use, anyway, in determining what are the problem areas in the actual trial of cases and in the decisions at the trial level. We would appreciate it very much at any time any Judge has a decision on the Rules, on the facts over interpretation of them, that either you, as practicing lawyer, or the Judge send us a copy. Just send it to the Procedure Committee, in care of myself, or to Al Schultz, and we can keep it, at least find out where, if any, problem areas are.

The second thing that I'd like to bring to your attention at this time is the work of the Appellate Procedure Subcommittee. We've had a subcommittee that has worked long and hard for some years now in preparing various drafts of proposed revisions to our Rules of Appellate Procedure. The Chairman of that Committee who has done a lot of work is Phil Johnson of Fargo. And at this time, I'd like to call on Phil and ask him to explain to you the work of that subcommittee and what we have been doing in regard to appellate procedure.

#### FURTHER REPORT OF PROCEDURES COMMITTEE

MR. J. PHILIP JOHNSON:

I'll try to keep this brief in lieu of the time limit this afternoon. Briefly, I might explain that the review and revision of the Rules of Appellate Procedure for the North Dakota Supreme Court started in September of 1969, officially, when the Procedure Committee met and discussed proposals for updating and revision of our Rules of Appellate Procedure. A subcommittee was appointed at that time, consisting of Kermit Bye, Larry LeClerc, Tim Davies and myself. And in October of 1969, that subcommittee met to establish guidelines as to how the review and the revision of the appellate rules might be accomplished. We entered into a research program through the University Law School in which we utilized two University law students and the Law Library there, to survey Rules of Appellate Procedures throughout the United States and the Federal system,

plus the available authority in this area.

In December of '69, the subcommittee received a written report of this group and copies of comparable Rules from other states that might be utilized as a basis for revising our own. At about that time, the subcommittee met and reviewed these available materials and discussed their own experiences and made two basic decisions: first of all, that any reform or revision of the appellate rules should be accomplished by comprehensive, rather than a piecemeal approach to appellate rule revision; a whole new set of rules, in other words. And, secondly, that the rules should take as their model the recently-adopted Federal Rules of Appellate Procedure.

The reasons for this are basically two, and some of the same reasons that apply to the original idea of using the Federal Rules for the District Courts. First of all, that a Federally compatible system would be most consistent with our existing Rules of Civil Procedure for the District Court, and, also, that we would have the extensive research and authority which is available in interpreting the Federal Rules to utilize in our own appellate practice. In addition, of course, we have the extensive studies that have been made in putting together these Federal Rules of Appellate Procedure.

After a series of meetings, we had a series of drafts of Rules of Appellate Procedure, and the drafts were, in turn, reviewed by the entire Procedure Committee at several meetings and copies were made available to lawyers throughout the State and, consequently, in March of 1970, a draft was submitted and made available to the Supreme Court, and certain suggestions were received from the Justices.

Now at this stage we have draft number four of the proposed Rules of Appellate Procedure for the North Dakota Supreme Court, and just briefly, I will itemize a couple items that are contained in these Rules.

First of all, we have a simplified method of perfecting an appeal. This is one of the areas of real concern for lawyers throughout the state. You perfect an appeal by a simple notice of appeal. There is no provision for specifications of error or insufficiency of the evidence. No provision for complicated judgment roll and, of course, both civil and criminal appellate procedure incorporated in the same set of rules.

In addition, there are a number of Federal rules that have no direct application to our practice, and these have been eliminated. And we also, of course, in the Federal practice have certain detailed requirements with respect to an appendix to the brief, copies of the record, printed record, printed briefs. These have been simplified and largely eliminated from the draft proposal. This draft provides for a table of superseded statutes and rules, and it would supersede much of the existing statutory procedure governing appellate practice, except for certain areas, such as specialized writs. In addition, it would supersede the present Rules of Appellate Practice, which, incidentally, dates from 1920.

On behalf of the subcommittee, at this time I would like to offer the following resolution:

"WHEREAS, the existing appellate procedure before the Supreme Court of North Dakota is based upon rules and statutes dating from the year 1920; and

"WHEREAS, comprehensive revision and reform of the rules of appellate procedure be in the best interests of appellate efficiency, together with prompt and just determination of appeals; and

"WHEREAS, as appellate procedure subcommittee of the procedure committee of this Association has developed a series of drafts for revised rules of appellate procedure based upon the Federal rules of appellate procedure;

"NOW, THEREFORE, BE IT RESOLVED that the procedure committee of this Association is directed to petition the Supreme Court of North Dakota for adoption of revised rules of appellate procedure in the general form of draft number four of suggested rules of appellate procedure."

THE MOTION CARRIED

#### REMARKS RE AMENDMENT OF CONSTITUTION TO INCLUDE YOUNG LAWYERS SECTION

MR. JOHN GORDON:

Thank you, President Nilles. There are copies, I believe, of the proposed amendment distributed. The proposed amendment also has attached to it proposed Bylaws which are not up for consideration by this meeting, and we included them only for purposes of your information.

The reason, as I believe was explained last year, for the necessity of a section structure within our Constitution is that presently the only form of internal organization provided by the Constitution is the committee form. And operational wise, it becomes rather difficult to have a committee composed of 70 or 80 persons, and, additionally, we can qualify, be affiliated with the American Bar Association Young Lawyers Sections through the section format.

I would at this time raise the proposed amendment which could be adopted either as a complete article by itself or as an addition to our present Article 8 of the Constitution. Article 8 provides for the committee arrangement within the Association, and I would suggest that the amendment be made subparagraph (b) of that Article. It provides:

"(b) Sections. The work of the Association may be carried on, in part, by permanent 'Sections' made up of members of the Association having a special interest in any phase of the law or bar activity. Their work shall at all times be in furtherance of the unity of the law as a science and in the interest of the profession and this Association and the performance of its public obligations. Consistently therewith, there shall exist the following Sections:

1. Young Lawyers Section.

2. Such other Sections as may be designated by the Executive Committee and approved by the affirmative vote of two-thirds of the members present at any annual meeting of the Association.

"(c) Said Sections are empowered to:

1. Adopt and amend By-laws, not inconsistent with this Constitution or the By-laws of this Association, providing for the election of officers, assessment of dues and the Administration of the Section.
2. Receive allocations from the Association.
3. Accept applications for membership from members of the Association only.

“(d) Said Sections shall:

1. Make an annual report to the Annual Meeting of the Association.
2. Cooperate with officers and Executive Council” — that should be “Executive Committee” — “of the Association and coordinate its activities with appropriate committees of the Association.”

We are not original, I would say, in providing for sections. South Dakota, from which this provision is modeled on, does have section organization within its Bar Association, and there are quite a few others that I am aware of at the present time on a State Bar Association level.

Mr. President, I would at this time move for the adoption of the amendment to the Constitution, as outlined in this outline that I have just read as an amendment to Article 8 of the Constitution.

MOTION CARRIED

## DISCUSSION OF THE BUDGET

### PRESIDENT-ELECT CONNRY:

Let me start by talking generally first about this license fee increase proposal. There are some basic figures I want to give you. We are proposing a \$25 increase in license fees in all categories. For our practicing lawyer category, this raises us to our statutory maximum of \$100. We have approximately 700 members of the Association in all categories, which at the \$25 increase would result in \$17,500. Your Association retains 80 per cent of the license fee money; the other 20 per cent goes to the Bar Board. The net result of a \$25 increase would be an increase in Association income of \$14,000, and an increase to the Bar Board of \$3,500. I've got lots of things I can suggest to the Bar Board they do with their \$3,500, but at the moment, let's talk about the \$14,000 income figure which would come into your Association.

Now this income would not in any way affect the budgeting process of the Association until the start of the next President's term in July of 1972. The income for 1971-72 is in hand and we will not lose the filing fee money until July 1st of 1972.

All right. The filing fee income, best estimate, is approximately \$18,000 per year. The expenses the Association will lose in connection with the loss of the filing fee money is approximately \$7,500 per year. The net result to the Association of the loss of the filing fee money is eighteen minus 75, whatever that comes to — eleven five, I think, and my figures don't sound right, but that's what it works out to.

Now, carrying this a step further, your Association budget for the previous year totaled — and if you've got these budget sheets, if you've all picked one up, it would be helpful — totaled \$67,400.

The budgeting process of the Association is such that amounts are put in for committee expense which, historically, are never spent. The actual expenditures during the 70-71 budget year in round numbers was \$67,000. In the proposed 71-72 budget, the total is \$70,000, or less than a \$3,000 increase. Yet in the 71-72 budget, I have attempted to boil out a heck of a lot of what was water in the 70-71 budget. And I think that \$70,000 is much more realistic than the sixty-seven thousand of the previous year.

Now, again, we have \$19,500 income and cash on hand in a special fund which must be spent during the coming year or forfeited back to the State. In addition to that, we will have a \$49,500 cash availability in the general fund. There is no obligation to spend it, and over the past three years, the administration has been successful in improving the cash position of the Association each of these three or four years. If you will recall, about four years ago we were in the hole; we were in the red. We went to that 13 month period to adjust our fiscal year, and over the last three years, or so, we have increased the treasury by a substantial amount.

There is available for the 71-72 budget year \$69,000. I think the seventy-thousand-dollar budget figure proposed is realistic. It still has some water in it. We can live at our existing level of expenditures and programs, plus add five thousand for PR, and live with the financial availability. However, beginning July 1, '72, that year the funding of availability will be \$46,000.

Carrying out the activities in this 71-72 budget would require that the Association have availability of \$62,500. Adding the fourteen thousand anticipated, or hopefully raised through a dues increase, to the general fund of 46, would give the Association \$60,000 availability during that 72-73 year, which would be sufficient to carry on the activities of the Association at its existing level.

With this background, I would like you to look at this budget summary sheet I have prepared. Now, as you know, our Association operates out of this regular fund and this special fund. The special fund expenditures were designed and set up in such a way that they could be justified to the Legislature. They were primarily “public information” or “public service functions,” with the exception that one-half of the cost of the central office, exclusive of the Executive Director's salary, was paid from this special fund.

I have put this together in one column, so that the totals can be analyzed and compared without the necessity of having to pick up two figures from two separate funds. The top section is our central office expense. The only change posted in it is a reduction of \$400 in equipment purchase. I'm just going to go through this before we have any discussion and questions.

The second section is the officers and Executive Committee travel, and I have generously increased my travel allowance by \$500 there.

The third section, in effect, are other non-committee expenses. Where there are reductions made, as per example, annual audit, I am trying to bring the figure more in line with reality. We only spent \$208. The other increase shown is the Clients Security Fund. Actually, that should not appear as an increase, because we spent a thousand dollars in the past year on it. We have committed ourselves to a program of adding a thousand dollars

per year to that fund until the balance in it reached a minimum of \$20,000.

All right. Let's look at the third section, which is committee expense. Again, the figures that are shown are either my thoughts on where we should be emphasizing our activities under committees, or they are an effort to bring the budget for those committees more in line with reality. CLE, increased it \$500, thinking that this is a valid area for expenditure by the Association. The decrease shown in Interprofessional Relations is simply shown to reflect the fact that last year they only spent \$63. Judicial Improvement spent nothing last year, and I have removed this figure on the belief that for the coming year the Judicial Improvement function is best left to the paid staff of the Judicial Council, which is financed through a grant from the Law Enforcement Council. Next year, when there is a work product to look at, there will again be a valid job for the Judicial Improvement Committee.

Legal Economics, while they only spent \$717, I left it \$1,200, feeling that this is again an area of prime importance to our members. Memorials and Fifty-Year Awards spent the monumental sum of two dollars, so I reduced their budget to 50. This Public Relations is where this proposed \$5,000 increase comes, and that was discussed yesterday. The Unauthorized Practice Committee spent nothing, yet I have increased the budget by \$150 to 450. Again based on the complaints and problems that have come up, I feel there is a valid job that this committee can and should be doing in this coming year. And I think they can and should spend that much money, if, in fact, the expenditure of money is any reflection of activity. And don't get me wrong; many of these committees have been very active, but their members have just not submitted vouchers. So the fact they spent no money does not mean they did not work. It just means we are going to continue to victimize their members and prey on their good will for another year and hope they again don't submit vouchers.

Young Lawyers Section was in at two; they spent nothing, so we cut it to one. Administrative Law Section was in for 300; they spent nothing, so we cut that back to nothing. The Court Administrator is out now, because of the funding of the Judicial Council Administrative Program. The Grievance Commissions did not spend their full budget. They were left in, though, at the same amount as previously. The Information and Service Committee just about spent it. We left it the same. The Judicial Selections went slightly over; we left it the same. The Law Review Advisory Committee spent nothing, so we gave them nothing. Law School Liaison showed no expenditures, but this is another committee where the members simply absorbed their expense. In the belief that securing the building appropriation accomplished a major part of their work, we cut the budget in half for them. Legal Aid and Defense of Indigents spent \$68, so we cut them to \$200. Legal Education and Admission to the Bar spent 200, so we budgeted them at 200. Now the Legislative and the Legislative Council-Special I felt did not need to be funded during this coming year, as a non-legislative year. The Special Probate Subcommittee spent only \$172 of their thousand, so we cut them to 500 dollars. The Pattern Jury Committee — and this is primarily printing costs and expense — spent \$771. We anticipate printing. We left it in at a thousand. Procedure Committee spent 787, but again under the belief that the primary function has been accomplished with the submission of the rules to the Supreme Court, we did reduce that. And, conceivably, we have some water in the figure that's left. The Real Property Committee spent 129. We reduced them to 300. The Student Bar spent nothing. They should have spent something, so we put them back in at 150. Traffic Safety went over their budget by \$20. We put it in the same. And the Legal Education Program for students managed to go unnoticed this year, so we didn't budget it for next year, trying to save or squeeze some water out of these figures to make them a little more realistic.

Now there are many ways that we could go through this, but first, let me start with what I have shown as committee expense. Let's start at the bottom of this sheet and work up. Does anyone have any comments, objections or desired changes in what we have projected and shown as the committee expense section of the proposed budget?

#### PRESIDENT-ELECT CONMY:

I would like to call for two resolutions; the first is that henceforth, the chairman of the existing committees to anticipate any change in expenditure from previous committee activity reports that change to the Budget Committee no later than June 1st of the year, outlining and requesting either an increase or decrease in what has been shown as Committee expense. Because as a member of the Budget Committee, budgeting in the dark is no fun. Would someone second such a resolution.

#### MR. DAHL:

If the resolution is adopted, and I see no reason that it isn't, I would like to amend your resolution by a requirement that the Executive Director send a copy of your monthly report to the committee chairmen, so that they know how much money has been spent. Otherwise, it's going to be necessary for each committee chairman to keep track of every voucher that he signs.

#### AMENDMENT CARRIED AS DID MAIN MOTION.

#### PRESIDENT-ELECT CONMY:

The next resolution I would move is that the annual dues for membership in the Association be increased in each category by the sum of \$25, with such increased dues to be due and payable for the period beginning January 1, 1972.

#### REPORT OF SPECIAL GRIEVANCE PROCEDURE STUDY COMMITTEE

#### MR. DANIEL J. CHAPMAN:

President Gerry, gentlemen, and ladies of the Convention:

You will find at the end of the rows a report or a copy of the report that we have made in connection with our work in this Committee.

Just by way of explanation of how this came about, we were advised about the first of this year by President Nilles that in view of the Clark report and the report of Mr. Justice Clark at our last Convention that it would be advisable that we look over the present grievance procedures, together with a manner in which they were presently functioning. As a result, our Committee got together and met on several occasions. We met, for example, with a Mr. John McNulty of the Hennepin County Bar, who is a member of the ABA Committee dealing with this particular subject. He gave us considerable assistance in reviewing these particular procedures that we now have, made suggestions, and our Committee went over them in some detail with regard to suggested changes.

You have the report, or you should, or it's available to you, of our Committee, and I won't read it in detail. I will merely summarize what we have said. The opening paragraphs are merely explanatory of what we have done, the manner in which we have functioned, what we have studied. We looked over the Arizona procedures with regard to this. We talked with Mr. McNulty; and we came to a number of conclusions and recommendations. As President Nilles has already pointed out, one of the first conclusions that we came to — and we would doubly like to emphasize this — is that presently, under the procedures that we now have, it is certainly not the personnel which is at fault with any delay in the procedures. We have in Bob Dahl in the East District and Harold Anderson in the West District, Ward Kirby on the Grievance Commission, competent, qualified, dedicated people, and their Committees and the Commission are also people of this same stripe. They have done everything, more, perhaps, than we could expect of any unpaid personnel who might serve on a committee of this importance.

We also conclude — our Committee concluded that the overall structure of the grievance procedure is generally satisfactory. There may be some questions with that. I'll talk just briefly about it a little later on.

The third thing we found is that, nevertheless, there are some criticisms of grievance procedures, mainly with regard to the speed with which they are handled. In some instances, we concluded, without going into specifics, the criticism is justified. There are certain instances where the grievance procedure has been a little slow in catching up to some action that should have been taken. We concluded, also, that there are very — there is very little under the present rules that can be done to speed up the procedure. One of them has been stated to be better communications between the Grievance Commission and the Grievance Committees.

Maybe I should just briefly, just in a second, explain to you how this works. We have appointed by the Bar Association two Grievance Committees; one in the east and one in the west. This operates as the investigation committee. It investigates all the complaints and makes recommendations to the Grievance Commission. The Grievance Commission is an arm of the Supreme Court. It consists of six people; one appointed from each District. This, then, takes the final action with regard to whether a grievance is to be continued or is to be concluded at that point. After that, of course, recommendations are made for prosecution to the Supreme Court. In many instances, then, a referee, usually a District Judge, is appointed to take testimony, and a hearing is held before the Supreme Court. So under the present procedures, we think there is probably little that can be done to speed it up.

Our last conclusion was that it may be necessary — and, obviously, under the present budget, it's impossible at this point to see where we are going to do this — but it may be necessary to ask for some increased expenditures for the grievance procedure, either in (1) having our committees meet more often, or (2) in hiring additional help to make the investigations; possibly a part-time help in the form of a retired attorney. Minnesota, South Dakota have done something like this already.

So, based on these conclusions, we have made a number of recommendations. The recommendations are these:

First of all, we suggest — and most of these are in line with the Clark report, which, if you haven't seen, is an interesting report with regard to grievance procedures — the first recommendation is that in any instance when an attorney is convicted of an offense consisting of a felony, there is an automatic — there should be an automatic suspension within 10 days after the conviction, reserving in the Supreme Court the power to relieve the attorney of this for good cause shown within that 10-day period. As far as a misdemeanor involving moral turpitude and as far as felonies are concerned, subsequently there will be an inquiry, but the only question is what the punishment or the disposition of the matter will be. We are recommending, then, that procedures be set up. This is a broad recommendation. We would set up the specifics by the rule to the Supreme Court, amendment to the present rules, to implement this. We are asking that we have power to do this, make this change.

The second one is to permit an attorney to resign. The important thing here is "upon admission of guilt." We do have in our present rules something which does provide for an attorney to turn in his license. However, this does not necessarily involve an admission of guilt on the part of the attorney charged, and we feel that by resignation, admitting guilt, that the procedures can be speeded up.

The third thing, the third radical change that we suggest, is that there be provision for the suspension of attorney who is incapacitated. We hope that we won't get hung up on what the word "incapacitated" means, because we are just talking about broad outlines here. The specifics will have to come later. But what we have in mind, generally, is that attorney, who, by mental incapacity, by reason of an alcoholic problem, for example, is not capable of performing the duties of his calling. Now, we are not talking about an attorney who becomes blind, an attorney who is caused to resort to a wheelchair to get around, that type of incapacity. We are talking about the incapacity that makes him incapable of performing as an attorney.

The fourth thing that we recommend be done is that a procedure be implemented to make a permanent record. There is already something which is being done in this regard by our Grievance Commission, Bar Board, but we feel there should be a permanent record of these complaints, investigations and dispositions for the use of future Grievance Committees and Commissions.

Number five: We suggest that the procedures be set up to permit the institution of grievance action without the filing of a specific complaint. The problem here is that while we do have this in our present rules to some extent, it does not seem to be utilized, and we think that the procedure should be amplified in this regard.

Six involves the setting up of a time period within which the complainant should be advised of the initial action taken. We suggest that this be done within 15 days of the time of the complaint. Under the existing procedures, that



is the number of times our Committees meet, this would be impossible. And this is where we're talking about the additional funds that may be necessary.

In connection with that, number seven gives some powers to the Grievance Committee. At this time the Grievance Committee merely makes recommendations for actions. The Grievance Commission takes the action more or less in line with the recommendations of the Grievance Committee. We suggest that the Grievance Committee be given specific — I got it right that time — specific action with regard to admonishment or dismissal of what we call "crank complaints." I think those of us who have served on these Grievance Committees will know that a large percentage of the complaints are in the nature of crank complaints, and can be summarily disposed of. But it may take, under our present procedures, as long as three months in order to accomplish this, because our Grievance Commission meets only quarterly, and they are the only ones that can take final action.

Then, number eight, one that has drawn some fire — we have gone over this with Grievance Committees and Grievance Commission — is that adequate safeguards be set up so that there is not too automatic or hasty reinstatement of disbarred attorneys. With regard to that, again we are suggesting merely broad outlines. We do have a procedure under our present rules with regard to reinstatement. We feel that more can and should be done in this area.

Number nine and ten can be read together. Number nine: We suggest that consideration be given to the establishment of an adequate staff to handle grievance investigations, and number ten provides that high priority be given to paying the cost of the hiring of the adequate staff.

In conclusion, our Committee has made the recommendation that our Committee or a similar committee be continued, and our President-Elect has indicated will appoint the same Committee to look further into this matter and to come up with the exact wording which is to be submitted to the Supreme Court. And, of course, this would be done with the Executive Committee's approval.

After I prepared and submitted the report and our Committee met and approved the report, the Grievance Committee No. 2, chairmanned by Harold Anderson, made a rather unique suggestion, which was that the Grievance Committees be disbanded, and that they take the form only of investigation people and the reports would be made directly to the Grievance Commission; thus eliminating one step. Frankly, our Committee considered and would have been in agreement with this, but we did not feel that too sweeping a change would be accepted by all of the interested parties. We do think there is great merit in considering this, and the Grievance Commission has, itself, indicated it will take this into consideration at its next meeting. And so, therefore, I'm making an additional recommendation which is not on this list or not on the report that you have. It's worded as follows:

"Recommendation No. 11: That authority be delegated to the state executive committee to initiate procedures to seek such other changes in the grievance procedures as may be determined to be advisable, including the elimination of the grievance committees."

Thus giving to the Executive Committee the authority, if it sees fit, to go ahead with recommendations for the elimination of the Grievance Committees.

Now, we make these recommendations at this time because we don't want to waste another year until the next meeting of the Bar Association, which might be necessary. We would like to get going with some of these recommended changes.

Mr. President, I move the adoption of the recommendations included in this report.

CARRIED.

#### REPORT RE BAR ASSOCIATION ACTIVITIES DURING LEGISLATIVE SESSION AND RECOMMENDATIONS FOR FUTURE SESSIONS

MR. ALBERT WOLF:

I am not sure, first of all, whether this subject matter is entitled properly, but it's on the agenda as a Burleigh County proposal. It has to do with the reaction by the members of the Burleigh County Bar Association, over the past six months, to the activity or inactivity of the North Dakota Bar Association insofar as it concerns itself with legislative matters.

Early in the Legislative Session, many of us in Bismarck discussed the fact that this might be a year when we were going to see much proposed legislation affecting the judiciary, the Bar Association and the practice of law, generally, and that we should take steps to have the membership informed as to what was going on. I called the feeling of the Bismarck people to the attention of our officers, and I think that it became apparent to me that perhaps one of the real problems was that the structure of the thing was such that the Bar Association, of all organizations that should be responsive to legislation and proposed legislation, did not have the flexibility and the mobility to react to legislation introduced by other people and other organizations, and to really take a strong position, sometimes, where it was needed. And, so, at, I think, every meeting we had of the Burleigh County Bar Association, at our monthly meetings, we discussed the problem, and perhaps it was because — I'm sure it was because we're closer to the situation in Bismarck and the fact that we became aware of various members of the Association that were totally unfamiliar with some of the proposed legislation and judicial salary issues and had not contacted their legislators in their areas, and many times matters that we were concerned with, we would talk to the legislators and they would say, "Well, nobody in our area has talked to us," and then we'd talk to some of the lawyers in the area and they weren't too familiar with what legislation was being proposed.

Now there were, probably, about 110 bills introduced in this last Session that had a direct or indirect effect on the practice of law, on the judiciary, or the Association, and it was felt by many of the Bismarck lawyers that we should have had a better communication, perhaps, and in some instances we were not able to, as an association, take official positions on proposed legislation, because the matter had not been discussed last June, in Williston. And, as the general rules in the By laws provided or suggested in the past, the officers or the Legislative Com-

mittee, of which I am a member, did not have the opportunity to take a position and speak for the Association, unless the matter had been presented and discussed and voted upon at the State Convention. Now that, in itself, immediately suggests the ridiculousness of that type of a rule, because just as much legislation was introduced in the last Session by other organizations as was introduced by our organization; in fact, many more bills that we should have taken a position on, perhaps.

Now I might say that, in spite of all this, we did have a pretty good Legislative Session, insofar as the legal profession is concerned; but I think that there were some areas where information to the members of the Association as to pending legislation should have been more readily available through the Association. There are some other organizations — and I might just refer to several, like the Petroleum people and the Retailers, and various other organizations — that ordinarily might not have as much need for direct information as lawyers would, have a real fine reporting service — a weekly thing — that goes beyond what you see in the *Fargo Forum* or the *Minot* paper, about bills being introduced. Those little captions are somewhat misleading sometimes; so you might need some additional information; and various other organizations have been providing that to their memberships. And so it was this, primarily — the lack of communication to the membership of pending legislation — that prompted the reaction by the Bismarck lawyers, I think. And so we asked the Executive Committee to put this matter on the agenda for discussion; and then, later on, the next month, at our meeting — I believe at the April meeting — a committee was appointed, and then we met since then, and we have come up with some recommendations.

Now these recommendations were merely proposed or formulated for the purpose of discussion here, so that we might take one step back and look at the whole picture of the executive offices; and when I say "executive officers," I mean the entire executive office structure — the Executive Committee and the President and Vice President, the President-Elect and the District Chairmen, and to see what their function, their role and their responsibility to the Association might be. And so they made some specific proposals, and I'll mention that this committee of Burleigh County lawyers consisted of Dave Evans, Myron Atkinson, Bill Murray, Kent Higgins, Al Schultz and myself. Al was already up here when we met, at Minot, so he was not at the meeting we had this week.

But I will just, very quickly, read through a one-page report of recommendations of the Burleigh County committee, which might give us a basis for further consideration. I'll leave the original copy with the President and I'll refer to the report.

At this meeting, the Burleigh County committee to review the executive offices of the North Dakota Bar Association adopted the following positions and recommendations regarding the State executive offices in connection with legislative and Constitutional Convention matters:

1. That the State Executive Committee be given the latitude, discretion, responsibility and authority to propose legislation on behalf of the State Bar Association or to take a position on legislation proposed by other sources, without necessitating a State Bar Convention vote on such proposals.

2. That the primary responsibility of the State Executive Office should be to communicate to the membership concerning proposed legislation and Constitutional Convention matters and to the extent that such legislation affects the legal profession or the practice of law.

3. That the Executive Committee, including the individual District Chairmen, but particularly, the President and Vice President of the Association, upon taking office, must be prepared to engage in a larger scale in formulating and carrying out the legislative program of the Association, including personal participation by the individual members of the Executive Committee.

4. That the legislative program shall include the following:

- a. A systematic reporting service to give early information to the membership of the Association as to legislation proposed or introduced that may affect the legal profession or the practice of law;

- b. To assume the responsibility of making arrangements for appearances of members of the Association, or others, at various legislative hearings to present the position of the Association.

- c. To provide a follow-up reporting program concerning legislation enacted which would affect the legal profession or the practice of law, in a timely and concise manner;

5. That the State Executive Committee designate procedure for the Association to review and take positions on various constitutional proposals and to solicit suggestions and recommendations from the membership, thereby enabling the Executive Committee to reflect the consensus of the Bar as to constitutional matters.

I'll just discuss the last one, briefly.

Since I have come to Minot this week, I have been informed, for the first time, and I'm happy to hear, that a committee, with Herman Weiss as Chairman, has been appointed to review the legal constitutional provisions that would affect the legal profession, and they are formulating language, which is being prepared and submitted to the Constitutional Convention. So, perhaps, that step has been taken. But, again, as sometimes is the problem, I was not aware of it, and neither were any of the lawyers in Bismarck on our committee, at least, that this had been done; but we're happy that that, number 5, has been taken care of. That still leaves, however, the responsibility, I think, and need for the Association, through the Executive Committee, to respond to and to take positions on other proposals by other committees of the Constitutional Convention, up through the preliminary hearings and, also, during the Session next January. And I think it takes more than just drawing language for one section of the Constitution; it may require some influential lobbying by the State Bar Association, again.

Now I might also say that I didn't mention anything in this report that the Committee adopted concerning the Legislative Committee or the Committee Chairman of the Association, and of course we didn't eliminate or exclude him or the Committee from this report for the purpose of suggesting the elimination of that Committee; but, rather, to place the responsibility at the Executive Committee level to formulate whatever structure is necessary, including the retention of the Legislative Committee or even the expansion of that Committee or that Committee Chairman's responsibility to carry out legislative programs.

And the other thing that might be mentioned is that there was a feeling—and some of these things I'm mentioning now are not in the report, because they reflected the feeling of certain members of the Committee who had

sat down and thought at least some of the things out themselves that were more detailed; but I think, in order to reflect if this type of procedure were adopted, where the Executive Committee was given the authority to formulate the position of the Bar Association, it might necessitate a little more participation by the District Chairmen in their own Districts; that is, perhaps they should have one or two other additional attorneys who would advise and consult with them on legislative matters, so that when they come to an Executive Committee meeting, it would give a broader base than merely the people there, to formulate the positions of the Bar Association on legislative matters. And perhaps that's again, something that the Executive Committee might want to implement for that purpose. I think that the suggestion and the practice in the past, for the Bar Association, at their convention in June of the year preceding the Legislative Session, to anticipate what might be necessary for the Bar Association to do in support or opposition to legislation, is just sheerly ridiculous, and we know that in the last Session there were at least five times as many bills that had as much effect on this Association and its members and the practice of law that were not effective or where the Bar Association did not take an official position, as there were where we did; and, fortunately, individual members took positions. But there was a lot of questions among the Legislators concerning what the Bar Association's position was or why they didn't have a position on some very crucial legislation. And it's for that purpose that we would suggest that the Executive Committee have that authority and exercise it, and perhaps more discreetly than 25 or 30 people might exercise it at the tail end of a convention before the Legislative Session starts. And we have a ridiculous situation — and I don't intend this as criticism of those who voted for some of these things last year — but where you have a bar association supporting legislation that would require the judges to go to every county in the state, when they're overloaded where they're at, to begin with — I mean every county in the state once a month, I believe is what the bill was — and that was a Bar Association bill — and yet not take a position on the Small Claims Court, which probably was a proposal that has gained us more public support and acceptance in the community — in the lay community — than anything else that was proposed last year. But this is to correct that, and I think it's been the structure that's prevented the State Executive Committee from having this power in the past, and certainly, if we elect six district chairmen and know that they're going to have that power, we'll keep them informed in our districts as to what our feelings are on legislation, and we elect the President-Elect, Vice President and a Secretary and the various other members of the Executive Committee, and they should have the responsibility and they should have the authority to formulate the position of the Bar Association.

This is, basically, the report. If we are going to change and implement the recommendations of the Committee as to the delegation of the authority to formulate policy and positions of the Bar Association by the Executive Committee, we would have to change the Bylaws. The Bylaws can be changed on one day's notice under our rules. The Constitution has to be changed on one year's notice, as you perhaps know. This would be a bylaw addition. It would be under Article III of the Bylaws, paragraph (d), which would read as follows:

"The Executive Committee shall formulate and carry out legislative and Constitutional Convention programs by proposing and taking public positions on legislative or constitutional matters in the best interests of the profession and the general public and to communicate such proposals to the membership in a timely manner."

Now this would be the language that would go into the bylaw addition or amendment.

And, Mr. President, I would move the adoption of the report and I would move, insofar as the bylaw change, it would be incorporated in my motion for adopting the report.

REPORT ADOPTED.

JUDGE BURDICK:

I now propose that the last sentence of — what section was it of the Constitution which you read, Mr. President?

PRESIDENT NILLES:

Article IX says as follows: "No expression of approval or disapproval by this Bar Association on any measure or candidacy shall be given except as hereinabove provided."

JUDGE BURDICK:

Mr. President, I move — I'm serving notice at this time that at the next annual meeting — I'm proposing at this time that this sentence, which you have just read, be deleted from the Constitution or amended at the next annual meeting.

PRESIDENT NILLES:

All right. Your notice of intention will be so noted in the record. This requires no action by the Association. Is there anything further on that subject? I presume we have completed it.

ELECTION OF OFFICERS:

Nomination and election of John Gordon for Secretary-Treasurer.

Nomination and election of Michael R. (Ray) McIntee for President-Elect.

REPORT OF COMMITTEE ON JUDGES' MEMBERSHIP FEES

MR. DAN CHAPMAN:

As Jim Williams has pointed out, that he is the Eddy County Bar Association, I am the Committee with regard to this matter.

What brings this about is that, prior to this time, there has been no provision in our rules or our Constitution

with regard to the payment of membership fees by district judges and supreme court judges — all judges. At the last session of the Legislature, Senate Bill 2249 was introduced and passed and signed by the Governor, which would provide for the payment of fees by judges as a grounds for membership in the Bar Association. There was some consternation as to who would do this sort of thing, because raising the fees or the cost to the judges is not going to particularly endear the person who makes the motion to raise the fee, and I guess they looked at my record with the judges and with the Supreme Court and they didn't think it would do any harm to me.

The first order of business will be to propose an amendment to Article III of the Constitution of the State Bar Association of North Dakota. It presently reads:

"The membership of the State Bar Association of North Dakota shall consist of all practicing attorneys who have paid their annual fees to and have received their licenses from the secretary-treasurer of the state bar board, as provided by law, and all other attorneys who have been duly admitted to practice by the Supreme Court of this state and by virtue of holding judicial or other public office are exempted from the payment of such license fees."

The amendment that I propose would be to add the words:

"and who have paid the membership fees established by the State Bar Association of North Dakota for such persons exempted from licensing requirements, provided that the amount so fixed shall not exceed an amount equal to the State Bar Association's share of the annual license fee to practice law."

This is the wording of the statute. It provides that the fee will not be the same fee that they would pay, if they were being licensed, but it will be the State Bar Association's share of that fee. So, of course, that cannot be acted upon until the next meeting of the Association.

I'll go on with the proposed amendment to the Bylaws.

The proposed amendment to the Bylaws will be — it does substantially change the present rule, so I won't even read the existing rule.

"DUES:" It's Article II, by the way, of the Bylaws.

"Dues: The annual dues of the members of this Association shall be in an amount equal to the amount returned to the Association by the State Bar Board from the license fees paid to such Board by the individual licensees and dues shall be deemed paid upon receipt of said amount by the Bar Board. The membership fees for all attorneys holding an unrevoked certificate of admission to the Bar of this State but who are prohibited from practicing law in this State by virtue of holding a judicial office shall be in an amount to be fixed by resolution of the Association but which shall not exceed an amount equal to the State Bar Association's share of the annual license fee to practice law.

"In addition thereto, assessments of not to exceed twenty-five dollars per year for each member may be made upon the resolution adopted by a majority vote at an annual meeting or at any special meeting if due notice be given in the call for such special meeting that such assessments will be proposed."

I move the adoption of the amendment to the Bylaws.

AMENDMENT ADOPTED.

#### MR. CHAPMAN:

Well, Mr. Chairman, then I would move the resolution that the fees for those holding office and exempted from the license fees be fixed at \$52 — the lowest category — commencing next year.

#### REPORT OF MEMORIALS COMMITTEE

Memorial — The Honorable Eugene Coyne

#### MR. ORLIN BACKES:

Dave Peterson, Chairman of the Memorials Committee, asked that a proper memorial be prepared for the Honorable Eugene Coyne, who is deceased, and this will be printed in the *North Dakota Law Review*.

"District Judge Eugene Coyne died unexpectedly at Minot, North Dakota on the eleventh day of March, 1971. He was appointed Judge of the Fifth Judicial District by Governor William L. Guy in June 1967.

"Judge Coyne was born May 5th, 1915, at Starkweather, a son of Mr. and Mrs. Michael Coyne. He was reared in Starkweather and graduated from high school there. He entered the University of North Dakota and was a graduate of UND School of Law in 1938.

"He practiced law in Pembina County until entering the military service. During World War II, Judge Coyne served with the American infantry force both in Africa and in Europe, then returned to his native state to take up the practice of law in Pembina County until coming to Minot in 1953.

"Judge Coyne devoted much of his time to his church and community. He was a devout member of St. John the Apostle Catholic Church, President of the Ryan High School Board of Education and active in the Knights of Columbus. Judge Coyne also was a member of the Ward County and North Dakota Bar Associations, the District Judges Association, Lions International, and the Minot Elks Lodge.

"His honesty and integrity on the bench, and as a lawyer, his great compassion in applying the law to avoid injustice, his scholarly approach to the law, his gentleness and perceptive understanding, and his kindness and consideration for his fellow man had earned him the respect and admiration of all those who had the pleasure of knowing him.

"These qualities blended well to make him one of our finest trial judges.

"Judge Coyne is survived by his wife, Naomi, four daughters, Jane, Rita, Michele and Winnifred, and two sons, Christopher and James."

## REPORT RE CONTINUING LEGAL EDUCATION

MR. GORDON SCHNELL:

I don't really have a presentation. I merely wanted to bring this matter up for discussion. We have a Committee for the Unauthorized Practice of Law. We've been concerned about that area; but, in recent years, there's also been considerable concern about the practice of law by those who are technically authorized, in that they have a license or that they call themselves a lawyer, and yet their practice of law, I think, does more damage to our profession than those who don't even have a license. And the problem is that it's very difficult to set up any sort of standards or requirements which would eliminate this. The problem goes back too far and it's a matter of personalities and a matter of fact that these men are already admitted to the Bar, and they haven't done anything which would cause them to become disbarred; in other words, they haven't done anything criminal or anything like that, and yet they may carry on their practice not even out of an office; they may just do it out of their home, or it's a sort of a sideline in some instances, and I think this is very damaging, and I would hope that there would be some way that that sort of thing could be remedied. It isn't going to be immediate, but eventually, I would hope so. And one of the things that has been bantered around a little bit was the concept that every lawyer should further his legal education each year; and so, along that line, it has been suggested that perhaps, as a condition to renewal of our license each year, a lawyer should either be required to certify that he has done something in the past year to comply with this, or — it's a matter of technicalities as to how you carry it out, and it's also a problem as to how far you want to go. I don't think, at this point, we could go very far. My suggestion would be that we merely go on record as requiring continuing legal education on the part of each lawyer. Maybe some day we can put teeth into it. I think now it would probably be too harsh.

Al Schultz has checked with the Bar Associations of other states, and there are no states which have such a requirement — at least that have any teeth in it, although, among the legal profession, as well as among other professions, it's understood that a person in good standing must maintain his professional capacity from year to year.

And so I think we should have discussion of this and we should look for ways in the future to do something about this.

There's also been discussions as far as requiring persons to take the bar exam again, after — for instance, if they haven't paid their license fees, or something like this. But the problem with all of these suggestions is that they're quite arbitrary; they're harsh, and they're difficult to carry out. So, for the present purpose, and in order to bring about some discussion, which I hope we could have on this matter, I will simply make a motion that we pass a resolution requiring each lawyer to attend continuing legal education courses or seminars or meetings of some type each year, it being understood that he does not have to certify this, he does not have to prove it; that it's just a matter of his conscience that he abide by it.

So I'll open it up for discussion.

PRESIDENT NILLES:

You have heard the motion to adopt the resolution requiring lawyers to attend a CLE meeting once each year, period. Is there a second to the motion?

JOHN GORDON:

Second.

PRESIDENT NILLES:

All right. Is the amendment to the motion consented to by the gentleman who seconded it?

MR. GORDON:

I'll consent to the change.

PRESIDENT NILLES:

It's with your consent. You have the motion in the form as amended, with the consent of the seconder.

## REPORT OF RESOLUTIONS COMMITTEE

MR. JOHN HJELLUM:

I think I've got a resolution to which no one can take exception. I move the adoption, on behalf of the Resolutions Committee, consisting of — I don't even have the names here — but consisting of John Zuger and Nick Vogel and myself.

"WHEREAS, exceptional accommodations and entertainment have been provided for us by the City of Minot and the Ward County Bar Association and we have had an excellent and outstanding convention under the co-chairmanship of Mr. Kenner and Mr. Berning and their committees,

"THEREFORE, BE IT RESOLVED by the North Dakota Bar Association that we express our hearty appreciation to the City of Minot and the Ward County Bar Association for the excellent convention arrangements, and to the lawyers of Bottineau, Burke, McHenry, McLean, Mountrail, Pierce, Renville, Rolette, Sheridan, Wells and Ward Counties for the delightful barbecue and social program provided.

"BE IT FURTHER RESOLVED that we express our genuine thanks to the charming members of the Ladies Activities Committee for their fine program of entertainment for the ladies;

"BE IT FURTHER RESOLVED that we express our sincere appreciation to Robert W. Meserve, President-Elect Nominee, American Bar Association, Boston, Mass., for his appearance and address

delivered to our annual luncheon;

"BE IT FURTHER RESOLVED that we express our sincere appreciation to The Honorable Edward K. Pritchard, Immediate Past Chairman, National Conference of Bar Presidents, Charleston, South Carolina, for his appearance and address to be delivered to our annual banquet;

"FURTHER, that we express our appreciation to the committees arranging the general meetings and to the leaders and speakers presenting the subject of discussion in an exceptionally fine and complete manner at this annual meeting;

"FURTHER, that we express our appreciation to the law book publishers and others who contributed to our convention;

"BE IT FURTHER RESOLVED that this Association hereby expresses its sincere thanks and appreciation for the dedicated work of President J. Gerald Nilles of our Association, President-Elect Patrick A. Conmy, with the striped pants, Secretary-Treasurer John Gordon and Executive Director Alfred C. Schultz, their direction having given us a highly successful Bar year."

#### CLOSING REMARKS, PRESIDENT NILLES, AND ADJOURNMENT

##### PRESIDENT NILLES:

All right, gentlemen. Is there any further business then to come before the Association?

We have nothing further on the agenda.

I would like to extend my thanks, again, to all the members of the committees, particularly the gentlemen who have presented the matters before this Association. I think that the quality of the reports demonstrates the hard work that everybody has done this past year.

I, of course, also want to extend my thanks to Al Schultz for all the arrangements he has made. We have had a difficult year and, believe me, I could not have accomplished the matters that we did without him.



## MEMORIALS

### JOHN C. STEWART

A native of Grand Forks, North Dakota, Mr. Stewart attended public schools there, completing undergraduate and doing graduate work at the University of North Dakota. He served in the United States Army before attending the University of North Dakota Law School.

An honor graduate of the Law School in 1959, he served with distinction as general counsel to the State Public Service Commission after graduation.

He began the private practice of law with a Bismarck law firm in 1964, and was a partner in the firm of Fleck, Smith, Mather, Strutz, Mayer & Stewart. He returned to the Public Service Commission as general counsel in 1968, serving in that capacity until his death.

"Jack" Stewart enjoyed a reputation as a diligent, competent and thorough legal practitioner.

He was a gentleman with many of the attributes Justice Felix Frankfurter once advised a young man interested in a law career to aspire to. He came to the study of the law as a well read person with a deposit of good reading, a love of good music and poetry. Always a student of the law, he had a facile use of and love of language.

He was a cultivated man with wide ranging interests that allowed him a deeper draught of life's good experiences than most longer lived persons can claim. His family, friendships, hobbies, and recreational pursuits were joys he valued most.

He exemplified a courageous spirit during the nearly four years he suffered from cancer prior to his death. He died October 24, 1970, at Bismarck, North Dakota, at the age of 41.

He is survived by his wife, Mary Scott, whom he married in 1962, and their son, Judd, born in 1965. He is also survived by his parents, Mr. and Mrs. Lawrence Stewart of Grand Forks, North Dakota, a brother, Leigh, of Washington, D. C., and a sister, Mrs. Marjorie Gaff of Minneapolis, Minnesota.

### THORSTEIN HYLAND

Thorstein Hyland, who practiced law for 62 years after graduating from the University of North Dakota Law School in 1908, claimed to be North Dakota's oldest practicing attorney until his death in 1970 at the age of 90.

Mr. Hyland was born in Norway and came to the United States in 1899 when he was 19 years old. Although he had no money, and spoke no English, he was determined to put himself through law school. After receiving his law degree from U.N.D., he went to Washburn, North Dakota, to join his brother, James Hyland, who was practicing law there. James Hyland died in 1966 at the age of 94, and he was the oldest practicing attorney in the state at that time.

In 1909, Thorstein Hyland went to Stanton, North Dakota, to start his own practice. As a young lawyer in Mercer County he served as Assistant State's Attorney for several years until he moved to Sioux Falls, South Dakota. In the 1920's he returned to Stanton.

Thorstein Hyland was married to Clara Berdahl at Garretson, South Dakota, in 1915. They celebrated their 50th wedding anniversary in Stanton in 1965. Mrs. Hyland survives him as do his two daughters, Norma (Mrs. Ed

Doherty) of New Rockford, and Ruth (Mrs. Allan Sitzer) of Minto.

Mr. Hyland was well known for his ability to present complicated facts in a simple and understandable manner, and he was very persuasive before court and jury. He lived a long and full life, and was an able Lawyer and a fine Gentleman.

#### M. W. DUFFY

M. W. Duffy was born at Elroy, Wisconsin, October 31, 1881, to Maurice Duffy and Margaret (Flood) Duffy. The family moved to Dakota Territory in 1886, where the father had taken up a homestead and treeclaim about 18 miles northeast of Devils Lake. After his father's death in 1898 he carried on farming operations with his mother until 1904 when the family moved to Devils Lake. Shortly thereafter, he took up a homestead near Ruso, North Dakota. In 1909, he was married to Sarah McDonell of Devils Lake and after selling his homestead, he and wife moved to Grand Forks where he was employed at the post office for several years during which he attended the University Law School. He was admitted to the North Dakota Bar in 1917 and thereafter served for several years as Assistant Secretary of State under Thomas Hall. Mr. Duffy moved from Bismarck to Cooperstown in April, 1925, where he entered upon the practice of law, which continued until his death, June 25, 1970.

During his 45 years in the practice of law at Cooperstown, Mr. Duffy served five terms as State's Attorney for Griggs County and as City Attorney for several years. He was in partnerships with the late O. J. Thompson for six years; with the late District Court Judge, John Sad, for seven years; and with current District Court Judge, A. C. Bakken, for ten years.

Besides his wife, he leaves three daughters and two sons: Beatrice, Mrs. J. F. (Catherine) Lewis, and William, all at Portland, Oregon; Mrs. James (Miriam) Weitz, at Sidney, Montana; and Neil, an attorney at Minneapolis, Minnesota. His brother, Clyde Duffy, is a prominent practicing attorney at Devils Lake and former Lieutenant Governor of North Dakota.

The sentiments of the people of the Cooperstown community toward Mr. Duffy cannot be more accurately expressed than as done by Mrs. Gordon Frigaard in an editorial in the Griggs County Sentinel-Courier of July 2, 1970:

"Mister Duffy is gone, and all of us are going to miss him. He stood for so many, many things that we respected and admired.

I do not know how many people were ever on a first-name basis with him. Outside of his family, I guess I never heard anyone call him anything but Mister Duffy.

Reserved as he was with people, he loved to talk, and I don't know anyone who was more fun to listen to, or more stimulating a talker. He was well read, and well informed about practically everything and remembered in detail everything he had ever read, it seemed to me. There was really no use arguing with him, but it delighted him if someone did.

Old age did not dim that astonishing memory. In his last years he became gaunt and bent, but his mind was as sharp and precise as it ever was.

He was a community landmark and we regarded him with pride and amazement.

'That Mister Duffy — they don't make many like him,' we would say, and blink a few times, and swallow hard."

#### MAURICE G. LA GRAVE

Maurice G. LaGrave was born at New England, North Dakota, on May 8, 1920, the son of Grover and Mary Buckley LaGrave. He died suddenly at his home in Mandan, North Dakota, as a result of a coronary attack on October 16, 1970.

He attended high school at Esmond, North Dakota, graduating in 1938. Thereafter he attended Jamestown College where he received a degree of Bachelor of Arts.

During World War II he served the United States Armed Forces, serving with the 101 Airborne Division. He served as a lieutenant platoon leader of a parachute infantry platoon. His regiment was the first to land on the Normandy Beachhead by parachute on D-Day. Wounded in action three times, Maurice was awarded the Silver Star, Purple Heart with 2 Oak Leaf Clusters, Presidential Unit Citation with Oak Leaf Cluster, Bronze Star, various Theater Ribbons, and the Belgium and French Fourreguerre.

On August 2, 1942, Maurice was married to Violetta Stasney of Mandan, North Dakota. Two children have been born of this marriage, Larry Maurice LaGrave and Charles William LaGrave. Following his service in World War II, he returned to Mandan, North Dakota, where he taught at the State Industrial School from 1946 to 1950, serving both as teacher and later as Principal at the State Industrial School. He then enrolled in Law School at the University of North Dakota and in 1953 graduated from the University with a law degree and that same year was admitted to the Bar.

From July 1953 to June 1955 he served as part-time legal clerk for the North Dakota Supreme Court and as

Assistant States Attorney of Morton County, North Dakota. In 1955 he commenced private practice of law and pursued a successful career as a lawyer in Mandan until his death.

In addition to his law practice, Maurice was active in community affairs, being a member of the Mandan Chamber of Commerce, Elks Lodge, Kiwanis Club, Reserve Officers Association of the United States, and served as Commander of the American Legion and Veterans of Foreign Wars Mandan Post, as State Department Judge Advocate for Veterans of Foreign Wars, and also being active in politics served as Chairman of District No. 34 of the Republican Party.

Maurice will be long remembered by the members of the Bar as an able, honorable and aggressive lawyer. His many loyal clients and friends will remember his contribution to the cause of justice under law in this area.

#### CHARLES J. CARTER

Charles J. Carter passed away at his home in Flaxton, North Dakota, on September 17, 1969. He was also born in that city on October 30, 1909, to Frederick Frank Carter, Jr., and Ethel Jean Carter.

Chuck, as he was known by his many friends, graduated from high school at Flaxton and entered college at the University of North Dakota at the age of fifteen years. His college was interrupted to serve on active duty with the Citizens Military Training Corps, after which he returned to the University and was awarded his Bachelor of Arts Degree in 1934 and his LL.D Degree in June of 1935.

Mr. Carter practiced law at Flaxton and at Bowbells in Burke County after graduating from Law School and also served as Burke County Auditor for nearly a term, until departing for active duty with the Department of Interior, Bureau of Indian Affairs, in April of 1941. He eventually became a criminal investigator for the Department of Indian Affairs and worked at Gallup, New Mexico; Fort Washakie, Wyoming; Billings, Montana; Fort Duchesne, Utah; and Keams Canyon, Arizona.

In July of 1942 he was inducted into the Military Service and became a commissioned officer in the Military Police. He served in the Army until his honorable discharge in February, 1944, and then returned to Gallup, New Mexico, and his duties with the Department of Indian Affairs. Chuck retired from the Government Service in 1962 as a supervisor of criminal investigators, receiving many honors from various directors in areas where he had worked and the Medal of Commendation from the Department after 21½ years of service.

In March, 1967, he and his wife, Mary, moved back to Flaxton, North Dakota, to make their home. Chuck soon opened his law office in Bowbells. In July of 1968 he was appointed County Justice of Burke County and again became very active in civic and community affairs.

Chuck is survived by his wife, Mary, an uncle and two aunts. He will be long remembered by his many friends for his sense of humor and general intelligence and by his fellow lawyers for his thorough knowledge of law in the field of criminal law.

#### JOHN C. GUNNESS

Energy — Enthusiasm — Excellence. No person could better be characterized by such qualities than John C. Gunness, former Bismarck Attorney, and always a North Dakotan at heart.

Born in Jamestown, North Dakota, on May 22, 1922, the son of Mr. and Mrs. Clarence Gunness, he moved with his family to Bismarck as a young man and graduated with honors from Bismarck High School. Enlisting in the U. S. Navy in May, 1942, Mr. Gunness was commissioned following flight training and served as a Navigator and Pilot in the South Pacific. Following his separation from the service in 1946, he attended the University of North Dakota where he received both B.A. and LL.B Degrees. An outstanding student, and a Rhodes Scholar candidate, he was awarded an MBA Degree from Harvard Business School in 1952.

Mr. Gunness started his legal work with oil brokers during the summer of 1951 and returned to Bismarck in 1952 to join the law firm of Cox, Pearce and Engebretson. In 1958, while still a member of the firm, he became Executive Director of the North Dakota Petroleum Council. In 1959 Mr. Gunness became a general partner in the law firm of Cox, Pearce, Engebretson, Atkinson and Gunness and remained in that capacity until 1963 when he moved to Denver as the Regional Representative of the Committee on Public Affairs for the American Petroleum Institute.

Always active in community service, Mr. Gunness served as a member of the North Dakota Economic Development Commission representing the Petroleum Industry. His friendly enthusiasm and genuine interest in legislative matters made him a friend of legislators and public officials not only in North Dakota but throughout the entire Rocky Mountain Region.

Married in 1947 to Jean Cronquist of Gilby, North Dakota, Mr. Gunness leaves his wife, now residing in Denver, Colorado, and three children, outstanding students as was their father. Marget is working towards a Master's Degree in Anthropology and Ecology, Clark is a senior at Harvard University, and Joan will be a freshman at Colorado State University.

John Gunness will long be remembered for the energy, enthusiasm and excellence with which he met and shared each experience in life.

#### LOUIS HERMAN OEHLERT

"No more to gather in convention halls —  
No more to lay the propositions clear —  
No more to breach the gaps in logic's walls



And 'vance the views to those who happen near;"  
 ("Cal" Waldron Finis)

It is fitting to open with lines of Dakota Cal who immortalized the rivalries of strong advocates of the colorful era of North Dakota trials.

"Lanier climbed on his legal forte  
 And talked of grave duress,  
 Poor Chester had been rendered short  
 Reduced by strain and stress!

"And were you 'frightened,' Oehlert quizzed  
 What brought about your 'breakdown?'  
 At just what point were you gee-whizzed  
 Or shattered by a shake-down?"  
 ("Cal" Waldron, The Marshal's Dilemma - or - Plowed Under)

Mr. Oehlert was born August 17, 1902, at Sheffield, Iowa, and attended public schools at Hampton, Iowa. He graduated from the University of Iowa with a B.A. Degree and received his law degree from the University of Minnesota. He was a member of Alpha Sigma Phi, social fraternity, and Phi Delta Phi, International legal fraternity.

He was admitted to the Minnesota Bar in 1929 and the North Dakota Bar in 1930. He was a founding partner with John J. Nilles and Herbert G. Nilles in the Nilles, Oehlert, Nilles law firm in 1932, which was the successor to the Newman, Holt and Frame law firm founded in 1904.

Mr. Oehlert was interested in youth as a member, director and president of both the YMCA and Kiwanis Club. In legal circles he served as President of the Cass County Bar Association and president of the State Bar Association of North Dakota in 1961 and 1962. He was a Fellow of the American Bar Association Foundation, and a Fellow of the American College of Trial Lawyers. He was president of the Fargo-Moorhead Executive Club.

He belonged to and was active in the First Methodist Church of Fargo where he was a Trustee, and the Masons, Scottish Rite Bodies and the Shrine.

Mr. Oehlert is survived by his wife, Julia Gilbertson Oehlert. They were married December 24, 1929, at Minneapolis, Minnesota. He died December 8, 1970, after a short illness and is buried in Riverside Cemetery, Fargo, North Dakota.

Always a vigorous and active man, Lewis Oehlert loved to fish and enjoyed the rigors of North Dakota weather which gave him his Viking spirit.

#### CLAUDE L. DAWSON

Claude L. "Dad" Dawson died in his sleep at Washington, D. C., on the night of Easter Sunday, April 11, 1971.

Mr. Dawson was born at Mason City, Iowa, on June 30, 1888. He taught school at Larimore and Reynolds, North Dakota, and later entered the University of North Dakota. He was graduated from the Law School in 1914 and was admitted to the Bar in that year. He received his 50 year award from the State Bar Association in 1964.

He served as Assistant Secretary of the North Dakota Senate in 1915 and was Chief Clerk of the House in the 1921 session. For a brief period he was State's Attorney of Golden Valley County. In 1919 he was the first Department Commander of the North Dakota American Legion. Later he served on the National Executive Committee of the Legion.

In 1923 he joined the United States Veterans Bureau legal staff in Washington and later served as Chief of Trials in the Bureau of War Risk Litigation in the Department of Justice. In 1936 he entered private practice in Washington, concentrating his efforts chiefly in the field of the law of veterans.

Although Mr. Dawson spent most of his active life in Washington, D. C., he never lost interest in North Dakota and was a frequent visitor here, and was widely known as a friend of all veterans from North Dakota.

Mr. Dawson is survived by his wife, Evelyn, of Washington, D. C.

#### C. F. PETERSON

Charles Francis Peterson was born October 7, 1884, on a homestead in Walsh County, North Dakota, located near Michigan, North Dakota. He received elementary and high school education at Caledonia, North Dakota. He received a Bachelor of Laws degree from the University of North Dakota in 1915.

He married the former Eva Marie Doenges on June 30, 1915, at Springfield, Illinois. She died in 1960. He is survived by three sons, Albert B., Fargo, James L., The Dalles, Oregon, and Edward M. of Grand Forks; two daughters, Mrs. John (Betty) Lehmkuhl, Fullerton, California, and Mrs. Andrew (Jeannine) Feraco, Dayton, Ohio, and twenty grandchildren.

Mr. Peterson was employed from 1901 to 1905 with the J. I. Case Co. at Fargo, Park River and Hillsboro, North Dakota. He lived from 1905 to 1911 near Olds, Alta., Canada. He taught school for three months in the winter of 1911-12 at Kelso, North Dakota. He later attended Dakota Business College at Fargo and then taught at Quincy, North Dakota, in the spring of 1912. He was then employed with the International Harvester Co. at Fargo from July 1912 to early 1913 when he entered the School of Law at Grand Forks.

He entered law practice with the late John Moses in January, 1916, at Hope, North Dakota. A year later he entered practice with Lawrence & Murphy, attorneys at Fargo, and then opened a law office at Casselton, North Dakota. In September of 1917 he was employed by Pierce, Tenneson & Cupler, attorneys at Fargo. In the fall of 1918 he was employed by Fidelity and Casualty Co. in New York with his office in Fargo. He came to Grand Forks in 1921 in partnership with J. F. T. O'Connor and lived in Grand Forks until his death. Before his retirement he was associated with the late Grand Forks Mayor Henry O'Keefe, Jr., in the practice of law and when Mr. Peterson retired in 1960, his son Edward assumed the firms practice. Retired Federal District Judge Ronald N. Davies was also a partner of Mr. Peterson.

He was a member of St. Michael's Catholic Church; a past president of the Grand Forks County Bar Association; a member of the Order of the Coif and Guy Corliss chapter of Phi Alpha Delta, legal fraternities; a past member of the University of North Dakota School of Law and a past exalted ruler of the Grand Forks Elks Lodge.

#### A. R. SCANLAN

Albert R. Scanlan, 77, passed away in a Pontiac, Michigan, hospital. He retired from the active practice of law in Mandan in 1961 and moved to Royal Oak, Michigan, where he was residing at the time of his death.

Mr. Scanlan, a Duluth, Minnesota, native, received his bachelor's degree from St. John's University in Washington, D. C., and his law degree with highest honors from Georgetown University in Washington in 1916. He practiced law briefly in Duluth before enlisting in the Army in 1917. After the war he practiced in Duluth with the firm of Ryan and Scanlan. He served as Duluth assistant city attorney from 1939-1944 and then moved to Mandan where he engaged in private practice and joined the firm of Kelsh and Scanlan.

He was a member of the American Legion, Knights of Columbus, and Elks Lodge of Mandan and in Royal Oak was a member of the Shrine of the Little Flower parish.

He is survived by his wife, the former Kathryn O'Rourke; a daughter, Mrs. Fred M. (Muriel) Glassford, Bloomfield Hills, Mich.; five grandchildren and 10 great-grandchildren.



### REPORT OF THE PROCEDURE COMMITTEE

#### Rules of Civil Procedure

The Procedure Committee has this last fiscal year presented to the Supreme Court, the proposals for amendments to the Rules of Civil Procedure which were presented to the Bar Association last year. The Court expressed concern that if rule amendments were adopted the Court would not have sufficient money to do the necessary printing and distribution. Because of this expressed concern, the Procedure Committee has deliberately had only two meetings. Our thought was that, by conserving our budget, if necessary, the money could be utilized for the long-sought printing and distribution of rule amendments.

#### Rules of Appellate Procedure

A sub-committee of the Procedure Committee has worked long and hard on revisions to the rules of appellate procedure. Various drafts have been presented to the Supreme Court, which asked for our suggestions.

If the Supreme Court does not take action on its own regarding rules of appellate procedure, it would seem appropriate for the Bar Association members to petition the court for desirable changes. A resolution to this effect, prepared by the Procedure Committee, will be presented to the Bar Association convention this year.

#### Future Work

It is anticipated that during this next year the Procedure Committee will be able to devote its energy and resources to other tasks than the revisions of rules (both of District Court and Appellate) which have occupied the Committee during the last few years. We ask the members of the Association to once again submit any suggestions for procedural changes to the Committee.

Respectfully submitted,

Leonard H. Bucklin, Chairman  
Francis John Smith  
Paul M. Sand  
Thomas A. Mayer  
Gerald G. Glaser  
James L. Lamb  
Gregory W. Tschider

Lawrence A. Leclerc  
Timothy Q. Davies  
J. Philip Johnson  
LeRoy A. Loder  
John J. Tebelius  
Kermit E. Bye

## INTERPROFESSIONAL RELATIONS COMMITTEE

Due to the absence of any other area requiring the attention of this Committee, it devoted itself exclusively to furthering the establishment of a Fair Trial — Free Press Council for the State of North Dakota. Due to number and variety of groups and organizations involved, progress was made slowly, especially in the area of communication. Also, one of the incorporators temporarily lost two different sets of Articles of Incorporation.

Eventually, the organizational meeting of the Council was held on February 12th, 1971, at the Holiday Inn at Bismarck, and was well attended. At this meeting, Judge Teigen was elected Chairman of the Council and Jerome Mack, committee member from Grand Forks, was elected Secretary. The By-Laws which had been amended at an earlier time were adopted and a steering committee was selected. Most important, a planning grant of \$1,980.00 was received from the Combined Law Enforcement Council, and future action grant of the same amount appears to be a distinct probability.

The Council adopted, on a temporary basis, recommended guidelines relating to adult criminal proceedings, as follows:

## I.

The following information generally should be made public at, or immediately following, the time of arrest:

- (A) The Accused's name, age, residence, employment, marital status and similar background information.
- (B) The substance or text of the charge, such as is, or would be contained in a complaint, indictment, or information.
- (C) The identity of the investigating and arresting agency and the length of the investigation.
- (D) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

## II.

The following information generally should not be made public at, or immediately after, the time of arrest:

- (A) Statements as to the character or reputation of an accused person.
- (B) Existence or contents of any confession, admission or statement given by the accused, or his refusal to make a statement.
- (C) Performance or results of tests, or the refusal of an accused to take such a test.
- (D) Expected content of testimony, or credibility of prospective witnesses.
- (E) Possibility of a plea of guilty to the offense charged or to a lesser offense, or other disposition.
- (F) Other statements relating to the merits, evidence, argument, opinions or theories of the case.

The Council proposed to circulate several thousand copies of these guidelines to the people who would be most affected by them.

The Council also intends to inquire into and study the need for additional guidelines in other areas, such as juvenile criminal matters.

This Committee will apparently have no further connection with the Council because the Council is now well organized, well financed and running under its own power.

R. G. Nerison, Chairman  
P. W. Lanier, Jr.  
Patrick Fisher  
Ronald A. Suess  
Albert A. Wolf

Gordon Thompson  
Mitchell Mahoney  
Thomas A. Davies  
Jerome Mack



## REPORT OF COMMITTEE ON UNIFORM LAWS

The following uniform or model acts promulgated by the National Conference of Commissioners on Uniform State Laws were enacted by the Forty-second Legislative Assembly and will become law on July 1, 1971, except as otherwise noted.

- 1. Revised Uniform Adoption Act (H.B. 1161)
- 2. Uniform Jury Selection and Service Act (S.B. 2320)
- 3. Uniform Controlled Substances Act (H.B. 1558)
- 4. Uniform Recognition of Acknowledgments Act (H.B. 1072)
- 5. Uniform Mandatory Disposition of Detainers Act (S.B. 2289)
- 6. Uniform Minor Students Capacity to Borrow Act (H.B. 1204)
- 7. Model Escheat of Unpaid Postal Savings Account Act (S.B. 2182)
- 8. Model Choice of Forum Act (S.B. 2448)
- 9. Model Special Power of Attorney Act (S.B. 1235)

The Uniform Consumer Credit Code was introduced and passed by both houses as House Bill No. 1299, but was vetoed by Governor William L. Guy on March 12, 1971.

The Model Escheat of Unpaid Postal Savings Account Act was enacted as an emergency measure and became

effective when approved by the Governor.

Support for one or more of the foregoing acts was offered to the legislative assembly by some or all members of the Uniform Laws Committee, by the legislative committee of the State Bar Association and by the Judicial Council.

Your committee on uniform laws will have under consideration for the ensuing year the following uniform acts promulgated by NCCUSL:

1. Uniform Consumer Credit Code
2. Uniform Marriage and Divorce Act
3. Uniform Act on Status of Convicted Persons
4. Uniform Supervision of Trustees for Charitable Purposes Act
5. Uniform Land Sales Practices Act
6. Uniform Trustees' Powers Act
7. Uniform Arbitration Act
8. Revised Uniform Deceptive Trade Practices Act
9. Uniform Probate Code
10. Revised Model State Administrative Procedure Act
11. Model Public Defender Act
12. Uniform Consumer Sales Practices Act

In addition, the committee will consider any uniform or model acts promulgated by NCCUSL at its 1971 meeting in Vail, Colorado.

From the standpoint of legislative accomplishment, the foregoing report indicates generally ready acceptance by the legislative assembly of uniform and model acts promulgated by NCCUSL. This report also indicates the worth of the expenditure by SBAND of appropriations for the support of NCCUSL and the Commissioners on Uniform State Laws for the State of North Dakota.

Eugene A. Burdick, Chairman  
Orville A. Schulz  
Jerome F. Riley

LaVern C. Neff  
William Daner  
Fred Whisenand



#### PATTERN JURY INSTRUCTION COMMITTEE REPORT

The combined Judicial Pattern Jury Instruction Committee and State Bar Pattern Jury Instruction Committee has revised the Pattern Jury Instructions as previously published, revising the index, correcting and revising many of the instructions and adding additional instructions, all to a work product of fifty replacement pages in the instructions.

These instructions have been published and are now being distributed to the members of the State Bar Association at a minimal cost.

Those who have not previously bought Pattern Jury Instruction sets may purchase the original instructions, plus the amendments, from the office of the State Bar Association.

Bruce M. Van Sickle, Chairman  
Paul M. Sand  
David Nething

Robert Vogel  
Roger Persinger  
James Morris



#### GRIEVANCE COMMITTEE NO. 1

Grievance Committee No. 1 met four times during the last fiscal year.

The following is the status of all complaints processed during that period:

Complaints being processed at beginning of year	2
Complaints received and processed during the year	20
Complaints pending at end of year	3

Disposition of processed complaints:

Recommendation of Dismissal—no violation of Canons of Professional Responsibility shown	13
Returned for referral to Grievance Committee No. 2	1
Recommendation of dismissal with admonition	1
Recommendation of disciplinary action	4

If the work of the Grievance Committees is to continue to be done expeditiously and economically, some system of screening should be devised to separate the legitimate complaints from those unwarranted complaints filed by disgruntled clients dissatisfied by the results of law suits, etc. It takes as much time to process this type of complaint as a legitimate complaint and often more time.

There is a tremendous lack of knowledge of the Canons of Professional Responsibility among the bar generally. To create an awareness of their existence and restrictions, seminars, letters, items in the Gavel, etc., should be used frequently.

Lack of communications and failure to complete work promptly are the principal reasons for complaints. These are areas in which the lawyer himself has the basic responsibilities.

Robert E. Dahl, Chairman  
Lynn G. Grimson  
Gene C. Grindeland  
James B. Graham  
Eugene Kruger

Joseph C. McIntee  
William J. Murray  
Thomas E. Rutten  
L. T. Sproul



#### REPORT OF GRIEVANCE COMMITTEE NO. 2

The Committee during the last year investigated 23 complaints which resulted in recommendation to the Grievance Commission of the Supreme Court that 10 be dismissed as being without merit, 4 recommendations of dismissal with admonishment to the attorney complained of, and 7 recommendations of suspension or disbarment. Of these last 7, five of them were against one attorney, one was for unconscionable fees and an attempt to use the minimum bar fee schedule to justify the unconscionable fee, and one was for the complete failure of the attorney complained against to cooperate with the Committee and willful failure to answer or respond to the charges against him.

Two cases are still pending before our Committee as the investigations were not completed.

We also investigated one case re: re-licensing a suspended attorney.

Our Committee is somewhat of the opinion that perhaps a change should be made in our disciplinary procedure, and that our Committee members should be nothing more than willing investigators for the Grievance Commission and report directly to the Grievance Commission at their meetings. It is impractical for our Committee to convey by short written reports all of the little details and impressions stated by the investigator to our Committee in its deliberations, so that the Grievance Commission often must almost accept or reject our recommendations "in the blind" so to speak. Also, sometimes, the Commission wonders whether our Committee considered some fact or circumstance in coming to our decision and recommendation, and, while we may have discussed it in our deliberations, it isn't necessarily reflected in the written report furnished to the Commission. These matters then would all be covered by the investigator with the Commission as he makes his report directly to them.

Harold L. Anderson, Chairman  
LeRoy P. Anseth  
Q. R. Schulte  
George T. Dynes  
Robert J. Palda, Jr.

Fred Saefke  
Jack Christensen  
Maurice Cook  
Malcolm Brown



#### LEGAL AID AND DEFENSE OF INDIGENTS COMMITTEE

##### Legal Aid Association, School of Law, Grand Forks, North Dakota

The Law School Legal Aid Program continued successfully during the year. During the 1969-70 school year 52 cases were handled. The number increased for the 1970-71 school year to 60. The matters pursued in any depth all involved a participating attorney licensed to practice. The cases handled include criminal, traffic offenses, misdemeanors and felonies, various types of civil matters, including administrative boards and juvenile.

A proposed Supreme Court rule for limited senior practice before the courts of North Dakota was presented to the North Dakota Supreme Court. The Supreme Court held a hearing on the proposal. The rule has been adopted.

#### FARGO CIVIL LEGAL AID

Pursuant to a contract between the Legal Aid Society of North Dakota, Inc., a North Dakota non-profit cor-

poration and the City of Fargo, based on a supplemental grant from the Dept. of Housing & Urban Development through the Metropolitan Fargo Model Cities Agency, a legal aid office was opened on October 1, 1970, at 15 South 21st Street, Fargo, North Dakota. This social service project is limited to lower income residents of Fargo, including all of the Model Cities area. The office is staffed full time by an administrative director, an assistant director, both lawyers, and a legal secretary. An accounting system designed by a C.P.A. firm and approved by Model Cities fiscal officers has been set up. Monthly and quarterly reports are submitted to Model Cities.

The entire spectrum of civil matters only, including advice, counsel, representation and appeal, is available to qualified residents. The basic exception is that feebearing cases, i. e., those which attorneys would take on a contingent basis, are not accepted. The Board of Directors of the Society establishes overall policy and with the coordination of the Model Cities staff establishes income standards to qualify for this service. As an example, for a family of four, the income level is \$80.00 per week net after federal, state and FICA taxes.

Refunding of the Fargo program and expansion of full time Legal Aid services and possible Judicare were discussed with the Bar Association Executive Committee and the Governor and the Public Welfare Board. Maurice E. Garrison, Director of Fargo Legal Aid, met with all organized County Bar Associations and received a very favorable reaction to possible Legal Aid expansion.

The Governor and the Director of Public Welfare have given tentative approval to an expansion of Legal Aid to include all of Cass County and the opening of a one man Legal Aid office in Grand Forks to service Grand Forks County, the Airbase, and cooperate with the Law School Legal Aid. Funding is being sought from the Department of Health, Education and Welfare, and if funded and approved, the Board of Directors would be changed to include a representative of Grand Forks County and the Director of the Public Welfare Board.

#### PUBLIC DEFENDER PROJECT

The Public Defender Project covering 10 counties in Western North Dakota was established April 1, 1971, with Kent Higgins as full time director, with offices in Bismarck, North Dakota. The project is funded by the North Dakota Law of Enforcement Counsel, with 60 per cent federal funds and 40 per cent from the county served, paid according to the cases handled in the county. The present project is for one year with a possible second year, and third as the maximum under present funding. The counties of Sioux, Grant, Morton, Mercer, Oliver, McLean, Sheridan, Burleigh, Kidder, Emmons are served. The public defender handles the defense of all indigents accused of felonies and misdemeanors in county courts of increased jurisdiction, which exist only in Morton and Burleigh County. He handles misdemeanors in Justice Court in the other eight counties when requested by the County Justice. Juvenile cases and voluntary commitments by the Mental Health Board, extradition and revocation of deferred imposition of sentence are handled in all counties. The Defender's Office has a part-time investigator who is used as needed and paid by the amount of services rendered.

John Michael Nilles, Chairman  
Lyle Huseby  
Jon Fitzner  
David Kessler  
Roger Gackle  
Dale W. Moench

Robert A. Wheeler  
Gerald G. Glaser  
Ralph Bekken  
Douglas Christianson  
Maurice E. Garrison  
Benjamin C. Pulkrabek



#### REPORT OF UNAUTHORIZED PRACTICE COMMITTEE

This committee has had no formal meetings during the year.

There have been twelve complaints received. These matters handled by correspondence and a meeting is scheduled during the Bar Convention to consider the other unresolved complaints. The matters of most concern are unlicensed attorneys attempting to practice, legal type advertising by lay firms and foreign professional corporations operating in North Dakota.

James H. O'Keefe, District Judge, Chairman  
Idean M. Locken  
J. O. Thorson  
Harris Kenner  
Fred Whisenand  
Wayne P. Jones

A. J. Pederson  
T. L. Secrest  
E. J. Rose  
M. C. Hiaasen  
Loren L. Johnson  
Dennis A. Schneider

## CONTINUING LEGAL EDUCATION COMMITTEE REPORT

The initial activity of the Continuing Legal Education Committee during the 1970-71 year was the presentation of a two-part Seminar which took place on December 11 and December 12, 1970.

The first segment on December 11 was presented by Attorney John Harris of Minneapolis and his presentation was on estate, trusts and the Tax Reform Act of 1969. The second part of the first segment was presented by the trust officers of the four of the trust companies located in Fargo, being more specifically Mr. Jack Riley of Merchants National Bank & Trust Company, Mr. David Gordon of Fargo National Bank and Trust Company, Mr. Merton Bobo of First National Bank & Trust Company, and Mr. Richard McKnight of Dakota National Bank & Trust Company.

The second segment presented on December 12, 1970, was on Personal Injury Damage Evaluation and the speakers were Attorney James D. Cahill of Moorhead, Minnesota, Attorney E. Forsyth Engebretson of Bismarck, North Dakota, and Carl Klabunde, Director of Claims for Mutual Service Insurance Company of St. Paul, Minnesota. All of the Seminars were held at the Oak Manor Motel, Fargo, North Dakota. The total mid-winter Seminar incurred expenses of \$591.59 as against income pattern of \$1,155.00 for a net income of \$563.41, which sum was turned over to the treasurer of the State Bar Association.

The Committee again arranged the educational program for the State Bar Association Convention at Minot. The following programs were presented:

A. 1971 North Dakota Legislation presented by Senator Donald Holand, Fargo, Representative Myron Atkinson of Bismarck, and C. Emerson Murry, Legislative Research Council Director, Bismarck.

B. Civil Procedure: Rule Amendments and Discovery presented by Leonard Bucklin of Bismarck.

C. Probate Procedure Checklist presented by Manfred Ohnstad of West Fargo.

D. Environmental Law presented by Representative Henry Savelkoul, Albert Lea, Minnesota, Attorney.

E. Damages — Loss of Consortium, presented by Attorney Herman Glaser of New York City, New York.

Again the Seminars were given in response to interest displayed by members of the State Bar Association and an attempt was made to balance the program in order to interest the trial attorney as well as the attorney engaged primarily in office practice.

The Committee has attempted to continue to spur interest in the cassette tape type of self-education and some progress has been made in arranging for transfer of tapes back and forth among lawyers in the state.

Walfrid B. Hankla, Chairman  
John A. Zuger  
William F. Lindell  
Jon R. Kerian  
Edmund G. Vinje  
Albert A. Wolf

J. Philip Johnson  
Herbert L. Meschke  
Jan M. Sebby  
Harry M. Pippin  
Charles A. Feste



#### ANNUAL REPORT OF LAW SCHOOL LIAISON COMMITTEE

1. This Committee met for the first time during this fiscal year on July 21, 1970, and up for consideration as a new Law School complex was the St. James Academy school buildings in Grand Forks. The Committee toured the buildings and then met with President Starcher, Vice Presidents Koenker and Clifford and Comptroller Skogle at a luncheon immediately following the examination of the buildings. It was the decision of the Law School Liaison Committee at that time that if the buildings could be procured reasonably and adequate funds provided for the conversion of the two newer buildings into a Law School that this should be done. At this meeting the matter of whether the Law School was a professional school as distinguished from a graduate school, or both, was brought up with the University officials and Dr. Starcher said that he would see that the law students were available for graduate scholarships, the same as other graduates therefore and entitlement would be on the percentage which the enrollment in the Law School bore to the enrollment in the other graduate schools.

2. The next meeting was held on October 15, and the Committee at that time met with all members of the faculty of the UND Law School as well as a representative of the senior class and a representative of the junior class in said Law School. At that time the figures were available as to the cost of the St. James buildings and conversion thereof and therefore further consideration was necessitated as to whether or not the former recommendation of the Committee should be changed in view of the costs involved. Because the cost and conversion of the St. James High School buildings would have cost \$1,041,000 which figure did not include book stacks, furnishings or equipment, and because it was felt that the cost of a new Law School building would far exceed this amount, and because a preliminary estimated cost for a new addition to the existing Law School building and the conversion of the existing Law School building solely for Law School purposes could be achieved for \$1,072,000, which would provide an adequate building, in good shape and adequately furnished, it was the unanimous opinion of the Committee and all members of the faculty and representatives of the senior class and the junior class that it

would be to the best interests of all concerned that a new addition to the present Law School building and the conversion of all of the existing building for Law School purposes be recommended. This was recommended to Dr. Starcher and to the Board of Higher Education and representatives of the Committee appeared before the Board of Higher Education at their meeting on November 19th.

3. On January 11, 1971, Chairman Hjellum appeared before the House Appropriations Committee urging appropriations for the new addition to the present Law School with conversion of all of the existing Law School building for Law School purposes, and equipment thereof. On February 22, past President Herman Weiss appeared before the Senate Appropriations Committee urging the same thing. Thereafter the Legislature passed the College Building Bill, House Bill No. 1554, and it was finally enacted into law providing that commencing July 1, 1972, there would be transferred \$2,000,000 or the amount in excess of \$15,000,000 in the General Fund, whichever was the lesser, to the College Building Fund until the sum of \$5,643,551 had been transferred thereto and providing that the amount in the College Building Fund on July 1, 1971, should remain in the Building Fund and be considered a part thereof. According to President-elect Tom Clifford of UND and Commissioner of Higher Education Ken Raschke, this would provide sufficient funds to construct the first four buildings provided in the College Building Fund since the Law School addition and conversion of the existing building and equipment was the fourth building provided in the sum of \$998,804, it seemed assured that the long awaited Law School building would be a reality.

4. However, thereafter Senator Redlin obtained an agreement from the Board of Higher Education that funds in the College Building Fund would not be expended until the Ellendale situation had been taken care of. Just what the situation is at the present time is unclear, but the Board of Higher Education had authorized President-elect Thomas Clifford to hire an architect, which has been done and the firm is Foss, Engelstad & Foss of Fargo, North Dakota. It is our understanding that the Board of Higher Education has now authorized President-elect Clifford to authorize the architects to proceed with the plans and specifications. It would therefore appear that the Law School addition and the conversion of all of the existing building for Law School purposes and equipment thereof will become a reality within the next year.

Respectfully submitted,

John Hjellum -- Chairman  
Arley R. Bjella  
Daniel J. Chapman  
Mrs. Barbara Hanson  
P. W. Lanier, Jr.  
Richard H. McGee

Dean Robert K. Rushing  
Gordon Schnell  
Harold D. Shaft  
Michael W. Stefanowicz  
Norman Tenneson  
Romaine Thorfinnson



#### SPECIAL COMMITTEE ON UNIFORM PROBATE CODE

The Special Committee on the Uniform Probate Code has devoted most of its time this year to consideration of constitutional provisions to implement the Uniform Probate Code as a part of a Unified Court System.

The Uniform Probate Code contemplates that the Court that has jurisdiction of probate matters, be one of general jurisdiction. The Committee is convinced that probate and administration of estates, guardianships, trust accounting and the like, should be under the jurisdiction of the District Court. This contemplates that a District Judge would be in charge of and be the Supervising Judge of such matters in his Judicial District.

The Committee has made tentative proposals to the Executive Committee, the Judicial Counsel and the Bar Association's Constitutional Committee. These will be supplemented during the coming year, hopefully resulting in a Unified Court System and the subsequent adoption of the Uniform Probate Code by the Legislature.

Lyle W. Selbo  
W. J. Austin

Kirk Smith  
Herman Weiss



#### ANNUAL REPORT OF TRAFFIC SAFETY COMMITTEE

The annual Traffic Court Conference was held in Bismarck, N. Dak., on April 20, 21 and 22, 1971. W. J. Austin, Chairman of this committee, was absent due to illness and W. L. Eckes of Beach, North Dakota, acted as Chairman.

Richard A. Rifas of the Legal Division, Northwestern University Traffic Institute, Chicago, Illinois, and Richard L. White, the Associate Director of the Traffic Court Program for the ABA, were the main speakers. Other attorneys and judges appeared on the program among whom were the Honorable Alvin C. Strutz, Chief Justice of the Supreme Court of North Dakota, Walter Hjelle, State Highway Commissioner, The Honorable



Halvor Halvorson of the Court of Increased Jurisdiction at Minot, N. Dak., Floyd Sperry, Past President of the State Bar Association, and other prominent speakers among whom were Honorable Ralph J. Erickstad, Justice of the North Dakota Supreme Court.

There was a very good turnout of County Justices, Municipal Judges, Prosecutors and other lawyers, as well as other Traffic personnel. Possibly the attendance was not quite as high as in past years but the interest was very great.

The suggestion has been made that we return to a Thursday, Friday and Saturday meeting. It appeared there was a great deal of conflict on a Tuesday and Wednesday meeting. My personal opinion is that the meeting should be confined to two days rather than three days.

Another suggestion has been made that a luncheon and some type of program be set up for those members' wives who come and attend.

It was also thought that some of the meetings stretched out too long and they should be terminated about 4:30 in the afternoon. I believe that if we stick to the three day meeting that this could easily be done.

In the past, this committee distributed Traffic Safety pamphlets to driver education classes. This has not been done in the past two years and it was thought that possibly this process should be renewed this coming year if there is money available for same. This endeavor has met with high approval in the past with the high school people and the Highway Patrol and it is probably one of our better public relations efforts.

Your acting chairman also feels that there should be a revision, modification and issuance of a new recommended average bonds and fines in traffic cases for municipal judges and justice courts. The last one was issued quite some time ago and is somewhat out of date at this time. While this might not be one of our better public relation efforts, it certainly would be of use and value to our traffic judges.

W. L. Eckes, Acting Chairman  
Richard B. Thomas  
Mark J. Butz  
Bruce R. Howe  
Robert A. Case  
John T. Paulson

Glenn Dill  
Thomas E. Rutten  
Robert Baird  
Rodney Webb  
James Purdy



#### COMMITTEE ON ETHICS AND INTERNAL AFFAIRS

Since the last annual meeting of the North Dakota State Bar Association, the Committee on Ethics and Internal Affairs has received thirteen separate inquiries concerned with the conduct of North Dakota lawyers. Twelve of these inquiries have been resolved and the thirteenth inquiry, only recently presented to the Committee, is receiving the Committee's attention. Written opinions of the Committee have been sent to you and to the Secretary of the State Bar Association. The Committee has requested that a permanent file of these inquiries be kept and that copies of the opinions be sent to other State Associations which are regularly communicating their opinions to the North Dakota State Bar Association.

Nine of the inquiries dealt with the question of advertising by the attorney in the telephone directory, on the letterheads, the shingle, in political campaigns, and in letters to clientele. In addition, the Committee received a request from another State Bar Association to defer action on the newly enacted Code of Professional Responsibility. Two inquiries dealt with the conflict which arises when a public prosecutor is asked to defend an accused in a tribunal other than that which he serves as an elected or appointed official.

Your Committee is pleased to report that it has been asked for advisory opinions in the greater number of cases prior to the actual commission of what might have been a violation of the rules. In only one case has the Committee found it necessary to request severe disciplinary action by the Grievance Commission based upon what appears to be a flagrant overt violation of the Code of Professional Responsibility. From these indices alone, it would appear that the members of the North Dakota Bar Association are becoming more acutely aware of and responsive to the Canons of Professional Ethics and the Code of Professional Responsibility which succeeds the Canons.

Alfred A. Thompson, Chairman  
Dean Winkjer  
Gene P. Johnson

Robert L. Burke  
Thomas Wentz  
Thomas A. Davies



#### REAL PROPERTY, PROBATE AND TRUST COMMITTEE

The Real Property, Probate and Trust Committee held two meetings during the past year and concerned themselves with the following activities:

1. Considerable discussion and some research was done regarding proposed legislation regarding the matter of whether a lien attaches to the vendor or vendee's interest, or both, where land is sold under a contract for deed. Although several versions of proposed legislation have been presented, this matter has not yet been agreed upon and same is continuing as an item of work to be completed.

2. This committee has further studied the matter of trying to clarify surface rights but in view of pending appeals to the North Dakota Supreme Court, this matter is being held in abeyance.

3. This committee has attempted to acquaint itself with the matter of land trusts and how same can be used as a vehicle in estate planning in North Dakota. Proposed conveyancing forms are being worked on in this area to include the appropriate language so that the recording of the trust instrument will not be necessary. This too is a continuing project which will overlap into next year's work.

4. This committee has briefly discussed some problems in the probate area but has not taken any action pending the report from the special probate committee. If some of the problems which we discussed were not resolved by the Probate Committee, further action will then be taken.

5. The committee has taken action and recommends that Section 5-01 of the Title Standards be deleted in that Section 28-01-45 of the North Dakota Century Code obviously revokes that standard.

6. The committee has been working and is near the final stages in the preparation of a short term mortgage and mortgage redemption form.

Respectfully submitted,

Clinton R. Ottmar, Chairman

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Robert L. Stroup II

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Roger O. Herigstad

Paul Pancratz



#### PUBLIC RELATIONS COMMITTEE

The committee aligned itself with the special committee known as the Public Relations Coordinating Committee. Under the auspices of the special committee, publicity and material have been released through our public information office under the direction of Ted Smith Advertising Agency.

This past year we have concentrated on a public information program directed to the lawyers within our organization. Information has been disseminated in an attempt to improve our personal public image within our offices and as private citizens.

The report of the substantive special committee will detail the specifics of the activities of the past year.

Robert D. Hartl, Public Relations Chairman

Maurice E. Cook

Harry Malloy

Armond Erickson

Edmund Vinje

Jack Christensen

Albert A. Wolf

Conrad Ziegler

R. W. Wheeler

Richard McKennett



#### LAW DAY U.S.A. COMMITTEE

As Law Day Chairman for the State I coordinated the various activities constituting local Bar Association recognition for Law Day. Contact was made to each of the Associations and each of local Bar Associations, then carried on various Law Day activities according to their own wishes and desires.

I kept in contact with the American Bar Association's Law Day subcommittee and obtained information from them concerning observances of other states. Letters were forwarded to our Senators and Congressmen from the State of North Dakota encouraging them to observe Law Day and mention the same publicly in the oral statements. Mr. M. F. Peterson, the Superintendent of Public Instruction, was also contacted and encouraged to emphasize the recognition of Law Day.

A Governor's Proclamation of recognizing Law Day was obtained and the same was highly publicized. Publicity included a picture of our State Bar Association president, Mr. Gerald Nilles witnessing the signature of Governor William Guy and which was published in our monthly newsletter.

In addition, speakers manuals were ordered by the State Bar Association and distributed to anyone requesting a manual. In addition further correspondence regarding assistance in Law Day activities was carried out by the State Chairman.

Richard J. Forest, Law Day U.S.A., Chairman  
Duane Ilvedson  
Jerome F. Riley

Colin Bailey  
Shelley J. Lashkowitz



#### LEGISLATIVE COMMITTEE REPORT

Twenty-one Senate and 34 House bills totaling 55 bills were passed and signed by the Governor in the 1971 Legislative Assembly of particular interest to lawyers. There follows a brief recitation of these bills. At the end of each recitation describing the bill briefly, there is reference to the affected statute and thereafter the number of the bill:

#### SENATE BILLS ENACTED INTO LAW

1. Bar Association appropriation of \$23,000 for one year and an appropriation of \$9,000 for the Uniform Commissioners and UND Law Review. 2027.
2. Uniform Rendition of Accused Persons Act. Chapter 29-30.1. 2069.
3. Pro-ration of court reporters' salaries among the counties in the judicial district based on population rather than suits filed. Section 27-06-02. 2096.
4. Security interest requirement on title to car extended to mobile homes, truck trailers, and semi-trailers. Section 35-01-05.1. 2117.
5. Convicted defendant in municipal court need not pay costs of jurors. Section 40-18-18. 2161.
6. Increase in salary of judges for County Courts of Increased Jurisdiction. Section 27-08-08. 2199.
7. Cost of motor vehicle operating records up from \$1.50 to \$2.00 and a copy will be sent to the driver identifying who requested it except if the request is made by the FBI, CIA, or any law enforcement agency of the state or political subdivision. Section 39-16-03. 2218.
8. Notice of *lis pendens* to be cancelled automatically if final judgment entered and appeal time has expired. Section 28-05-08. 2219.
9. Creates new grand jury law and repeals old law. Chapter 29-10.1. 2230.
10. Repeal of the Newman Act or trial de novo in non-jury actions in the Supreme Court. 26-27-32. 2252.
11. Given 30 more days from 90 to 120 days to file statement in Register of Deeds office for labor or material liens. Lien priority goes from \$150.00 to \$1,000.00 over other liens. Sections 35-13-02-03-04. 2254.
12. Uniform Mandatory Disposition of Detainers Act. 2289.
13. Interstate agreement on detainers. 2305.
14. Uniform Jury Selection and Service Act in conformity with Federal courts. Jurors come off voter lists and their pay goes to 10 cents a mile and \$20.00 per day in District Court and County Courts of Increased Jurisdiction and \$8.00 a day in Justice Court. Section 18 permits the Supreme Court to make rules regulating selection. Chapter 27-09. 2320.
15. Permits administrative and supervisory power of the Supreme Court over lower courts. Assignment of judges, filing of reports, withdrawals, reassignments, expedition, etc. 2331.
16. Reports and accounts need not be rendered periodically in guardianships of less than \$3,000.00 but only when the court deems necessary. Section 30-14-10. 2363.
17. Permits filing of affidavits of prejudice against District Court judges only in all civil and criminal matters applying to trials or any proceedings by simply filing with the clerk a written demand for change in triplicate executed by the party, not the lawyer, filed three days before hearing or ten days before trial. It is precluded if the judge has ruled on any matter where the party had a right to be heard or was heard. There must be a recitation of

good faith and not for delay. On receiving the copy the judge is automatically disqualified and the Supreme Court appoints a new judge. 2383.

18. \$5,000.00 appropriation to Dr. Prouty for blood samples of victims of car accidents. 2408.
19. Short form mortgage foreclosure on real estate extended from three to ten acres. Section 32-19.1-01. 2546.
20. Courts in North Dakota will entertain an action if parties agree to litigate it in North Dakota. 2448.
21. Under the Uniform Commercial Code a secured party is offered the relief provisions of Chapter 28-29, if the creditor takes possession of the collateral without judicial process. Section 41-09-49. 2459.

#### HOUSE BILLS ENACTED INTO LAW

22. If a judgment creditor collects a portion of the judgment from uninsured motorist coverage or Workmen's Compensation or from any other source, it is deductible from Unsatisfied Judgment Fund coverage. Section 39-17-07. 1067.
23. Liberalizes drivers license suspensions of non-insured drivers. A driver may retain his license if he purchases a liability policy and accepts responsibility or agrees to a settlement of claims or a court has determined him negligent. Section 39-16-05. 1066.
24. Permits cancellation of automobile liability policies only for non-payment of premium or license revocation and a revocation notice must be sent. Section 26-02-33. 1070.
25. Uniform Recognition of Notarials Act with forms. Chapter 47-19. 1072.
26. Provides for service on U.S.A. or an agency in a state court civil action on the U. S. Attorney or his assistant or a clerical employee designated with a copy to the Attorney General in Washington, providing that if an order of an officer or agency is attacked and that agency isn't a party, a copy must be served upon such officer or agency. Provides the U.S.A. or agency has 60 days to answer a complaint. Chapter 28-06.2. 1073.
27. Adds irreconcilable differences to grounds for divorce and defines it as substantial reasons for not continuing the marriage. Sections 14-05-03 and 09.1. 1097.
28. Eliminates detailed written autopsy reports by coroners. Section 11-19a-11. 1109.
29. Property damage reporting in car damages raised from \$50.00 to \$200.00. Section 39-08-09. 1122.
30. Vendee has only six months to redeem on default of Contract for Deed rather than a year if indebtedness is more than 66 2-3 of the original debt and area is three acres or less. Section 32-18-04. 1131.
31. Permits estates to pay real estate brokerage commissions. 1149.
32. Sheriff's mileage up from 10 to 12 cents. 1155.
33. Revised Uniform Adoption Act. 1161.
34. All persons become adults at 18 years of age. Section 14-10-01 and 02. 1193.
35. Compulsory \$10,000-\$20,000 uninsured motorist coverage on every automobile policy issued and prohibits insurance companies from recovering against the Unsatisfied Judgment Fund. 1201.
36. Must in 90 days file amended North Dakota estate tax return if the Federal return is amended. If the Federal return is changed, this must be reported to the County Court and Tax Commissioner in 90 days after final determination of change. Section 57-37-22. 1216.
37. 35,000 plus population counties shall have full-time states attorneys effective 1-6-75. Salary ranges from \$14,000 to \$20,000. Section 11-16-04. 1229.
38. Provides detail language for powers of attorney. They may be signed before and be approved by County Judge. The judge must find the principal understands the matter. There need be no formal pleading. The power may be unrestricted. Copies are filed with the Clerk of Court and Register of Deeds. There are accountings to the principal as the judge orders. 1235.
39. Supreme Court salaries up from \$20,000 to \$22,000. Chief Judge from \$20,500 to \$22,500. District Court judges up from \$18,000 to \$20,000. Chapter 27-02-02.1. 1238.

40. Involves life insurance proceeds in trustees. 1253.
41. Allows defense to legal jeopardy for using reasonable means to protect yourself, your family, your property, or when aiding another. 1287.
42. Exoneration from damages for emergency care at accident except for willful misconduct, intoxication or gross negligence. Section 39-08-04.1. 1291.
43. Marriage license fees increased from \$1.00 to \$6.00 and certified copies may now be obtained from the Registrar of Vital Statistics in Bismarck for \$1.00 rather than the county. Section 14-03-22. 1319.
44. Birth and death certificates up from \$1.00 to \$2.00. Section 23-02-05. 1347.
45. Abolishes undertaking on appeal for state, its agencies and municipal or political subdivisions with an automatic stay of execution by filing a notice of appeal. Supreme Court may on motion require sureties. 1357.
46. Changes the garnishment law. 1389.
47. Involves private foundations, charitable trusts and split-interest trusts. Section 59-02-22. 1392.
48. Establishes a Small Claims Court in County Courts with Increased Jurisdiction or county justices with jurisdiction confined to cases for the recovery of money, cancellation of an agreement involving material fraud, deception, misrepresentation or false promise where the value of the agreement or the amount claimed does not exceed \$200.00. The courts refuse jurisdiction to assignees of claims. No garnishment or attachment shall issue. The cause of action must have accrued on or after 1-1-71. Commencement of the action is by claimant's affidavit. Formal pleadings not required. A court reporter is not required. A jury trial of six residents must be requested. Appeals are to the District Court within ten days. 1401.
49. The 15 day zoning change notice published in the newspaper must contain a description of the property involved by street address if platted. 1409.
- 50, 51 and 52. In all divorces or separate maintenance actions or in family courts the court can issue ex parte orders on support, attorneys fees and custody and District Court judges will make up the rules on issuance and service of the orders which are final unless the adverse party files a motion for a hearing in five days. Sections 14-06-02; 27-05.1-09; and 14-05-25. 1461, 1462 and 1465.
53. Abolishes the affirmative proof requirement in divorces. The court can grant a divorce if the defendant is in default. It can grant a divorce on uncorroborated testimony. It can grant a divorce on the testimony of one of the parties. It can grant a divorce on the statement or finding of fact made by a referee. The transcript need no longer be transcribed in defaults. Section 14-05-19. 1463.
54. Adds to the motor vehicle "care required" statute the giving of such warnings as are reasonably necessary for safe operations. Also, it is not necessary to sound a horn in every instance on passing but only when reasonably necessary. Section 39-09-01 and 39-10-11(1). 1478.
55. Allows chemical breath screening test of colliding drivers if death or bodily injury causing hospitalization. Officer must request and have grounds. Revocation of license for refusal. May lead to blood test. 1550.

In addition to the above statutes of interest to lawyers, the Legislative Assembly passed certain resolutions which are now being studied by the Legislative Council. They are as follows:

HCR 3019 — Determine if citizens and taxpayers of State would be benefited by changes in administration and procedures followed by North Dakota Judicial system. Assigned to Judiciary Committee "A."

HCR 3052 — Judges' retirement fund and statutes providing system of retirement benefits for Supreme and District Court judges. Assigned to State and Federal Government Committee.

HCR 3053 — Feasibility and desirability of adopting Uniform Probate Code. Assigned to Model Laws and Intergovernmental Cooperation Committee.

HCR 3095 — State tax structure, with emphasis upon property tax assessment procedures, twenty-one mill levy, business privilege tax and sales tax. Assigned to Finance and Taxation Committee.

SCR 4028 — Total field of safety responsibility and revocation of drivers' licenses. Assigned to Transportation Committee.

SCR 4029 — Public liability and no-fault automobile insurance. Assigned to Industry and Business Committee.

SCR 4065 — Need for board of tax appeals that will provide taxpayers with an efficient inexpensive procedure for review of grievances. Assigned to Finance and Taxation Committee.

SCR 4083 — Income tax law study. Assigned to Finance and Taxation Committee.

Frank Magill, Chairman  
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Warren Albrecht, Jr.  
Shelley J. Lashkowitz



#### REPORT OF AMERICAN CITIZENSHIP COMMITTEE

The primary activity of the American Citizenship Committee the past year was the continuation of the Constitution Key Award, which is presented to an outstanding senior from the various high schools throughout the state of North Dakota. During the month of January, 277 high schools were contacted concerning the Constitution Key Award Program, of which 222 schools participated, this representing a participation rate of 80.5 per cent and is the highest rate of participation since the inception of the program. The presentations were made by 127 lawyers, many of whom made multiple presentations.

There was some inquiry made from the smaller high schools about the possibility of having more than one recipient of the Award. It was decided by the committee that we should adhere to our policy of the past; namely, having only one recipient per high school.

The response from school officials and students receiving the Award throughout the State has been extremely favorable; and, I believe this is a good public relations activity for the Bar Association and I recommend its continuation.

Shelley J. Lashkowitz, Chairman  
George Longmire  
Calvin A. Calton

William Tschetter  
Roger Gackle

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