



1962

Proceedings of 1962 Annual Meeting of State Bar Association of North Dakota

North Dakota State Bar Association

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PROCEEDINGS

OF 1962 ANNUAL MEETING OF

STATE BAR ASSOCIATION OF NORTH DAKOTA

THURSDAY MORNING SESSION

June 28, 1962

The Sixty-second Annual meeting of the State Bar Association of North Dakota convened in the Hall of Four Seasons, Grand Pacific Hotel, Bismarck, North Dakota, at nine-fifteen o'clock, Mr. L. H. Oehlert, President of the Association, presiding.

PRESIDENT OEHLERT: We will now call to order the First Session of our Sixty-second or 1962 Annual Meeting of the State Bar Association of North Dakota.

We will be favored by the invocation of the Hon. Leslie R. Burgum, Attorney General of the State of North Dakota. Mr. Burgum.

ATTORNEY GENERAL BURGUM: O, God, our help in ages past; our hope for years to come; our shelter from the stormy blast; and our eternal home. Thou hast been the dwelling place of Thy children through countless generations. In Thee we live and move and have our being. Thou art infinite; we are finite. Thou art eternal; we are creatures of time and place. And yet Thou hast implanted in our hearts a desire for justice allowing for freedom, the searching for peace. And wilt Thou now, as we open this convention and as we meet together during these days, we pray that Thy Divine Spirit might create within us a deeper sense of gratitude for the blessings which we enjoy which have come down to us from the past. Renew within us a spirit of humility. As we contemplate the cost of all these blessings, we come to the realization that we are not our own but we have been bought with a great price. May we possess, by virtue of the presence of Thy Spirit, charity in our hearts for all mankind, for the peoples of the earth who have never had a Lincoln to save them nor a Jefferson to inspire them, but who are now emerging from the darkness into light. May Thy blessing rest upon our State and upon our Nation and lead us in ways of peace and of service to Thy children everywhere, irrespective of race or language or creed. We pray for the members of this Association, for their families, their homes, their several undertakings, and in all of life and in every transaction may they be overshadowed by Thy Divine Spirit of love and care. Be with us through the days of this meeting and guide and help us. Spirit Divine, attend our prayer and make our hearts Thy home. Descend with all Thy gracious power. Come, Holy Spirit, Come. Amen.

PRESIDENT OEHLERT: We will next be favored by His Honor, Mayor Evan Lips of the great city of Bismarck, who will give the address of welcome. Mayor Lips.

MAYOR LIPS: Mr. President, Members of the North Dakota Bar Association: It is always a pleasure for me to welcome groups to Bismarck. We are awfully happy to have you here for your annual convention. We are real proud of the Grand Pacific Hotel ownership who have provided this new facility for Bismarck. We know that it will be a great advantage for our city and also for the groups who visit here in their conventions.

Now, we have our parking problem like every other city. But this particular group, I wonder if it is necessary to give you free parking tickets, because being all attorneys I would think you could get yourselves out of the jam if you should happen to receive a ticket from our police department. But I hope you were passed out those little stickers for your automobiles; and if you will be so kind to place them on the rear window of your car, I think the police will be quite courteous with you while you are here in Bismarck.

We of Bismarck are quite proud of our city; proud of the growth and development we have had here in the past few years. Maybe some of you haven't been here for awhile. It might be nice to take a trip around and see your Capital City. When I am traveling in other states and have an opportunity to compare North Dakota and compare Bismarck with the city I am visiting or the state that I am visiting, I must say it is awfully nice to come back to North Dakota and also to come back to Bismarck. But I think we are real fortunate this year to have the moisture we have had and see the country look so wonderful. I wonder, I would like to interview some of the tourists that are going through here this year on the way to the Fair. We certainly can see a large number of cars from out of state traveling through North Dakota. I wonder what they think of North Dakota if they read the headlines in the papers last year to see North Dakota so beautiful.

We are certainly happy to have you here. We want to welcome you here and want the people of Bismarck to make you feel at home while you are with us. And we hope you will come back again for another session. Thank you very much. (Applause)

PRESIDENT OEHLERT: Next, Ladies and Gentlemen, we will have a response by our own Vice President, Jim Conmy. Jim.

VICE PRESIDENT CONMY: Mr. President and the ladies and gentlemen of the Bar of North Dakota, for whom I now speak:

On behalf of the members, Mayor Lips, and as a rural resident of this area, I want to thank the government of the City of Bismarck, as here represented by its able mayor, for their courtesy in inviting and receiving this convention of the members of our profession. I say, on behalf of the Association, that we are pleased to hold our convention in the Capital City of our State of North Dakota. We thank you for welcoming us, and we hope that we will be a credit to the State and to the city of Bismarck in the conduct of our convention and hope that we will be invited again sometime.

Now, before I sit down, I don't want the President to have to introduce himself. But the time has come in our program for the address by our President.

Now, President Oehlert has worked hard in his job as head of our organization this past year, and I expect that he has worked hard in preparing this address that he will give you.

And I call upon Mr. L. H. Oehlert, our President, for the annual President's Address to the Assembly. Mr. Oehlert. (Applause)

PRESIDENT OEHLERT: Thank you, Jim.

Again, ladies and gentlemen, I reduced my remarks to writing in order

to be sure that they don't extend too long, in order to cover the things somewhat in detail that we have tried to do this year and that has been done.

Now, I think we can start out with the general idea that we can all agree—sometimes we disagree—but at least we all agree on the most important element of our Association is the cooperation and contribution that each individual member makes to the joint efforts in any given year. At the outset, I want to go on record as saying that as a whole, we have had splendid cooperation and assistance from every member of our Association who has been called upon this year with the exception that there are some of our members who did not pay their voluntary assessment of \$25.00, but I am happy to report that quite a few more of our members have paid this year than ever before. Moreover, most of our members who were not specifically asked to help have made valuable suggestions and contributions of their own volition and this is a very healthy sign for the future well being of our Association. If each of you will read the proceedings of our last eight Annual Meetings as reported in the *North Dakota Law Review*, you will again fully appreciate the tremendous amount of work being carried on by our Association entirely through the services of our paid staff with a lot of hard work thrown in by the officers, committee members, and the membership in general. We are constantly continuing forward with the program to raise the professional status of the practicing Bar through higher standards and requirements for admission to practice, an approved legal ethics program, a public relations program to increase the public's awareness of and respect for our legal profession, an unauthorized practice of law program and a legal economics program to help the individual member in raising his financial status and all of these are being furthered in the light of the fundamental concept that it is the public good that is paramount and must first be served.

In addition to the above general activities which have been carried on this year, we have worked on three special programs relating to the establishment of a Clients' Security Fund, the establishment of a University of North Dakota Law School Foundation that has tax exempt status and a special committee was continued and will make a report at this Annual Meeting on suggested improvement of our laws relating to judicial selections. We are happy to be able to report, as most of you know, that such foundation has been established and that through gifts principally from our members, more than \$14,000 was secured to implement its activities and purposes which generally are to promote and further legal education and legal research at the University of North Dakota Law School, to promote the interest and welfare of such Law School through awarding scholarships, purchasing books and equipment, providing funds for institutes and special lectures, establishing student loan funds, establishing funds for faculty and student research and for such purposes as will better enable such Law School to perform its fundamental educational functions.

The special committee on judicial improvement consisting of Mr. Floyd B. Sperry as Chairman, Judge Obert C. Teigen, Judge W. C. Lynch, Roy A. Ilvedson, Bruce VanSickle, Francis Breidenbach, James P. White and Roger E. Persinger have compiled a very valuable written report and recommendation which will be discussed at the Friday afternoon business session and I hope that each of you will be there to consider such report and the recommendations of such Committee.

The final report and recommendation of the special committee on Clients' Security Fund consisting of Herbert G. Nilles, as Chairman, William R. Pearce, Lyle E. Huseby, and Roy A. Ilvedson, Clyde Duffy, Harold D. Shaft, Lowell W. Lundberg, and John Hjellum, along with the form of resolution to be passed on during the course of this Annual Meeting were carried in the May 15th, 1962, issue of the North Dakota Bar News Letter. This was done so that each of you would be fully informed as to such precise matters. You will appreciate that whether the work of such last two special committees will be brought to fruition depends upon the final action of our members at this Annual Meeting. Frankly, I am very hopeful that you members will deem it advisable to put your stamp of approval upon the reports and recommendations of such two latter special committees.

In line with the above, I wish that each of you could see the wealth of activities of the organized Bar in North Dakota from the vantage point as President of our Association. I was impressed by what we were doing in North Dakota as the organized Bar before I became an officer of our Association and my experience as such an officer has impressed me even more and I am very, very proud of our Association and its past history and accomplishments and what we are doing today and will continue to do in the future. While we can take some justifiable pride in our past accomplishments, yet we must be humble in the light of what we must contribute to the welfare of the organized Bar in the future and particularly in building public esteem for our profession not just by words, but by our acts. I am also happy to be able to report that on the American Bar Association level we are considered one of the finest, if not the finest, State Bar Associations in the light of our total membership.

We should also report to you that the so-called "Filing Fee Bill Case" has now been fully submitted to the Supreme Court and we should have the final authoritative decision in ample time before the commencement of the next Session of our State Legislature next January as our Association promised would occur.

We are also happy to be able to report that the results of the full second year of our voluntary assessment program has resulted in the largest collection and now approximates the sum of \$10,000. The final figure for the ensuing fiscal year of our Association which ended on June 15th, 1962, will be reported by our esteemed Vice President and Finance Chairman, J. F. X. Conmy, during the course of the business sessions of this Annual Meeting. Frankly, I am elated about the ultimate fact that our members generally believe enough in our Association to sponsor and support it in such a fine voluntary fashion. It augurs well for the continued and better well-being of our Association. I want to compliment each of our members who paid their voluntary assessment this last year and I particularly want to compliment our members who are judges who paid such assessment even though under our licensing statutes, they are not required to pay the ordinary license fee of \$20.00 per year required to be paid by all licensed practitioners in our state. Without such voluntary assessment, your Association could not function as it is functioning today and while I do not have the specific figures and they again will be reported to you by J. F. X. Conmy, our total income this year will exceed our total expenditures by a sum exceeding \$6,000.00. This is to be compared with last year's overage of a little over \$3,000.00. This increase is largely the result of everyone continuing to watch the expenditures as was done last year,

increased collection of the voluntary assessment and we secured a larger dividend this year than ever before from our Group Life Insurance program. The bank balances of our Association now exceed \$21,000.00 as compared to a little in excess of \$14,000.00 a year ago.

Each of you should also know that your Executive Committee has this year inaugurated a so-called "Trust Account" in which is segregated all of the fees that come to us as a result of the Filing Fee Bill Statute. Charged into this account are the expenses of the activities of our Association that have to do solely with the work of our Association that is to the public interest and thus we will be fortified next year with the actual facts and figures that clearly evidence that the funds derived from such statute are insufficient to defray the cost of such activities which would otherwise have to be paid by our Legislature if such work were to be continued and which is the situation in most of our neighboring states. For example, two of the larger items that are charged into such Trust Account arise out of the publication of the **North Dakota Law Review** and the work of our commissioners on uniform laws. You are further advised that a deficiency in such Trust Account is made up by funds from the general account of our Association, so you will see that we will be in a position to better combat any unfounded assertion that is made in the future that funds received under such Filing Fee Bill Statute are devoted to other causes that do not redound to the public interest.

You may be interested to know, if you do not already know, that some of the esteemed members of our Association have objected during the course of this year to some of my President's Letters and some of my actions as president. I bespeak the right of every one of our members to express their respective position on any subject of interest to our Association and that includes constructive criticism of any officer of our Association. While in the instances referred to, I could not agree with the criticisms, yet I appreciate that our members took the time to write me as they did because it clearly evidenced their continued interest in our Association. I respectfully submit that such disagreements will not hurt our Association and that it is only natural that if we are alive and doing things that there will sometimes be honest disagreements and I submit further that this is a healthy sign and not to be deplored. With reference to the matter so referred to, I find myself somewhat in the position of Voltaire, who allegedly said: "I may not agree with what some of you may have to say, but I will defend until death your right to say it."

The above and foregoing is a brief outline of what has been accomplished during the past year. Space and time will not permit me to make a more detailed report but I can generally state that we can all be very proud of our Association as well as the American Bar Association and the work that is jointly being done for the public benefit and for all lawyers even though some may not be members of the American Bar Association. How I wish that each of the members of our Association would attend our Annual Meeting because they would come away with a much greater perspective of the worth of the organized Bar, what it is presently doing and what it intends to accomplish in the future. Our own Association is an integral part of the whole national effort and so I trust that each of you will continue to join in this great effort at least on our State Association level. The late Arthur Vanderbilt, Chief Justice of the Supreme Court of New Jersey, stated in effect that one of the five functions of a lawyer

is to do his part individually as a member of the organized Bar to improve his profession, the Courts and the law; and that every man owed some of his time to the upbuilding of his profession to which he belongs. Indeed, this obligation is one of the great things which distinguishes our profession from a business and we should be ever mindful of this distinction.

I would be amiss in my duty as President in the closing moments of this administration if I did not comment on some of our hopes and aspirations for future activities of our Association. Each administration builds on its predecessors and the ordinary work of our Association must continue as it has in the past and be better wherever and whenever it is possible to do so. In addition, it is hoped that in the not far distant future, we will be able to inaugurate a State Bar Association of North Dakota Foundation, which will also be tax exempt and to which we can all give money when we are so inclined with the ultimate objective of having and owning our own Association's office and building in Bismarck, North Dakota. Many other state bar associations have already acquired such a property and while I recognize that we are not large in number, we nevertheless are large in getting things done. It is submitted, that it is not too much to hope for, that enough of our members will feel so kindly to our Association that they will make voluntary gifts during their lifetime or by their wills so that we can procure and provide such a headquarters and building for the oncoming generations of our members. I personally will be very glad to work upon such a project during future administrations.

Another area that we might well explore as an association for future activity relates to the so-called "Annual Legal Check-up". Our Executive-Director, Mr. Alfred C. Schultz, has already collected quite a file on such a subject and it might well serve as a new and further line of activity of our Association and in building a better and greater association for the public interest as well as for each member thereof.

Before I close this address, I want to thank each individual member for the contribution that he made to the betterment of our Association during the last year. Next to each individual member and their contributions are the committee chairmen. Without them no President or Executive Committee or group of officers could accomplish very much and I now want to publicly acknowledge my thanks and indebtedness to each committee chairman who served so earnestly and well during the past year and I should like to name them for you so the names are firm in your memory. Mr. J. F. X. Conmy, of course the Vice-President and Chairman of the Budget Committee has done an outstanding job and he has volunteered to appear for me on various occasions and he has always fulfilled his assignments and responsibility with talent and with devotion. I submit that our Association could not have had a better Vice-President. I should also like to commend Mr. Harold M. Hager of Grand Forks, North Dakota, for his leadership of the Continued Legal Education Committee and the outstanding job that he and his committee did in carrying on the Family Law Institute at Grand Forks last February. This Institute has been a constant source of commendation in favor of our Association and it was an outstanding success not only from an educational standpoint but also from the standpoint of our public relations.

I should also like to congratulate Mr. E. T. Conmy, Jr., and his committee on Ethics and Internal Affairs and the fine and arduous work that he and his committee have done on difficult matters falling within the jurisdiction of such committee.

I am also happy to commend Mr. John G. Shaft and his committee dealing with Information and Service which includes various subcommittees involving Dale Jensen as Chairman of Law Day, Mark F. Purdy and W. B. Hankla, Co-chairmen of the American Citizenship Subcommittee, also Charles Feste as Chairman and the members of his committee, Donald R. Hansen and Frank Knox who have done an excellent but laborious job in writing articles entitled "Comments on the North Dakota Law," published in many newspapers in our state and who also compiled the new Handbook for Jurors of which we printed 10,000 copies and supplied to Clerks of Court this year and all of whom are entitled to the thanks of each member of our Association for their excellent contributions to this year's work.

We are also indebted to Mr. Albert J. Greffenius, as Chairman of the Legal Economics Committee and one of his subcommittees, chairmanned by John S. Whittlesey relating to a form of Professional Corporation Act which is being coordinated with other professional groups and will be presented to the next session of our Legislature for adoption; John T. Traynor, as Chairman of the Judicial Selections Committee even though his Committee was only a sentinel on duty this year; Dean O. H. Thorodsgard as Chairman of the Legal Education and Admission to Bar Committee; Ronald W. Wheeler, Chairman of the Legislative Action Committee; Everett Palmer, as Chairman of Memorial and 50 Year Awards Committee; William S. Murray, as Chairman of Procedure and Adjective Law Committee; Odin J. Strandness, Chairman of the Traffic Committee and the Honorable Eugene A. Burdick, Chairman of Uniform Law Committee.

We should also pay special recognition to Mr. John B. Hart as chairman and the other members of his Committee who have done an outstanding job this year in handling the work of the Unauthorized Practice of Law Committee. This year the work of such Committee, somewhat overlapped with the work of the Ethics and Internal Affairs Committee and were aided and assisted by your officers and the Executive Committee, which latter Committee has somewhat assumed, as I believe it should, jurisdiction of our public image or public relations. It is believed that we should continue to attack the idea so prevalent among laymen that lawyers are engaged in a commercial business and that we must continually advance the idea that lawyers are engaged in a profession and that as such they are devoted to a high standard of professional responsibility. That term is not limited to the lawyer's responsibilities for dealing honorably with clients, Courts, fellow lawyers, and others, important though these be. It includes the obligation to develop more effective relationships with the other professions and in social work, to the end that clients are aided with their problems as a whole, not merely with the technical legal aspects of such problems. It is submitted, that our professional responsibility also involves the lawyer's obligation to promote law reform, to improve the administration of law by Courts, and other governmental agencies, to maintain and improve the standards of the legal profession, to insure that adequate legal services are provided

for the indigent and the unpopular, both in civil and criminal cases and to act as a guardian of the principle of due process in a society in which the individual is increasingly dwarfed by the powers of organized groups and government. It also includes the responsibility of the lawyer for community service such as participation in educational and charitable organizations. Finally, the term should include the lawyer's responsibility for participation in public affairs, whether as a public official, or as a thoughtful leader of community opinion and action. This is the standard which we must put before our members and espouse in our Association activities. Then, too, if we are going to ask the public to believe in our sense of professional responsibility, we must take still greater pains to rid our profession and our Association of those who do not live and practice by our standards and to keep unqualified and less devoted persons out of the practice of law. It must be acknowledged that on very, very infrequent occasions, we have had some unscrupulous lawyers who have pursued a crooked course without—to our shame—being more expeditiously taken to task by their complacent colleagues at the bench and bar, but thank goodness it is less in our profession and in our Association!! The point is, however, that we could avoid these relatively few embarrassments to our Association if we all would limit ourselves to the practice of law and acknowledge our professional responsibility and would cause to be disciplined and disbarred the infrequent unethical practitioner much more expeditiously than has been done in the past. This must be done because the public judges us by our acts and not by the way we speak. Finally, we must continue to attack the problem of unauthorized practice of law. Our Committee on that matter has worked constantly to protect both the public and the members of our profession against the unauthorized performance of legal functions of unqualified laymen who would palm off their wares as professional assistance and guidance, when they really are nothing more than pettifoggers working solely for their own self-interest. Thus, we must challenge and warn the public against those unscrupulous real estate agents who will attempt to write up a binding contract of purchase and those unscrupulous insurance agents or "estate planners" who will attempt to give tax advice, or outline an estate. May it be distinctly understood that we do not challenge the right of these people to write legal contracts or plan estates just to protect our own interest, but rather, because it is clear that it is our professional responsibility as lawyers to protect the public from persons who are unauthorized and unqualified to practice law. In the same breath, I am sure that each member appreciates that in the last analysis the public image of our Association and our profession is gauged by the sum-total effort of all of our individual members exerted toward raising the professional standards and status of our Bar.

I have already commented on our special committees, such as the Clients' Security Fund Committee, formerly chairmanned by H. G. Nilles, since deceased, and whose successor is Mr. John Hjellum and the work of the special committee on Judicial Improvement chairmanned by Floyd B. Sperry. They have done excellent jobs and onerous ones.

I also want to commend John Hjellum's Special Committee on Medical-Legal Relations; Russell G. Nerison, as Chairman of the Committee on other Interprofessional Relations and the special committee relating to the formation of the University of North Dakota Law School Foundation composed of Roy A. Holand, Mack V. Traynor, Paul Benson and

Professor James P. White. There was another special committee formed during the course of this year relating to the banquet meeting held last month at the University in honor of Dean O. H. Thormodsgard. Such special committee was jointly chairmanned by Mr. Arley R. Bjella and Professor James P. White and they and their committee did an outstanding job to which all those in attendance will attest.

I also want to thank each member of this year's Executive Committee and the cooperation that they and our excellent Executive-Director, Mr. Alfred C. Schultz, have rendered to our Association and to me. Without their assistance and cooperation, we could not have done that which has been accomplished this year.

Before this address is concluded, I want to dwell also just briefly on the fact that the legal profession as a matter of history has been the leader in the fight for and the maintenance of freedom. As we all know, freedom and liberty are not free and if they are to be maintained, they rest and always will, on individual responsibility, individual integrity, individual effort, individual courage and individual religious faith. In other words, freedom and liberty do not rest in government, they rest with you and me. As we thus prove our faith by our works, as we accept with diligence and devotion the responsibilities for areas within our reach, as we inspire those about us and send them in turn to inspire others—as we do these things, we shall find that we are making an ever-increasing contribution to the fight to maintain our freedom. It was Shakespeare who said "It is time to fear when tyrants seem to kiss." Also, I submit that we should be careful of the pleas that we should permit erosion of our freedom because of necessity, because necessity has been the usual plea for every infringement of human freedom. It has been said that it is the argument of tyrants and that it is the creed of slaves. Thus, in this technical age of emphasis on the importance of material relations and dependence upon money and goods, the worth of the individual person becomes more and more crucial. We must understand as citizens and as lawyers that our future welfare does not rest so much in better machines or more frightful armaments as it does in better men and women. Character will always be worth more than plant, tools of war or money. Somewhere at the heart of every institution and clearly framed by every great idea is the enlarged picture of a man. The men who rise above the flat prairie of conformity to the rugged mountain top of personal integrity, creativity, and responsibility, are those who guarantee that the future will be worth living. If there is anything such thing as social responsibility or vision it is reflected from individuals. It is also true that if persons are not healed of their own maladies, the whole ensemble is exposed. Each must suffer the consequences or reap the rewards of his own acts, yet how often do we blame society for the conditions under which we suffer, willing to accuse anyone but ourselves when the rewards we covet remain out of our reach. Manifestly, no one else can eat your food for you or grow for you. No one else can think for you. When anyone tells you what to think—and you oblige—you are his mental bondsman with no feet of your own to stand on. Yet, it is always easier to conform than to reform. It is always easier to let others carry the difficult burdens of liberty and freedom than to become a crusader for conscience' sake. Whenever we are satisfied to say, in effect, "Make things easy for me. Spend my money for me. Tell me what I am to think and what I must do. Take care of me, please, from the cradle to the

grave"—when we advocate such "alleged social progress"—we are pleading for standardized opinion, agreeing to the death of freedom and liberty, and admitting that as individuals we are in the advanced stages of decay. It is nothing new, certainly, that we are facing a crisis. Every generation must plow new fields. Men are forever standing at the crossroads in the unending journey which is history. Every day is judgment day. Every age witnesses new problems rising upon old problems like today's sunshine and rain coming after yesterday's successes and failures. It is a ceaseless modulation of growth, adaptations, and increasing knowledge, teaching all who will be taught that we ourselves, and no one else, will make of our beloved America and our world a Heaven or a Hell.

It was George Washington who said, "Government is not reason, it is not eloquence—it is force! Like fire, it is a dangerous servant and a fearful master." So let us have a rebirth of the individual responsible American citizen who will again become Master of his government and thus maintain freedom and liberty for himself and for posterity.

In summation of what has been said, I submit that a genuine American's creed is as follows: He does not choose to be a common man. It is his right to be uncommon, if he can. He believes in equal opportunity to prove unequal talents. He seeks opportunity—not security. He does not wish to be a kept citizen, humbled and dulled by having the State look after him. He wants to take the calculated risk; to dream and to build, to fail and to succeed. He refuses to barter incentive for a dole. He prefers the challenges of life to the guaranteed existence, the thrill of fulfillment to the stale calm of utopia. He will not trade freedom or liberty for beneficence nor his dignity for a handout. He would rather die cleanly under an atomic bomb than rot away under socialism. He will never cower before any master nor bend to any threat. As he would not be a Master, so he would not be a slave. It is his heritage as an American to stand erect, proud and unafraid; to think and act for himself, enjoy the benefit of his creations, and to face the world boldly and say, "This I have done." I submit that it is on this basis that America was built, that it will be maintained and that this is what it means to be a genuine American.

In conclusion, I want to state that while the task has been somewhat arduous, yet it has been a great pleasure for me to serve as your President during the last year. I am not unmindful of the great honor that you conferred upon me when electing me to the highest office of this Association and I assure you that I will continue to carry the happy memories of my work as your President through the remainder of my life. Moreover, you may rest assured that I will continue to do everything that I reasonably can do as a working member of our Association to enhance the standing and betterment of our great Association in the future. May I add that I appreciate very much the opportunity accorded me to serve as your President and I complete this address with warm personal regards and best wishes to each and all of you. Thank you. (Applause)

Well, we are running along. I think at this time that I would like to call upon Mr. Frank Jestrab and Professor James White and Mr. Gene Grindeland, in the order I have named, to make several reports that they would like to make at this time.

Mr. Jestrab, if you would like the rostum you may come up.

LAW SCHOOL FOUNDATION

MR. FRANK JESTRAB: Mr. President, I want to now report to the members of this Association, and I report in my capacity as General Solicitation Chairman of the first annual drive of the North Dakota Law School Foundation.

I thought this would be a good time to do it. I had hoped that there would be more members of the Association that had sufficiently recovered from their preconvention activities to be here to hear this, but I know that at least we have the more devoted folks here this morning—or at least the more physically capable, at any rate. (Laughter)

After having heard that very moving invocation of Leslie Burgum's, I was reminded that ever since Cardinal Cushing's inaugural prayer at the Kennedy inaugural that all other denominations have been striving for equal time. (Laughter)

I think that after listening to our President's Report on the contribution of the Bar to our annual assessment and after having had a chance to see what the Foundation has done, I think we have all come to the realization that quality education and professional education costs money. It's like buying oats. If you want nice fresh oats it costs money. On the other hand, if you are satisfied with oats that have been through a horse, no doubt you can get them for less. (Laughter)

Our Association Foundation drive, first annual drive, the purposes of which I outlined in my letter to all of you, as of this morning stands at approximately \$15,085. And I personally think that that is absolutely stupendous. I can't tell you how much I think of that.

We had 180 lawyers and judges participate. The average gift was approximately \$80. That is, \$80 per giver. It is a total of 20% of the alumni. Fellows say to me, "Well, Jestrab, you aren't an alumnus of North Dakota." And I say, "Of course not." Not actually. But, of course, all of us that live and practice and work here owe our first loyalty to this Association, this State, and this law school. And therefore it was a great pleasure for me to say that, "Yes, it is my law school. Yes, I am working for the University of North Dakota."

It is hard for us to realize what this bare figure means without some comparison, and I am going to first give you some idea of what has been done by a somewhat comparable school that lies east of the Mississippi. This school, Harvard University, started their first annual drive in 1951. They started with 16,000 alumni; we started with 666. They had 25 times, approximately, what we had to work with. But when it came to money they got \$61,000, which is approximately four times what we got. So with 25 times as many people they got four times as much money. Their average gift was \$36; our average gift was \$80. Since that time they have managed to get the total number of givers from 13% up to 45%. We had 20% the very first year.

So that this Fund, the purposes of which I outlined to you and which are for the service of this profession, our sons and our daughters, it's for our State and it will continue through the years. We now have this nucleus of \$15,000. I am more than thankful; I am profoundly gratified. And I hope that as the years go on we can get more of our people participating, more of the fellows giving a little more.

It is always very dangerous to point out particular people to cite as being worthy of special credit. I am going to write a personal letter to all of the people that helped us in this campaign. I am very happy to have had the opportunity to have served you and your Law School in its first annual drive, and I certainly wish next year's chairman the very best of luck. And, of course, he will have the support of all of us.

But I think that it would not be improper if I were to say that I think we are especially indebted to two very fine, wonderful young men of this Association: Norbert Auer, of Grand Forks, and Al Greffenius, of Valley City. They did an outstanding job. It isn't taking anything away from the rest of us, but I think they did just a little bit better than the rest of us in the results achieved. And I think they have set a mark for us all to shoot at. And I know we will try and do everything we can next year. And—well, I better not tell another story. Thank you very much. (Applause)

PRESIDENT OEHLERT: Thank you, Frank. We thank you for all the work you did as Chairman of that committee.

Next we will hear from Professor Jim White.

I might say, while Jim is getting up here, that he and Arley Bjella were co-chairmen of the banquet dinner in favor and honor of Dean Thormodsgard and he also worked with Frank on this Law School Foundation. Jim White.

PROFESSOR WHITE: Thank you, President Oehlert.

I should like to first begin by publicly, on behalf of the School of Law, thank Frank Jestrab for his tremendous efforts in the first annual fund drive. There is a great deal of work that went into this fund drive. Frank spent almost an inconceivable amount of time organizing and working on the fund drive. And certainly we of the School of Law are very grateful for all his efforts.

In addition, I should like to thank everyone here that was either a solicitor or a contributor. We very much appreciate all your efforts.

DEAN THORMODSGARD BANQUET

Now I am going to give a very brief report on behalf of Arley Bjella and myself regarding the banquet which was held for Dean Thormodsgard on May 26th.

As you all know, at the end of this month Dean Thormodsgard retires after 36 years at the University of North Dakota, 32 years as Dean of the School, which makes him the Senior Dean among accredited law schools in the country.

We had a testimonial dinner on the 26th of May, to which over 300 people attended—lawyers from all over the state. At this dinner the fund drive was announced and the first contribution of the Foundation, which is, I might add, going to be used for a loan fund, primarily, for students attending law school and some scholarship money—but primarily a loan fund.

But the first use of the fund was a portrait of Dean Thormodsgard, a very fine portrait which was painted by a New York artist and was presented to the School of Law at the time of the banquet. This portrait

now hangs in the Law Library at the Law School. I hope when any of you are in Grand Forks you will avail yourselves of the opportunity to come and see the portrait. Ultimately we hope it will hang in the foyer of the law building when we ultimately get a building to ourselves.

This roughly is what took place at the banquet. And I should like to thank everyone who worked on the banquet on behalf of Mr. Bjella and myself. Particularly I should like to thank Mr. Weiss, who is in the audience here today, and Mr. Hager, who I saw earlier this morning, who did a great deal of work regarding the banquet.

I would like to discuss only one other thing very briefly, and this is the School of Law. As I mentioned, Dean Thormodsgard retires after 36 years of devoted service to the School of Law at the end of this month. Now, we of the School of Law want to continue, and indeed increase, the relationship which exists between the School of Law and the Bar Association of North Dakota. First of all we would welcome your visits to the School of Law. If you are ever around Grand Forks, by all means come in and visit with the Faculty, visit with the students, find out what is going on in the Law School. We would like to hear your suggestions what should be going on in the Law School, how we might improve the Law School itself, how we might improve the public service concept of the Law School to the Bar Association and the State. This we are most interested in. So I hope that all of you here, and indeed all members of the Bar Association of North Dakota, will continue to look upon this school as Mr. Jestrab and as Mr. Oehlert have, although they are not alumni of the school. They consider it to be their law school. It is the Law School of the State of North Dakota. And I hope you will continue to take an interest in it, and, indeed, tell us what we might do to better the school and what we of the School might do to be of greater service to the Bar.

I want to just again say, on behalf of the School, the Faculty and the students, how much we appreciate your deep and continuing interest in the School. Thank you. (Applause)

PRESIDENT OEHLERT: Gene Grindeland, please.

Gene, I think, is graduated this year, and is going to take the Bar. He has been very active in Law Student Association activities, and I am happy to yield the rostrum to him.

For two minutes, Gene. We are running short.

STUDENT BAR ASSOCIATION

MR. GENE GRINDELAND: Thank you, Mr. President and members I am representing the Student Bar Association, and obviously you are not too familiar with the Student Bar Association's program, not because you are not interested, probably, but because you are so far removed from it. But over the last few years we have grown considerably and we have tried to tie the Law School and the Students' Association more closely to the State Bar. And I think we are succeeding. An example of that is \$150 yearly contribution that you have made to us in the last two years to help defray our expenses to the American Law Students' Association's National Convention. We appreciate this. It is very helpful to our program at the Law School. Another, of course, is the Fund,

which has been mentioned. And the third that we innovated this year and which I just want to make one remark about is the Legal Institutes. We have asked various lawyers periodically to come to the Law School and to speak on subjects that are not given in our curriculum. They are subjects of practical value, and, of course, in the academic background that we have these are very valuable. And I would just like to recognize a few of the gentlemen who have unselfishly come down to the Law School and given of their knowledge. They have taken time off and they have not asked for reimbursement. And they are: Mr. E. T. Conmy, Jr., Mr. Pancratz, Mr. Secrest, Judge Lynch, Fran Breidenbach, Mr. Harold Shaft, George Soule, and Bruce Van Sickle. And I hope I haven't forgotten any. We appreciate this. And I think that one of the best ways to guarantee a good North Dakota Bar Association is to help us out in the Student Bar Association. This is where the students first get their first contact with organizational work, and I think that if we can instill in these young gentlemen their sense of service, why, I think it will better the North Dakota Bar Association.

So thank you very much. We hope next year when you get a letter you will come down and talk to us. (Applause)

PRESIDENT OEHLERT: We will next call on Jim Conmy, Chairman of the Finance and Budget Committee, who will now make his report.

VICE PRESIDENT CONMY: Mr. President and ladies and gentlemen of the Bar: While I am waiting to see if the Secretary has a copy of the Budget Report, I will remark that usually when I speak following our President, Lewie Oehlert, it has been in the courtroom and I try to play down his oratory. This morning I heard from him that I was a very good Vice President, and it helped restore my confidence. (Laughter) I didn't know I was so good. (Laughter)

PRESIDENT OEHLERT: I have him dealing with figures this morning. (Laughter)

BUDGET AND FINANCE COMMITTEE

VICE PRESIDENT CONMY: Now, in this year's budgeting we have separated the budget into two budgets: one on the trust account and one on the general account. And it was only last year that we created that separate trust account.

I will say to the Members of this Association that that was done in order that the monies that come into the Bar Association's hands from the filing fees may be put into that trust account and budgeted out and used for the matters that can be definitely labeled in the public interest as distinguished from matters that might otherwise be labeled in our own selfish interest.

Now, we have budgeted a total in round numbers for the '62-'63 budget of, as I say, in round numbers, \$42,000.

We have increased the budget on a few items this year. Just to comment briefly, for instance on the *Law Review* we have budgeted \$7,250. Actually we get back \$3,000 of that money from the University of North Dakota. But we have added \$250 because the experience has been that back at the Law School they never have enough of their *Law Review* left over for the requests to buy it or get it after they have been distributed,

and we are going to make a few extra copies so we will have them available for those who request them and who want them for some worthwhile purpose.

We have added on a small item of \$65 for the Student Bar Association to help them in their orientation program for freshmen law students and to help sell the Bar Association to those young people when they first come into law school.

We have had to increase the appropriation for legislative work—it was \$115 last year—to \$500 this year because we have a Legislative Session coming up.

Outside of that the only increases in the budget are for salary of administrative personnel. Now, we haven't yet increased those salaries. But that has been budgeted so that if this Association or the Executive Committee deems it advisable and proper—incidentally, I haven't studied the Constitution and By-laws enough to know which body of the organization has to pass on it—to increase, if necessary and advisable, the salary of our Executive Director and the personnel he has to hire. There is an awful lot of clerical, stenographic work that has to go through his office.

Now, I will say to the members of the Association—and I don't know that it has been the practice; I still believe you are entitled if you want to—I am not going to take the time now to read every item in that budget, so if any of you as individuals—the Executive Committee already have them—desire copies of that tentative budget for the 1962-63 year which has been approved by the Executive Committee at last night's meeting, if you want copies of it, if you will write me, if and when I am President, we can reproduce it easily, photostat it, and send it out so you can study it and be ready to criticize it later on.

But I do say that just as in the operation of your business, the operation of your Bar Association costs more than it used to, and particularly in these last few years since we have a full-time Executive Director. And it is for that reason the budget has grown from year to year. I can say that last year we stayed well within our budget. I can say that your officers and your committee chairmen—and that sometimes worries the personnel as to whether they are running around spending Association money, traveling and so forth—your officers used only a fraction of the money appropriated for travel. We either absorbed the expense ourselves or—I think Lewie traveled free sometimes working for the railroads (Laughter) and that saved the Association some money—and many of the times when I traveled, or Alfred and I traveled, I took him along and we made on charges to the Association for travel expense. Your committee chairmen are put to considerable expense, and they not only give their own time but they lose their own earning power when giving that time and they bear considerable of that expense themselves. You know as a practical matter that when out on that work they expend more than they ever collect back on vouchers through this Association.

Now, we are happily better off than we were at this time last year. We were about \$14,000 in the black last year, and we are slightly above \$20,000 in the black—that is, the whole position of the Association—in funds. So we have improved about six or seven thousand dollars, but through savings, and savings that we can't anticipate will always be made, particularly with a legislative year coming on. And, as I say, the

details of this budget, if you people want it and want to study it, ask me and we will photostat it and send it to you.

Now, that's it.

I want to go back to Lewie's praise to me, that when I was selected as Vice President and working on this budget that ultimately justice prevailed. At least in the sense you will all remember when you have called your corporate clients and they ask you the verdict and you told them that justice prevailed that your client said, "Well, order a transcript and appeal at once." (Laughter)

There is one other thing: I want to move the acceptance of the report of the Budget Committee, and, in addition thereto, and as a part of the same motion—unless I am forced to separate them—I want to move again that the Association be permitted to assess its members the \$25 additional assessment. In connection with that motion, that revenue has been anticipated and is necessary in fulfilling the budget that we must make.

I put the motion.

PRESIDENT OEHLERT: You have heard the motion, gentlemen. Do I hear a second?

MR. FLOYD SPERRY: I will second the motion.

PRESIDENT OEHLERT: Floyd Sperry seconds the motion. Is there any further discussion on the report of the Finance and Budget Committee? (No response) If not, I will put the question. (Question submitted) Motion is carried.

Now, we are approaching 10:30. I want to just quickly refer to the fact that prior to the convening of this Annual Meeting I have appointed two committees, the Auditing Committee, of which John Zuger is Chairman, William Pearce and Milton K. Higgins, the other two members. I also appointed a Resolutions Committee, consisting of Chairman Lynn G. Grimson, Bill Daner and Helgi Johanneson. I will expect the reports of those two committees at the Friday afternoon business session of our meeting.

Now, at this time I am also asked to announce that the Fourth Judicial District is going to elect a new President at 11:55 this morning, prior to the Alumni Association luncheons, to the left of the stage. I don't know which side you are looking at. I suppose the one over here (indicating). There is a little more room. This is a call by Herman Weiss, the President in charge of the Fourth Judicial District. They need a new President. You elect the presidents of every even-numbered judicial district in even-numbered years and the odd-numbered judicial districts in the odd-numbered years. The other two have already been elected.

We have a few more moments here for one more committee report. I am going to call on Tom Conmy for his report. Is Tom in the room? I think that it is short, and we can have it now and then we will go into the coffee break.

Tom Conmy has done an excellent job, as I commented, he and his committee, on a very arduous but laborious task, as did all the rest of the committee on ethics. I give you Tom Conmy at this time.

ETHICS AND INTERNAL AFFAIRS

E. T. CONMY, JR.: Mr. President, members of the Association: During the past year our Committee has met three times with a substantial majority of committee members in attendance each time. Two meetings were held at Fargo and one at Bismarck.

The meeting of October 6th, 1961, lasted about four hours with twelve major matters being considered and resulted in four pages of single-spaced minutes.

The next meeting was on January 27, 1962, lasted 3½ hours, and produced five pages of single-spaced minutes with eleven major matters acted upon.

Our third meeting was on June 28th, 1962, at Bismarck.

Several hundred letters have been written and numerous opinions have been prepared.

Many investigations have been made, both by committee members and employed investigators. Sub-committee meetings have been held by committee members and appearances have been made before the Executive Committee.

At the request of Professor White of the University of North Dakota Law School and of the Student Bar Association of the University, a presentation on Legal Ethics was made to all University of North Dakota Law School students at an institute held on May 10th, 1962. The Law School does not presently offer a course in Legal Ethics and we recommend that such a course be included in the curriculum hereafter.

The last two disbarment complaints filed by our Committee, one in March of 1960, and the other in November of 1961, are still pending and not decided.

The Committee feels that disciplinary and disbarment procedures in this State are far too slow and cumbersome and we recommend to the Executive Committee that attention be given to overhauling these procedures with proper legislation, possibly similar to the procedure set forth in Section 43-17-31 et seq. of the Century Code, with reference to revocation of a license to practice medicine. We think a slow job is being done in policing our profession and we think the public can be justly critical of us in this regard.

In closing, Mr. President and Members, I would like to thank publicly the members of this committee for the help and assistance and work that they have put in this year: Gordon Caldis; Dave Kessler; Dan Letnes, of Grand Forks; Bill Kelsch of Mandan; Milt Higgins, of Bismarck; Frank Magill, of Fargo; Toupe Sproul, at Valley City; Dick Healy, of Hankinson; and Bob Dahl, in Grafton.

Before moving the acceptance of this report, Mr. President, I would like to announce that our committee will meet this noon in Room 8 at the Prince Hotel. If any members are here I would ask that you please attend and pass the word to the other members of our committee.

Mr. President, I would move the acceptance and filing of our report.

PRESIDENT OEHLERT: You have heard the motion, gentlemen, do I hear a second?

A VOICE: Second.

PRESIDENT OEHLERT: Any discussion?

(No response; question submitted)

Motion carried.

Thank you very much, Tom.

We will now go into our coffee break, 10:30, reconvening at 10:45.

... Coffee break. ...

VICE PRESIDENT CONMY: Gentlemen, I will again call the meeting to order.

The President and Secretary had, in the intermission, to go out and briefly attend the Ladies' Auxiliary Meeting and to speak to them. They told me if they weren't back in 15 minutes to start the meeting again. Well, we have been recessed for a half an hour now, and so I think that if we are going to get our work done we had better start. We are running about 20 minutes behind schedule now.

The next thing on the program, as you will see from your program, is the discussion of the Clients' Security Fund. Now, as you know, Herbert Nilles, now dead, had done a lot of work on that, as has his committee, and John Hjellum, a member of the committee, has kindly taken over that work on behalf of the committee. And I am going to call on John Hjellum so that we may get started in the discussion of the Clients' Security Fund.

Here is the President now.

PRESIDENT OEHLERT: Go ahead, Jim.

VICE PRESIDENT CONMY: So, John, will you take the stand. (Mr. John Hjellum then took the chair)

MR. HJELLUM: I thought that probably the President was trying to get out of introducing me, but he says that isn't the case. (Laughter)

PRESIDENT OEHLERT: The President had a meeting with the Ladies' Auxiliary out at the Country Club.

MR. JOHN HJELLUM: Well, I feel a little hurt that he put the ladies ahead of me, but I suppose that is understandable. (Laughter)

PRESIDENT OEHLERT: May I tell a story, John?

MR. JOHN HJELLUM: Go ahead.

PRESIDENT OEHLERT: They say that it is a good thing for the human race that men don't understand women because women understand women and don't like them. (Laughter)

CLIENTS' SECURITY FUND

MR. JOHN HJELLUM: This is a report of the Special Committee on the Clients' Security Fund.

This committee was established in 1959 and made a study of the advisability of creating a Clients' Security Fund for North Dakota. The committee reported at the annual 1961 meeting of the State Bar Association of North Dakota and its report is printed in *North Dakota Law Review* as a part of the report of the annual meeting, commencing at page 526, Volume 37, Number 4 (October 1961).

The committee was continued and enlarged, with directions to submit a plan for North Dakota to the Executive Committee and to the members at the 1962 annual meeting.

For the benefit of those who have done no reading on this subject, the Committee summarizes the plan and purpose of the Clients' Security Fund, as follows:

"It is a plan whereby the State Bar Association provides a fund whereby clients of North Dakota lawyers will be indemnified against dishonest acts arising out of the relationship of attorney and client."

Further discussion of the plan would be simply a repetition of the report already available in your *North Dakota Law Review*.

The committee has worked out and herewith submit for adoption a resolution establishing a Clients' Security Fund for the State Bar Association of North Dakota. The resolution will be read following this report.

The substance of the resolution is as follows:

1. A Clients' Security Fund is established.
2. The Fund will be administered and managed by the Executive Committee of the Association.
3. The plan applies only to claims arising after the effective date of the resolution.
4. It applies only in those cases where the lawyer is a practicing member of the State Bar Association and maintains a law office in North Dakota.
5. Claims may not be considered that have not been finally adjudicated by some Court except in those cases where the lawyer has died or has been adjudged insane.
6. Claims to be recognized must arise out of the relationship of attorney and client; claims arising out of private or personal business, or where the attorney is acting in some other fiduciary capacity, such as trustee, executor, administrator, guardian, etc., are not covered.
7. Claimants have no vested rights as third-party beneficiaries or otherwise, but, of course, it is expected, although claimants do not have vested rights, that all claims will be considered in the utmost good faith and fairness. Claims will be paid only to the extent that funds are available.

8. The Executive Committee is authorized to prescribe further rules and procedures.

9. The Bar Association is subrogated to the rights of all claimants to the extent that claims are paid.

10. Funds of the Clients' Security Fund are to be kept in a separate account.

11. To start out with, the Association will finance the project through an annual appropriation of \$2,500.00 per year for four years, and thereafter in such amounts as seem to be needed. It is believed that Association funds are available to do this without any further voluntary assessments than presently exist.

12. All funds will be invested, and any surplus of funds are to be paid back to the Association.

13. The Association may abolish the whole plan and any monies in the Fund returned to the Association.

14. The Executive Committee may buy insurance or a fidelity bond if it deems it advisable.

The above statements the Committee believe affirmatively answer practically all questions which might arise.

Last year the Committee thought the risk ought to be carried by insurance. This idea, however, has been abandoned because it is believed that the expense thereof would be prohibitive; furthermore, it is felt that claims can better be adjusted and settled by lawyers than by representatives of an insurance company. The relatively clean record which the North Dakota Bar enjoys makes us believe that self-financing is the better plan.

The Committee therefore recommends as follows:

1. The approval of the resolution; and
2. The discharge of the Committee.

This report has been approved by the members of the Committee whose names appear below.

Mr. Duffy acquiesces reluctantly as he feels some doubt as to the wisdom of the whole idea.

Now, before I read the Resolution, at the close of which I will move its adoption, I will move the acceptance and filing of this report.

PRESIDENT OEHLERT: You have heard the motion, Gentlemen. Do we have a second?

(No response)

PRESIDENT OEHLERT: I didn't hear any.

A VOICE: Second the motion.

(Question submitted)

PRESIDENT OEHLERT: Motion is carried. Proceed, John.

RESOLUTION ESTABLISHING CLIENTS' SECURITY FUND

MR. JOHN HJELLUM: Resolution establishing Clients' Security Fund for the State Bar Association of North Dakota—RESOLVED:

1. That there is hereby established a Clients' Security Fund (hereinafter called the "Fund") for the State Bar Association of North Dakota; that the same be administered and managed by the Executive Committee (hereinafter called the "Committee") of this Association; the function of said Committee shall be to receive, hold, manage and distribute such funds as may from time to time be appropriated to said Fund by the Executive Committee of the Association or other voluntary contributions or otherwise, for the purpose of maintaining the integrity and protecting the good name of the legal profession by reimbursing to the extent deemed proper and feasible by the Committee, losses caused by the dishonest conduct of members of the State Bar Association of North Dakota arising out of the practice of law in their capacity as lawyers.

2. The Committee shall be authorized, beginning not later than January 1st, 1963, to consider claims for reimbursement of losses arising after the effective date of this resolution and caused by the dishonest conduct of a lawyer (acting only as a lawyer) where said lawyer is a practicing member of the State Bar Association in North Dakota, and maintains an office for the practice of law in North Dakota, has died, or has been adjudged insane, or has been disbarred, or where the claim has been finally adjudicated by an order, judgment or decree in a Court having jurisdiction so to do; except in cases of death or legally adjudicated insanity, no claim shall be considered, allowed or paid unless or until such alleged dishonesty or embezzlement shall have been finally determined to exist by an order, judgment or decree of a court having jurisdiction thereof.

The Committee shall be authorized and empowered to honor, pay or reject such claims in whole or in part to the extent that funds are available. All reimbursements shall be a matter of grace, not right, and no client and no member of the public shall have any right in the Clients' Security Fund as third-party beneficiary or otherwise. So long as the plan is self-insured, the payment of claims shall be determined so far as practicable at one time at or about the end of each year of operation so that available funds may be equitably allocated if necessary.

3. No claim shall be considered or allowed or paid except such as arises out of the relationship of attorney and client and shall not be considered, allowed or paid if arising out of the personal or private business of the lawyer or in his capacity as a fiduciary.

4. The Committee is authorized to prescribe rules and procedures (not inconsistent herewith) for the management of its funds and affairs for the presentation of claims and the processing and payment thereof.

5. The State Bar Association of North Dakota shall be subrogated to the rights of all claimants to the extent that such claimant is reimbursed by the Clients' Security Fund, and claimants shall sign, execute and deliver to the Association a written assignment and subrogation of rights to the Association as a condition of such reimbursement.

6. All sums appropriated by the Executive Committee for the use of

the Committee shall be held by the Treasurer of the Association in a separate fund known as the Clients' Security Fund, subject to the written directions of the Committee under Committee rules.

7. The Committee may use or employ the Clients' Security Fund for all or any of the following purposes within the scope of the Committee's objectives as heretofore outlined:

- a) To cover the necessary expenses of the Committee.
- b) To make reimbursements to clients and members of the public.
- c) At its discretion to purchase insurance to insure the integrity of the Clients' Security Fund provided that such insurance is obtainable at reasonable cost and is deemed appropriate.
- d) To invest at its discretion as part of the Association's Custodian Account such portions of the fund, if any, as may not be needed currently.

8. The Committee shall provide a full written report of its activities at least yearly to the Association and it shall make such other reports of its activities and give only such further publicity to name as the Executive Committee may deem advisable.

9. The Committee as a Special Committee may be abolished at any time by the action of the members of the State Bar Association. In the event of such abolition, all assets of the Clients' Security Fund shall be and remain the property of the State Bar Association and usable for its general purposes by action of the Executive Committee.

10. The Executive Committee shall be authorized in its discretion to make an appropriation out of the general funds of the Association for the Clients' Security purposes in the amount of \$2,500.00 for the first year of operation, and the same amount for three consecutive years, and thereafter in such amounts as it may deem necessary and proper for subsequent years.

Should the Fund, in the judgment of the Committee accumulate to an extent not reasonably necessary for the functioning of said objectives, the Committee may withdraw any such surplus and return the same to the general funds of the Association.

I move the adoption of this resolution.

PRESIDENT OEHLERT: Thank you, John.

You have heard the motion, reading of the resolution, and the moving thereof. Do I hear a second?

A VOICE: Second.

PRESIDENT OEHLERT: Second the motion. Is there any further discussion on this motion, Gentlemen? This is one of the important business matters of this Annual Meeting, I believe. Now, if there are any questions, John will stay and will try to field them for you. So you have the floor.

Linn Sherman.

MR. LINN SHERMAN: Mr. President, I would like to ask a question: Did either Mr. Hjellum or the committee have any information or esti-

mate as to the amount in number and in dollars of losses during past years that would have been payable out of such fund had we had one?

MR. JOHN HJELLUM: It is my understanding, Linn, that in this State—you are speaking of this State, I imagine.

MR. LINN SHERMAN: That is right.

MR. JOHN HJELLUM: It is my understanding that in this State that during the past nine years there would not have been such a payment.

MR. LINN SHERMAN: Thank you.

PRESIDENT OEHLERT: Any further questions, Gentlemen? Mr. Stetson, from Lisbon. You have the floor.

MR. DONAVON STETSON: Did you say that judgment was necessary against the offending attorney before this got paid?

PRESIDENT OEHLERT: That is correct. Either a disciplinary judgment or a disbarment judgment.

And I might field that one, John. The reason for that one is that we are gaining with the experience of other clients' security funds adopted in other states. If we adopt it at this meeting, I think we will be the 17th state. They have found in other states that once these funds have been established that the judiciary, when a lawyer is under the compulsion of disbarment or disciplinary action—at least this is their experience—there is a tendency on the part of the judiciary to be a little weak-kneed with a defaulting practicing attorney because, well, the client is being refunded. And so, in order to carry through on that it is the very strict and specific recommendation of the Clients' Security Fund of the American Bar Association that a judicial determination be first required. We have their recommendation and specific instruction on that. By all means include that in our resolution. Does that answer your question?

MR. JOHN HJELLUM: I should add two more things, Don. There are two exceptions to that rule, and those are the situations that were mentioned: namely, where he has died or where he has been adjudged mentally incompetent. And there is also an additional reason, and that is the attorney himself, in some cases, feels that this Fund should not pay for his defalcations, he may feel he is innocent. And if he feels so, then he certainly would have a right to have this determined in court that he has legally, actually embezzled or been dishonest. And, of course, if the Fund made a settlement without that having been determined, why, he could very well be dissatisfied.

PRESIDENT OEHLERT: I am glad you brought up that other angle. See, it is really in protection of the person who is charged, to his protection in order to have such an adjudication.

Are there any other questions?

MR. ROBERT BURKE: Would this Fund go into effect only upon the insolvency of this attorney?

PRESIDENT OEHLERT: You want to field that, John?

MR. JOHN HJELLUM: No, it would not. Assuming that the conditions

have been complied with. I mean it may be that he would not pay it; but in the event that we did pay such a claim, we would be subrogated to the right of the claimant, and I presume that the State Bar Association would attempt to recover whatever settlement was made. And, of course, on the basis of a legal adjudication you would have something on which to base that claim.

PRESIDENT OEHLERT: Any further? Pat Conmy.

MR. PATRICK CONMY: John, you have talked about judgment and you are also talking about embezzlement and/or dishonesty as a base. And Lewie mentioned a disciplinary judgment. I would like to know if the judgment required is one of a civil nature determining the extent or if the conviction of the offending attorney for a crime is a sufficient judgment to enable collection from the Fund.

PRESIDENT OEHLERT: Well, Pat, they may overlap, you see. A man may be disciplined by the Supreme Court for having taken \$50 of his client's money, so he refunds it or he doesn't refund it or something of that kind. And it can operate in that kind of a matter, too. So he may also be guilty of a crime.

MR. PATRICK CONMY: So your judgment doesn't necessarily refer to a civil judgment assessing damages.

MR. JOHN HJELLUM: I think it does, Pat. I will just read the part. I think it has to be a civil judgment and I don't think the disciplinary judgment would comply with the terms here. It says he has to be an attorney, of course maintain an office and "has died or has been adjudged insane or has been disbarred or where the claim has been finally adjudicated by an order, judgment or decree in a court having jurisdiction so to do." Now my feeling would be, it would be a civil judgment.

PRESIDENT OEHLERT: But I submit it could also be a disbarment procedure.

VICE PRESIDENT CONMY: Mr. President, I have had the benefit of hearing extended discussions on this matter at the Midyear Conference of Bar Presidents, and both procedures were contemplated. The civil judgment, of course, for the purpose, if possible, to reimburse the Fund that it paid to the client whose monies have been misappropriated, the proper amount of their claim. The arguments first used against the Fund, some of the arguments were that, "In the first place, by establishing such a Fund we admit that as an association we have members who are at times crooked. We shouldn't do that." The answer to that, we must face the facts and we create a better public reaction when we show that we are willing to make good, at least temporarily, the defalcations of those who, through drink or mental illness, do commit these offenses.

The second point was raised, "Well, okay. We do that. We make it good. And then these lawyers who have offended blithely continue on in their practice." So it was made a condition also that the Association, or the organization adopting the plan, see to it that there were disbarment proceedings, if they were proper, or other disciplinary proceedings were taken as well. Both things are part of the plan, I believe.

MR. JOHN HJELLUM: Yes. Of course, Jim, there are many states that do not have the same writing as ours does, and in some states you

do not have to have an adjudication. It's a matter of discretion with the committee. In our particular report there was a discussion about this because originally it was not included in the first resolution that was knocked out, and thereafter it was determined, after discussion and correspondence, that that should be included. Of course, we will have to go by what our own resolution reads, and in my opinion I think it would have to be civil.

MR. E. T. CONMY, JR.: Mr. President.

PRESIDENT OEHLERT: Tom Conmy has the floor.

MR. E. T. CONMY, JR.: In view of what John Hjellum said a moment ago about the possibility of claims being made and paid under this proposal in response to Linn Sherman's question, I think I should say that in my opinion we certainly have some files in the Ethics Committee where payments would have been made if this plan had been in effect. I just think you should know this.

MR. JOHN HJELLUM: Thanks, Tom. I saw that in the correspondence. At least I got a letter from Herb on it and probably he didn't have the benefit of that file you are talking about. Thank you.

PRESIDENT OEHLERT: Incidentally, those occurred quite recently, Tom, and I think some of this correspondence happened a year and a half ago and these have now turned up. They are small amounts, I believe. But Tom is right. If this Fund would be in operation at this time, it would probably be subjected to such a reimbursement to the client. Assuming all these other conditions were followed.

MR. E. T. CONMY, JR.: This doesn't mean in any way that I am opposed to the plan.

PRESIDENT OEHLERT: No, I understand.

MR. E. T. CONMY, JR.: I am a hundred per cent in support of it.

PRESIDENT OEHLERT: I understand. You are merely clarifying the fact. Milt Higgins has the floor.

MR. MILTON HIGGINS: Mr. Chairman, I certainly agree with John, although he knows a great deal more about it than I do, that the language would seem to indicate that there should be a civil judgment. And I wonder if we shouldn't amend it to put in the word "civil judgment." What I am thinking of is the difficulty, for instance, in a criminal or disciplinary proceeding of any kind of determining the amount of civil responsibility. For instance, they might feel that one of the elements was embezzlement or shortage or misapplication of a certain amount of money. It would seem to me that it is putting an unfair burden upon them and also upon the committee that is to administer this if it is left open. Whether or not that can determine in any way the liability of this fund. And I would see one advantage—at least I think I can—in confining it to a civil judgment, aside from the simplicity and certainty of it, and that is that we pay only on civil judgment. The Bar Association will get, in my opinion, some justified and some usable publicity to the effect that this has been officially determined to be the shortage and it has been paid by the Bar Association. I think the public should know that; I think the Association is entitled to credit. I am very much in favor of this measure. I think it is high time we did it. And I do believe

that that will be best, and I therefore move the insertion of the word "civil" before the word "judgment."

PRESIDENT OEHLERT: Milt, if I may be so bold, may we just read that portion. We have it isolated. I think the language answers your objection if we read it carefully. John.

MR. JOHN HJELLUM: "Where said lawyer is a practicing member of the State Bar Association in North Dakota and maintains an office for the practice of law in North Dakota, has died, or has been adjudged insane, or has been disbarred, or where the claim has been finally adjudicated by an order, judgment or decree in a court having jurisdiction so to do." Now, the word "disbarred" is in there. That's one of the exceptions. And when somebody was talking about a disciplinary judgment, of course, the disbarment is specifically mentioned here as being one of the reasons. But otherwise if you were going to put anything in, I presume you would put it in where it says "finally adjudicated" to read "finally civilly adjudicated" or by "civil action."

PRESIDENT OEHLERT: Well, I submit, Milt, that it is self-explanatory. Of course, I, as chairman will accept any motion that is made. But I submit that you will be restricting it by such language. There are other provisions in this resolution that give a little discretion to the Executive Committee who is, under this resolution, the one charged with the duty and responsibility of administering this Fund. And I think it is broad enough to cover everything. You may run into a situation where civil liability may never be determined but the man is just disbarred, you see, but he owes this money to his client. And that is a sufficient prime prerequisite, you see. So we wouldn't want to make it civil, either.

MR. MILTON HIGGINS: Mr. Chairman, you have convinced me. I withdraw the motion. (Laughter)

PRESIDENT OEHLERT: Very well. Any other questions, Gentlemen. Bob.

MR. ROBERT ECKERT: I have one question. I notice Mr. Conmy over there brought up the fact that there have been some recent depredations. Has the Committee considered having this program have retroactive effect so as to cover this?

PRESIDENT OEHLERT: I can answer that quickly. The Committee does not recommend retroactive application. We have got to start somewhere, and we think we should not start except when it is adopted.

MR. JOHN HJELLUM: The resolution specifically provides "hereafter."

MR. AUGUST DOERR: Mr. Chairman.

PRESIDENT OEHLERT: August Doerr, from Napoleon.

MR. AUGUST DOERR: The question that comes to my mind is where you have a small claim, say from \$50 to \$125, or something like that, where the party has been defrauded, so to speak will he have to go into court himself to recover this judgment or is the Committee going to do that? I mean he may not gain anything by hiring an attorney to prosecute the claim.

PRESIDENT OEHLERT: I will let John field that one, August.

MR. JOHN HJELLUM: Yes, August, I think he does. I am sure the Committee would cooperate on it. But it would be my feeling that the reasons are just as good on a small claim as they are on a large claim. For instance, if this attorney says, "I didn't do this." And even if it is \$25 if he says, "I didn't abscond with this," he would certainly have a right to his day in court, I think.

MR. AUGUST DOERR: But you are putting the party that has been defrauded in the position of prosecuting a claim that he may not get anything out of.

MR. JOHN HJELLUM: Well, I would think that he could go into a criminal court—and maybe some of the state's attorneys will welcome this, I know, as additional business—(Laughter) but I think he could do that from a criminal standpoint as well.

PRESIDENT OEHLERT: May I say, if the report of the present Chairman of the Unethical Practices Committee is adopted, along with some of the remarks that I made in my President's Address, August, there will be no lawyers that will run off with even 15¢ that will not be prosecuted. I do not see any distinction on amounts at all. This is a matter of high principle, I submit.

Lavern Neff, of Williston.

MR. LAVERNE NEFF: My question is this: The purpose of the Fund is clear, I think; to reimburse clients for large or small losses. I would be interested in the Committee's thinking on whether or not the client shouldn't be reimbursed in full for his fees and costs in securing the judgment if we make that as a provision.

MR. JOHN HJELLUM: Well, there is no provision in the rule, and I don't have any particular opinion with reference to that, Lavern, but I could see where it might be a disadvantage. Just talking off the top of my head, it would just complicate and sort of muddy the waters, it would seem to me. If the claim were large enough, of course that question would be moot. In other words, if it exceeded the amount that they were in a position to pay.

And while I am speaking here, you might be interested to know the reaction of some of these other states. Now, we have at the present time, as Lew mentioned, quite a number of states considering this. But Canada has had this for a long time; that is, the Provinces, and in reading some of the material on this, last year the Province of Ontario increased their fees—now, mind you, they pay an additional fee on this; that is the way they handle it up there—they increased their fees from \$20 to \$45 a year to pay for this service. Now, they have a little different situation up there because they include fiduciary relationships and things of that nature and they have a great many of these escrow matters which we do not have here in the United States. But their coverage also was increased from \$10,000 to \$25,000—that is, a limit of \$25,000—when they increased that payment from \$20 to \$45.

PRESIDENT OEHLERT: I might say, too, on that, John, I don't believe in my reading of the matter that there are any of the Funds in the United States that reimburse fees, Vern. You can see some practical problems. This whole thing is working very well from a publicity standpoint. From a public-image standpoint it redounds to the benefit of the Association. But much more than that: This is a practice where

we, I am sure, respect our Association. We feel under an obligation, and in honor of our profession, that we will, as lawyers in the State of North Dakota, say to the public that we think enough of our profession that we are going to underwrite, within certain limits that we have got to fix, the integrity of every practicing lawyer in this State. No other profession does it. We will be the first. And I submit it's a laudatory purpose, a matter of high principle, that obviously it is going to redound to the public image of our profession. But that is not the fundamental reason for this. The fundamental reason is that if we are professional people, if we say that the public interest is first, not just by words but by deeds, this will accomplish that purpose by deed. We are not just talking now, we are going to do something by our actions.

Paul Agneberg, from Cando, North Dakota.

MR. PAUL AGNEBERG: Mr. President, I am wondering what is going to happen in the event of an embezzlement for around \$100,000.

MR. JOHN HJELLUM: Very simple. The resolution said "as funds are available." And regardless of how many funds are available, it is still in the discretion of the Committee. But, of course, I presume the practical limit will be what funds are available.

Now, as you know, it is \$2,500 a year for four years, and if we had no claims we would have \$10,000 accumulated. If we didn't we would have less. And then thereafter as the Association desires.

PRESIDENT OEHLERT: I might answer that, Paul, by saying that if you can't have \$100,000 public liability insurance, what is the use of carrying \$10,000? See, I mean by way of analogy I submit that as a proper comparison.

Any further questions?

MR. QUENTIN SCHULTE: Along with your thinking there and practical application of this thing, supposing there is an error and an attorney is liable and he has a personal liability policy. Now, what position does this Fund take in a case like that?

PRESIDENT OEHLERT: I am glad you brought that up, Quent. It has been brought up before. This is not malpractice insurance, fellows. This is in the nature of a Client Security Fund to cover a lawyer's defalcations. That kind of thing, defalcations, is not covered even in your malpractice insurance. Some of you carry that. See, there is a vast distinction here and a very sharp one. This covers lawyers who are in defalcations, take their clients' money. This is not a business where you examine an abstract and overlook a \$2,500 mortgage on it and you write an opinion that it is a merchantable title and your client says, "Look, you made a mistake. You owe me \$2,500. There is a mortgage on it." That is a malpractice act. It is not a defalcation or an embezzlement. Does that answer your problem?

Any further questions?

MR. WILLIAM PEARCE: As a member of the Committee, I would like to say one thing, though: It seems to me that we may be moving along here with the idea that a criminal conviction by itself is not enough to render a liability. Now, that hasn't been my thinking. The

language that John has read several times speaks of "judgment." I haven't been a state's attorney for about 25 years, but I also understood that a verdict of guilty was followed by a judgment of conviction, and I think it ought to be considered either criminal or civil. If a man has been found guilty, presumably by a standard of proof beyond all reasonable doubt, it ought to be at least as much proof as a preponderance of evidence in a civil judgment.

Now, my idea was that anyone who embezzles—and this is criminal that we are protecting against—he ought to be prosecuted, if our law is followed, that that judgment of conviction would, in any ordinary circumstances that I can think of, be followed by disciplinary proceeding which would probably result in disbarment. And therefore I think the language is better as it stands.

MR. JOHN HJELLUM: As it stands, Bill, it is not restricted. It can be either civil or criminal, but it must be a "judgment." And, of course, there is one other exception: Apparently you do not need a judgment if you have disbarment. But it specifically mentions disbarment or a judgment.

PRESIDENT OEHLERT: Any further questions?

A VOICE: Move the question.

PRESIDENT OEHLERT: Dave Kessler, of Grand Forks.

MR. DAVID KESSLER: I see a possible need for a maximum amount on this recovery, and just as an example, supposing the first year of this Fund you had a judgment showing a defalcation of \$2,500. And as I recall the way this would be administered, claims for a year would be held in abeyance and then they would be prorated according to the number of claims and the total amount at the end of the year. Well, if there were a \$2,500 determination in one case, judgment, right toward the end of the year, let's say a \$2,500 defalcation, the person who expected to recover the \$2,500, that immediately becomes only worth a tenth of that or only \$250.

PRESIDENT OEHLERT: Dave, what does he have if we have no Fund?

MR. DAVID KESSLER: Nothing at all. That is true.

PRESIDENT OEHLERT: All right. We are back on this original premise, you see. We may not be able to go the whole way. John has already pointed out that when the funds are available that they will be taken care of. That is the best we can do in order to get it started. Does that answer your question? Go ahead.

MR. DAVID KESSLER: Well, I can see as the funds are available. This, of course, sets a limit on it. I was thinking in terms of rather than one benefiting to a great extent and another to a very small amount, perhaps setting \$1,000 maximum—just as an example.

PRESIDENT OEHLERT: Well, again, Dave, this is made discretionary with your Executive Committee, who will be charged with the whole superintending jurisdiction of your Association, to whom the Unauthorized Practice Committee reports, to whom the Ethics Committee reports. Your Executive Committee are the best ones, after due con-

sideration, to handle this. All of this is made discretionary under this resolution. We can debate this—and I don't mean to cut off debate—you see, your arguments are well taken. Those were all gone over. But this is what the committee ends up with. And I still submit that it is an excellent job.

MR. DAVID KESSLER: I can see there is a practical limitation.

PRESIDENT OEHLERT: Are there any other discussions? Judge Points.

JUDGE R. H. POINTS: I was just wondering if this Fund could be made to include cases where the client defaults and doesn't pay his attorney's fees? (Laughter)

PRESIDENT OEHLERT: I will take that one, Judge Points. I will accept that as more facetious than in the nature of a comment. (Laughter)

Anything else?

(No response; question submitted).

The motion is carried. Thank you very much, fellows. I think we have made a real stroke for the state Bar Association of North Dakota on that matter.

Now, we have a few more minutes. If John Hart is in the room I would like to have him make his report on unauthorized practice at this time. Is John Hart present? You may have the rostrum, John.

John Hart and his committee, fellows—they say you have to be President or an officer and a member of this Executive Committee of this Association to see the tremendous amount of work that goes on, correspondence and detail work—and these fellows field all these complaints. I got one from a fellow out in Jamestown—I think he was in the asylum—raising Cain with one of our good members. And all these matters are fielded, and some of them are just crackpots. But the work is done. Some of you don't see it. But here is one committee that has done a yeoman job this year for our Association. I give you John Hart, Chairman of the Unauthorized Practice of Law Committee, John.

UNAUTHORIZED PRACTICE OF LAW

MR. JOHN HART: Your committee has received complaints in two categories of the unauthorized practice of law. The first and most numerous is the drawing of conveyance and collection instruments. This is usually corrected by a letter pointing out the civil and criminal liabilities incident to such activity. A criminal prosecution in Cass County during the last year has focused attention to the injury of the public where unauthorized practice extends over a long period of time.

The second and probably the more important category is the corporate and private solicitation in the area of estate planning. This profit motivated solicitation is within acceptable business practices but does violence to the professional non-profit motivated standards society requires of its licensed attorneys.

It is well to recall that professional attorneys are licensed by the public solely for the public's protection. Our Bar as guardians of the public's

interest must in fairness to all parties concerned establish clearly understandable guidelines. It is recognized the price of any such effort will be arousing opposition and charges of non-professional motives.

The thought and effort on this problem are astonishingly similar in other states. Recognizing the unmet need for protecting the public's interest, the American Bar Association in May of this year held the first National Conference on the unauthorized practice of law. Your committee recommends your next chairman be directed, at the expense of the association, to attend the next national conference.

Your committee views with growing alarm our Association's rank and file apathy toward pettifoggery. Related to the overall problem is our eroding concept of our professional public responsibility and an individual tolerance of our regular or prospective clients actively engaging in border line unauthorized practice. It is the recommendation of this committee that the executive committee of our association adopt clearly understandable guidelines sharply defining the often misunderstood area of unauthorized practice particularly as the same relates to protecting the public's interest in non-profit motivated estate planning. Thank you.

I move the acceptance of this report.

VICE PRESIDENT CONMY: Second the motion.

PRESIDENT OEHLERT: You have heard the motion, Gentlemen. Is there any further discussion?

(No response; question submitted)

The motion is declared carried.

The next committee Chairman that I would like to call on is Harold Hager. Is Harold in the room? I think it would be appropriate at this time that he give us a little survey of what the continuing legal education committee has done and is doing during this Annual Meeting.

Harold and his committee, again, have done an outstanding job, as I stated in my address, on that Family Law Institute. We are still receiving commendations on that. I present Harold Hager, Grand Forks.

CONTINUING LEGAL EDUCATION

MR. HAROLD HAGER: The Continuing Legal Education Committee has two functions to perform, namely to arrange for the institutes for the Bar Association during the year in which it operates and to plan the educational sectional meetings to be presented at the Annual Meeting.

The first meeting of our committee was held on September 16th, 1961, and after considerable discussion it was decided not to hold the Annual Tax Institute since there had been no unusual changes in the tax laws, and it was also decided not to hold two one-day institutes, but to hold one two-day institute and that the institute be on Family Law, which, to the best of our information, no institute on that subject had ever been held by any bar association. The Institute was held on February 23rd and 24th at Grand Forks and was very well attended and very well received. We also invited to the meeting the clergy, the people interested in welfare, the students at the University who were interested in relevant subjects, and

we received very much commendation on the Institute. The Committee would recommend that an institute on that subject be held again within two or three years.

On February 22nd we had another meeting of the Committee to plan for the sectional meetings. Prior to this meeting the Bar had been circularized as to what subjects they would like to have presented at this meeting, and it was found that the two most popular was the one on Products Liability and one on Estate Planning, Will Drafting, Joint Tenancy, and the consequences thereof. And we also felt that the presentation should be on the new Mechanic's Lien Law. And we have arranged to have Mr. Hursh, who is Assistant Managing Editor of the Lawyers' Co-op Publishing Company of Rochester, New York, present a talk on Products Liability. He has written a four-volume set on this subject, so I am sure that he will make a very fine presentation.

We have arranged to have Mr. Gallagher and Mr. Hodny present a talk on the new Mechanic's Lien Law, and we had a sub-committee meeting to determine how we should present the topic on the Estate Planning and so forth. It was decided to have this presented by a panel discussion and that we should obtain three lawyers from Minneapolis and one lawyer from North Dakota to present this topic, and we arranged to have a whole afternoon for this topic, which, I know, is of interest to all lawyers throughout the State. And we were fortunate in getting four outstanding men to present the topics this afternoon, which will start at 1:30. We felt also, and acted accordingly, that when you have a two-day convention the time is too limited to have sectional meetings as we have done before, and we have decided to have just one presentation of the subject and have it presented to all the members present. And we would recommend that this be done in the future. I hope that the meetings will prove very informative, and I feel that we have lined up for you an outstanding educational feature for this Annual Meeting.

I want to acknowledge the great assistance of all the members of the committee: Herman Weiss, Robert Burke, James O'Keefe, Cyrus Lyche, Leland Ulmer, John Gunness, George Soule, John Nilles, Ross Tisdale, Paul Matthews, A. F. Arnason, and William Daner.

I move that the report be adopted and filed.

PRESIDENT OEHLERT: You have heard the report and motion. Is there a second?

MR. FLOYD SPERRY: I will second it.

PRESIDENT OEHLERT: Is there any discussion?

(No response; question submitted)

The motion is declared passed, carried.

I was going to answer Jim Conmy this morning; I just thought about it now. He was talking about this justice prevail business, and the story goes that Jim sent his good son, Pat, out east in our area to try a lawsuit there and Jim didn't go himself; and when the case was over, Pat wired Jim and he says, "Dad, justice prevailed." Jim wired back, "Appeal at once." (Laughter)

If Dean Thormodsgard is in the room, we have time for his report as Chairman of the committee dealing with admission to the Bar, student education. Dean Thormodsgard.

LEGAL EDUCATION AND ADMISSION TO THE BAR

DEAN THORMODSGARD: Members of the North Dakota Bar Association: The committee on Legal Education and Admission to the Bar has been diligent in preparing annual reports to the State Bar Association. These reports are printed in the **North Dakota Law Review** and the **Bar Briefs**. For the convenience of the lawyers and officers of the Association, citations to important reports are given below: In Volume 37; in Volume 36; in Volume 33; in Volume 34; in Volume 32; Volume 31; Volume 30; Volume 29; Volume 28; and Volume 27. Those are the annual reports. And those reports have covered practically all of the details, material on legal education as approved by the American Bar Association.

In the **Bar Briefs** even prior to 1951 several of the annual reports of this committee are printed. Since 1951 this committee has always emphasized the merits of the standards for legal education as recommended by the American Bar Association. Briefly they are as follows:

Each pre-law student should complete as least three years of acceptable college work with a graduating average. There is a tendency for students to complete four years of college so that they may include courses in constitutional history of England, constitutional history of the United States, economics, statistics, and other courses, labor legislation and insurance in the field of economics.

Second, a law school shall require its students to study law for three school years.

Third, the law school should provide for an adequate library.

Fourth, the law school should be adequately housed.

And the fifth, the law school should appoint a sufficient number of full-time law teachers.

The University of North Dakota School of Law has been a member of the Association of American Law Schools since 1905 and has been on the approved list of the Law Schools of the American Bar Association since 1922.

From 1899 to June, 1962, over 1,527 law graduates have received their law degrees from the University of North Dakota School of Law and some 1900 students have been enrolled in the School of Law. And since 1926, the year I arrived, some 816 law students have graduated from the Law School.

The State Bar Association of North Dakota and this committee should take interest in working for and maintaining high professional standards as to legal education. It is recommended that these excellent reports of prior years be reread and studied. These approved standards not only should be the rules and regulations of the School of Law, but they should be enacted into law either by the Legislative Assembly or by the Rules of the Supreme Court of North Dakota.

Since nothing could be added to what has been printed for the past 11 years, I thought it would be not necessary to rewrite those articles but merely refer them to you by giving you the citations.

This report has been approved by the several members of the committee, and the others we assume approved it by their silence.

Mr. Chairman, I move that we accept this report and it be filed.

PRESIDENT OEHLERT: Thank you, Dean Thormodsgard. You have heard the motion. Is there a second?

MR. GEORGE SOULE: I will second it.

PRESIDENT OEHLERT: George Soule, of Fargo, seconds the motion. Any discussion?

(No response; question submitted)

Motion declared carried.

I think I am going to turn the mike over to our Executive Director, Al Schultz. He has a couple of announcements he would like to make. Al.

(Announcements made)

PRESIDENT OEHLERT: Thank you, Al. We have just another minute. We may run out of time, fellows. We have done very well this morning in view of the amount of work we have covered. And I think that the Clients' Security Fund is a good illustration that with a little preparation everybody had it in mind and thus is conducive to more expeditious handling of these vital matters. But inasmuch as we may run out of time in our business session to consider all of our reports of our standing committees—I will now entertain a motion for the waiver of the reading of each individual report and allow such reports to be filed and published in the *North Dakota Law Review* in those instances where they either were not given at this Annual Meeting or where no formal action of the committee is proposed. Will one of you members kindly make such a motion.

MR. ROBERT DAHL: So moved.

PRESIDENT OEHLERT: Bob Dahl makes the motion. Is there a second?

MR. HERMAN WEISS: Second.

PRESIDENT OEHLERT: Herman Weiss seconds. Is there any discussion?

(No response; question submitted)

Motion is carried.

We will now adjourn. And will you be sure to be in your seats at 1:30 so we can get started promptly with our panel.

(The meeting then adjourned at 12:00 noon)

FRIDAY MORNING SESSION

June 29, 1962

The meeting convened at 9:30, President Oehlert presiding.

PRESIDENT OEHLERT: Good morning, Ladies and Gentlemen. I am forced to announce that our speaker this morning, Mr. Hursh, has been delayed with plane trouble. I probably should not announce the name of the plane because some of you may want to ride on that kind of a plane again. At any rate, he is now expected to arrive at 11:45. So as a result of that, your officers, during the morning, have tried to switch the program around and we will have committee reports this morning. Our election hour will stay as it is in fairness to the candidates and their respective constituents.

I am in receipt of a telegram which I will read. I will read all telegrams from all candidates of the political field. I will announce that now so there will be no implications to the contrary. This telegram reads as follows, addressed to me as President of the State Bar:

"I would like to extend to the lawyers of North Dakota my best wishes for a successful Annual Meeting. I would also like to commend the members of the legal profession for the fine educational program they have to acquaint the people of this State with matters related to law and for their untiring efforts in upholding the individual and property rights of the citizens of North Dakota. Mark Andrews."

We will go right into committee reports. And the first report, we will be favored by the Hon. Eugene Burdick, who is chairman of our Uniform Laws Committee of our Association. Judge Burdick.

UNIFORM STATE LAWS

JUDGE EUGENE BURDICK: Mr. President and Members of the Association: Your committee on Uniform State Laws has maintained a continued interest in the Uniform Commercial Code. The Code has now been enacted by at least 17 states, including many of the leading commercial states, such as New York, Illinois, Pennsylvania, Massachusetts, Connecticut, and Rhode Island. Its eventual adoption by all of the States seems to be a foregone conclusion.

Your committee, in accordance with previous mandates of the general assembly of this Association, is going forward with plans to introduce the Uniform Commercial Code in the next session of the Legislative Assembly. The Executive Committee of this Association has budgeted funds for the preparation of the bill. Bill-drafting plans are now in progress.

To secure the enactment of the code it will be necessary to have the undivided support of all members of this Association. It behooves each of us to become familiar with the major provisions of the Code so that we may reassure those who must of necessity accept it on faith and with confidence in its sponsors.

To the extent that time and limited funds will permit, your committee will also assist the Executive Committee of this Association and the Legislative Research Committee in the consideration and submission of other Uniform and Model Acts not yet adopted by the State of North Dakota.

Mr. President, I move the report be accepted and filed.

PRESIDENT OEHLERT: You have heard the motion. Do I hear a second?

MR. C. M. PETERSON: Second.

PRESIDENT OEHLERT: It has been moved and seconded that this committee report be accepted and filed.

(Question submitted)

Motion is adopted. Thank you, Judge Burdick.

I might add that on the American Bar Association level I have been informed that our State Commissioners on uniform laws do yeoman service, and I believe that Dean Thormodsgard, who will retire as Dean of our Law School, is one of the oldest members on the A. B. A. Committee on Uniform Laws. All three of them are hard-working members of that general body of the A. B. A.

We will next take up the report of the committee on Legal Economics, which committee has worked in conjunction with our Legislative Action Committee. Al Greffenius is chairman of the Legal Economics Committee and R. W. Wheeler is the chairman of the Legislative Action Committee. So, Al, if you will come forward and take over on that matter.

LEGAL ECONOMICS

MR. A. J. GREFFENIUS: Thank you, Mr. Oehlert. Three years ago the Legal Economics Committee was formed to assist attorneys in increasing their office efficiency in getting to the end result, the produce of their work, the service to the clients, keeping in mind that the only raw materials that an attorney had to work with were intangibles.

Now, this particular definition of the work of the Committee takes in a lot of territory: Library, filing systems, time records, billing procedures. And the Committee acknowledges the help and assistance it has received from other bar associations and from the fine pamphlets that have been distributed by the American Bar Association.

We have just scratched the surface. And the prime purpose, frankly and unashamedly, of the Legal Economics Committee is to increase the economic benefits to the attorney, not for our own immediate and selfish benefit, however. The purpose behind all of this is to maintain and increase the present high quality of the Bar by attracting to it men of ability, men of ability who today, some of them, are going into fields which are more lucrative. Unless the Bar can continue to attract in the future men of high quality and standing in their college classes and academic world, the Bar is going to suffer and the nation will suffer, clients will suffer, because our profession is one of the most important threads in our fabric of society and government.

The Committee in the past three years has started several projects. It has completed none of them. It has completed only the first phase of the work which it has begun. The fee schedule and the text material embodied in that schedule will be in need of constant attention, revision, and adjustment, either downward or upward, as experience dictates. And the message of that material can be brought home to the various Bar

meetings around the State by an organized speakers' bureau, which is now in existence and also being formed so that it will have greater contact with the Bar meetings.

Another thing which occurred was the making of an economics survey, as was done in several other states prior to ours. This economic survey established many significant things, one of which was that he who keeps a record of his time spent for a client nets approximately what the non-timekeeper grosses. This work is not complete, either. The message of this economic survey and the many things that it brought out should again be brought home through the speakers' bureau to the various groups and Bar meetings, and it is recommended that some years hence another economic survey be made for purposes of comparison.

A project which is in the works right now is a desk manual: Forms, worksheets, outlines. And I wanted to mention that that is now in the process of being taken care of and the material that will go in there is in pretty good shape at the present time and is being put in its final form for publication.

Yesterday Mr. Shaft mentioned that the suggestions and advice to fiduciaries as outlined in the handouts we received yesterday would be a good thing to have for North Dakota attorneys. I believe that this is one of the items which will be considered to be included in the desk manual, even though it is copyrighted Minnesota material, I understand. Some arrangement can be made, I am sure. If it is not being considered, I will see to it that it is and will be included in the desk manual.

This last year the committee, in furthering the scope and purpose which was outlined at the beginning, was to work on a subject known as "professional associations" or "professional corporations." John Whittlesey, of Fargo, was the subcommittee on this matter. He spent many weeks, several months studying the background material, writing a lengthy report, and drafting a proposed bill to enable dentists, doctors, engineers, accountants, and attorneys to practice within a corporate form.

Now, there are at the present time approximately 19 states which have passed laws permitting this type of business organization. Some have gone the association route and some have gone the corporation route. Seven or eight more, plus North Dakota, are now considering such legislation. One of the reasons, of course, that it has come to the fore at the present time is the fact that HR 10 has bogged down somewhat, it appears, during the last eight years.

Now, after the report was made by Mr. Whittlesey it was duplicated and distributed to all the professional organizations within this state. It is now being considered by each of them through their appropriate committees with suggestions by them, expected to come from them, with respect to changes, ideas, differences in wording. And when all of the results are in from the various organizations, they will be taken and studied by the Legislative Committee, and hopefully it will be one of the bills that will be introduced in the Legislature next year.

The work of the subcommittee by Mr. Whittlesey in a direct sense is now complete and the project, and properly so, has been taken over by the Legislative Committee to report to you on the content of the bill, what is being done now, and what is hoped for in the future.

This presentation this morning is not a request for an endorsement by this Association. We have nothing specific to present to you to request an endorsement on. It is still in a state of flux; things are still fluid. The final form of the bill has not yet been arrived at. But we do wish to report to you the concept involved, what has been done, what might be expected, and for that I would like to ask Mr. Wheeler of the Legislative Committee to talk on that subject. Thank you.

PRESIDENT OEHLERT: Thank you, Al, very much.

I might say, while Ron is getting up here that if you fellows want some evidence of Belli demonstrative evidence, just take a look at this committee report of the Whittlesey Subcommittee with the attached bill folioed and everything—I think thirty-some pages of it. This is what your officers see and what we want you fellows to see that is being done by your committee work.

Ron, you have the rostrum.

MR. R. W. WHEELER: Thank you. Thank you, Al—and Whittlesey, you know, is a man of hard work and he is in Fargo right now. Therefore, they have called upon me to step up here in the breach and try to discuss with you the idea of professional corporations, and I believe whether or not this Association should support the idea of attorneys practicing law as corporations.

I don't believe that in the time we have here—which I understand is about 20 minutes, and I assume about half of that is gone already—we can go into the tax consequences of the proposed legislation nor do I think we should attempt to get into the technicalities that must be met before a professional corporation is likely to be taxed as a corporation by the Federal Government. Suffice it to say here that the proposed legislation is, or will be, designed to permit the professional man—and in addition to those named by Mr. Greffenius, I think we will also include chiropractors, osteopaths, optometrists, and veterinarians—to provide for their own retirement or create an estate for the benefit of their dependents out of current income before taxes. This advantage is presently and has always been—not always, but for many years—available to corporate executives and employees.

The proposed legislation is superior, does a better job, obtains for the professional man more advantages than does HR 10 Bill, the Keogh Bill, which is presently pending in Congress, and your Legislative Committee believes that this proposed legislation should be supported without regard to whether HR 10 is well considered by Congress or not because it is a superior piece of legislation.

The proposed legislation will permit one-man professional corporations. It will preclude or restrict the establishment of branch offices. It will require that the stockholders of a professional corporation all be members of the same specific profession. It will preserve the existing responsibilities and obligations of the professional man to his client. And, of course, they can be organized—and probably most of them will—as pseudocorporations, which are, for tax purposes, treated as partnerships.

If this legislation is enacted, it would be my recommendation that your committee on Continued Legal Education immediately schedule a

session on professional corporations because there is a lot that we will have to acquaint ourselves with if we are going to do a good job in organizing professional corporations for other professions. Incidentally, the medical profession has gone on record in support of legislation of this nature. We have not heard from the engineers as yet. The American Institute of Accountants has taken the position that it is not ethical for a certified public accountant to practice as a corporation, but they may change their position.

We feel that the Bar Association should furnish the necessary leadership to see that this legislation is enacted by the State Legislature and kind of coordinate the efforts of all the professions toward that end. And your Legislative Committee and the Legal Economics Committee is now, and has been, acting in that regard for some time.

As to the proposed legislation prepared by Mr. Whittlesey, we know already it has to be changed some if it is to accomplish the job that we desire.

Now, I know all about this stuff: All the tax consequences, all these technicalities and everything, and the only reason I say that we are going to limit our discussion here is because we haven't got a lot of time. (Laughter) You guys, in looking you over, this is apparently what is left over this morning. (Laughter) But it looks pretty good from up here.

These tax advantages, there are many of them, but they principally surround pension plans and profit-sharing plans. Those are the principal tax advantages, although there are others. So I will appreciate it if you will just take my word for it that the legislation is desirable from that standpoint. You don't have to believe that the arbitrary Federal income taxes are confiscatory or inflationary, are producing Government waste and are the mother of this horrible nightmarish giant that is commonly referred to as the "Federal Government" in order to support this legislation. Are there any questions? (Laughter)

PRESIDENT OEHLERT: Stay right here, Ron. (Laughter)

MR. GEORGE SOULE: Move the report be received and filed.

PRESIDENT OEHLERT: You have heard the motion. Do I hear a second?

MR. JOHN STORMON: Second.

PRESIDENT OEHLERT: Is there any discussion?

(No response; question submitted)

Motion declared passed.

Now, I was just wondering—and I only raise the point—would it be advisable—I ask this of the members—to delegate to your Executive Committee coming in shortly, authority and power to proceed with this and submit it to the Legislature if ultimately the Executive Committee so determines, because we will not have another Annual Meeting until next June. Now, I merely raise the point. I frankly hadn't thought of it until just now. It might be advisable. May I have such a motion?

On the other hand, Ron, what do you think? I would like to get your reaction, you and Al.

MR. R. W. WHEELER: Well, I know that as Chairman of your Legislative Committee, and the Chairman that succeeds me, I know that he will want to feel that he has the support of the State Bar Association when he approaches the Legislature to lobby for the enactment of this legislation.

PRESIDENT OEHLERT: Well, you see, without a motion and a resolution of this august body along that line, your Executive Committee may be proceeding a little bit under usurpation of authority. Mr. Hjellum.

MR. JOHN HJELLUM: I will make the motion.

MR. WILLIAM DANER: Second.

PRESIDENT OEHLERT: Is there any further discussion? The general motion, as I understand it, is that the Executive Committee of your Association, as it will be constituted at the end of this meeting, will have authority to proceed to do as it determines in the matter of this legislation referred to as the "Professional Corporation Act."

VICE PRESIDENT CONMY: Mr. President.

PRESIDENT OEHLERT: Mr. Conmy.

VICE PRESIDENT CONMY: Before the question is put, I would say that I feel sure the Executive Committee will welcome the authorization from the convention assembled here rather than having to assume the decision entirely themselves.

I do want to say, too—I don't know if it was mentioned—that one saving feature, I think, of that act, this proposal, is to let our people know that it isn't thrust upon them. They can incorporate or not incorporate. And in that way it should help all. They can choose.

PRESIDENT OEHLERT: That is correct. You still are not, of course, under any mandatory compulsion to incorporate if you don't want to do so. It merely makes available the means in case you desire it. Thank you, Mr. Conmy.

Any further discussion?

(No response)

If not, I will put the question. (Question submitted)

Motion is declared passed.

Thank you very much, Ron. We appreciate all the work you are doing.

MR. R. W. WHEELER: Well, we can get a little more work done. I have filed in writing a sparkling report for the Legislative Committee. I move its adoption at this time.

MR. PAUL AGNEBERG: Second.

(Question submitted)

PRESIDENT OEHLERT: The motion is passed.

So you see, Ladies and Gentlemen, this is the kind of work that is being carried on by your Association. Each administration builds on

another. The groundwork has been laid for this sort of activity for your oncoming legislative year.

We now will call on Floyd Sperry as Chairman of the Judicial Improvement or Judicial Betterment Committee. Is Floyd here?

Floyd and his committee is, again, a carryover from previous administrations with the work going forward, and they now have it somewhat more close to fruition. So I will turn the mike over to Floyd Sperry—incidentally, our Association Delegate to the A. B. A.

JUDICIAL SELECTION AND TENURE

MR. FLOYD SPERRY: Thank you, Lew.

Mr. President and Members of the Association: We have a demonstration of leftovers here, and before we get through we might also have a few hangovers. (Laughter) However, we will try and present this involved subject to you as best we can, and we hope that we will be able to get it before you so that you can act on the recommendations that the Committee has to make to you today.

We have sort of a hangover problem with the work of the Committee. It goes back to a year ago. That committee was headed by Roy Ilvedson, and I think he saved himself an awfully lot of trouble—and certainly a lot of controversy—by leaving most of the work for the 1961-1962 committee, because we have found that it is not only a controversial problem, but it is a very involved one.

I want to give you a little of the background. We have been very cautious about it, as you will probably agree. We submitted the report that we agreed upon to the Executive Committee several months ago, and the Committee approved of it. And then each of you were mailed a copy of our recommendations at least 15 days prior to the opening of this convention. Like most reports of that kind, I imagine they are either still lying on your desk or they have found their way to the waste paper baskets. So we are going to briefly go through them this morning.

I would like to say that this Committee has worked long and hard. We had many meetings; we conducted a great deal of research; the recommendations were rewritten a number of times; and we have submitted them to you in the best form that we knew how to prepare them.

The Committee is made up of the Hon. Obert C. Teigen, Judge of our Supreme Court; the Hon. W. C. Lynch, District Court Judge for the Fourth District, and who will talk on these recommendations this morning; Attorney Bruce Van Sickle, of Minot; Francis Breidenbach, attorney of Bismarck; Roy Ilvedson, the chairman of the preceding committee; Professor James White, from our University Law School; Roger Persinger, who is research man and clerk for the Hon. George Register, our Federal Court Judge at Bismarck; and myself as Chairman.

We not only proceeded cautiously with the material left for us by the preceding committee, but we took no action whatever until the House of Delegates of the American Bar Association met in February of 1962, at which time this matter came up. It was debated long and hard and the plan was generally approved. We have changed it somewhat because there are a number of things in it that would not apply to North Dakota at all. The A. B. A. plan, for example, provided for an intermediate ap-

pellate court, and we didn't think that we had any occasion to have that kind of appellate court in North Dakota. So we eliminated that. After a number of drafts of the plan we made—they were revised by Judge Teigen—and that is the form in which they were mailed out to you.

Now very briefly: We think the plan is revolutionary. It will eliminate the election of all judges to the Supreme and the District Courts. All of those offices will be filled by appointments made by the Governor from lists of names submitted by the Nominating Commission.

Probably the Nomination Commission is the key to the whole system, and that will be made by lawyers selected from each judicial district by the lawyers in that district, by laymen from each of those districts appointed by the Governor, which would give us 12 members. And then, of course, the Chief Justice of the Supreme Court would be the 13th member and the presiding officer of the Commission. The plan would also provide for the selection of the Chief Justice by the Nomination Commission.

And before we go into the mechanics of it I would again like to say that as far as the procedure is concerned, the way ahead certainly won't be easy at the best. We realize it is quite an undertaking, and that is why the work of the Committee has been extended over a period of two years. But the work of the American Bar Association on this type of a plan goes back for many years—in fact back to 1937. And the House of Delegates, of which I have been a member now for six years, also proceeded very cautiously with it. It came up for discussion at St. Louis in August of 1961, but no action was taken there and it was placed on the agenda of the February, 1962, meeting in Chicago where it was approved, as I mentioned a moment ago. We have proceeded with it very, very carefully. And then should you approve it, should you adopt the recommendations that the Committee has made, it would then have to be referred to our Legislative Committee. It may be in for a number of amendments, not only here but there also. And finally it would have to be approved by the majority of each house in our Legislature, where again it would have to go through hearings before our judiciary committees in both the Senate and the House. And then it would finally have to be submitted to the voters of the entire state, and it would require a majority vote there. So that briefly is the background of it.

And now I am going to call upon the Hon. W. C. Lynch to discuss the mechanics of it; then Professor White is going to talk on the statistics of it, giving us some information as to what has been done in other states on like projects. So at this time I would like to present to you the Hon. W. C. Lynch.

JUDGE W. C. LYNCH: Thank you, Floyd.

One of the problems that confronts all of us is to get qualified men to assume the judgeships. Last night I noticed in the paper that two young men escaped from one of our mental institutions, robbed a store and obtained some guns and so forth, and at the bottom of the article I noticed that I had sentenced those two. Now I am beginning to understand why there is some reluctance on the part of lawyers to assume judgeships. (Laughter) At last report they were headed the other way, and believe me! I have been following the papers. (Laughter) I believe that this meeting was originally set for 1:45 this afternoon.

Am I correct?

MR. FLOYD SPERRY: That is correct. I think our President has explained why we have had to change.

PRESIDENT OEHLERT: I have explained that, Judge Lynch.

JUDGE W. C. LYNCH: I thought that it should be explained, because otherwise someone may accuse us of politics. I notice that some of the people that are very vocal in their opposition to this type of a plan are not here this morning.

PRESIDENT OEHLERT: We have explained that, Judge Lynch, because of the emergency of Mr. Hursh having airplane trouble.

JUDGE W. C. LYNCH: Well, this is sort of a survival of the fittest, anyway. (Laughter) And I assume that we have nothing but the clear-headed people here. (Laughter)

We, as Floyd said, considered the American Bar Association plan that we adopted. We also considered the Illinois plan—which, by the way, is a document probably 10 times the length of our short plan—we also considered the Iowa plan, the Missouri plan, and several others. We tried to boil them down into something that we thought would be understandable, clear, short and concise. Whether we have accomplished that is for you to decide.

I think at the outset, however, that we should point out that we are members of a committee that was appointed by this Bar Association to draft a proposed constitutional amendment to bring about what we hope to be an improvement in the method of judicial selection. Now, the very fact that we have drafted it, we now find ourselves cast in the role by some people as being proponents of the measure, which I think is a little bit unfair. All we are doing is presenting a plan to you in accordance with your directions at the last convention. And if there is any criticism of the plan, I would think that we could discuss it in a forthright and intelligent manner and not blame the committee, so to speak, for presenting something that you directed us to present.

Now, with that out of the way, let us consider the plan, see what it is trying to accomplish and see if it does that in some degree of success.

The nomination and appointment of judges, under this plan, would basically be an adoption, more or less, of what we now have in operation for the appointment of a judge when a vacancy occurs. That is, we now have the plebiscite system, which we have adopted in the Bar Association, and we have a working agreement, and have had, with the governors of the state of North Dakota. So in that regard the appointment where a vacancy occurs, by a plebiscite or more or less by a nominating commission, is perhaps nothing new or radical to us. This merely puts it in the form of the law and it must be followed and clears up a few points that we believe need clarity or being cleared up at this time.

This plan provides, in Section 1, that whenever a vacancy occurs because of the expiration of term, death, resignation, retirement, removal or rejection by the electorate, then the vacancy shall be filled by an appointment by the governor from a list of three nominees presented to him by what is termed the "Judicial Nominating Commission."

Now, perhaps, Floyd, this would be the time to discuss the makeup of the Judicial Nominating Commission, and perhaps you could cover that phase of it.

MR. FLOYD SPERRY: All right, I will be very glad to do that.

The Nominating Commission that we provided for is the one that I briefly mentioned just a moment ago. The Chief Justice of the Supreme Court would be the chairman of it; the lawyers in each judicial district would select a member of the Bar to serve on that Commission. That would mean six lawyers in addition to the Chief Justice. And then the governor would appoint a member to the Commission from each judicial district, which would give us six laymen in addition to the six lawyers, plus the Chief Justice.

I might say that when we discussed that feature of it we considered a number of alternatives. The American Bar Association plan does not exactly provide for that arrangement. That provides that each judicial district should have six members rather than two. That would be three lawyers instead of one and three laymen instead of one. And that would give us a Commission of 37, including the Chief Justice. We thought that would be a little big for North Dakota, and that is why we tried to cut it down.

This committee is empowered to be elastic, however, and should the members of the Association feel that we should go back to the A. B. A. plan on that part, we are in a position to agree to that. I might say, in that event the entire Commission would not be acting on a judicial appointment to be made for a certain judicial district, it would only be the six from that district in addition to the Chief Justice. While under our plan a 13-man Commission would act on all appointments: Those for the Supreme Court and those for each of the District Courts.

Now, are there any questions in regard to that part of it? I think we might as well get to those now. Judge Burdick.

JUDGE EUGENE BURDICK: My sympathies are with the American Bar plan in that respect. I think as much local recommendation as possible is desirable, and I would suggest that you arrange your Nomination Commission to be composed of three lawyers and three laymen in each district and also the presiding judge, District Judge, of that district, instead of the Chief Justice. So you would have a Nominating Commission of seven for each judicial district. And I think that would keep it more or less on a local or area basis where it should be with respect to District Court appointments. However, so far as the state-wide Commission is concerned for members of the Supreme Court, I see nothing wrong with the plan at all and am generally in sympathy with the entire project and believe that it should be endorsed in principle and that it be submitted to the Legislature for further action. But I would like to ask your committee to consider the acceptance of the proposal of a local nominating commission for each judicial district.

MR. FLOYD SPERRY: The committee will be very glad to do that, Judge, and we appreciate your observations. In fact, if you would like to make a motion when we are through with the discussion of that part of it—I wonder if I am talking directly enough into the microphone so that you can hear me. Judge Burdick, I am directing my remarks to you, and that is under the suggestion that you made, which is that of including the District Court judges, we would run into some problems, I am afraid. I assume that you mean that where one of the District Court judges had passed away and then that the other would serve on the Nominating Commission for that district. But we might have a situation where

we had no judges at all for that district. That is why we thought that the Chief Justice should be—

JUDGE EUGENE BURDICK: Well, you could take care of that in drafting. But I have never known that to occur where you never had any judge at all in the judicial district, and the survivor is always the presiding judge if there are only two in the district.

MR. FLOYD SPERRY: Well, then I will assume that you recommend having the surviving judge on the seven-man-commission for that district.

JUDGE EUGENE BURDICK: He is automatically the presiding judge of the district. The oldest judge in point of service is the presiding judge of each district.

JUDGE W. C. LYNCH: That is right.

MR. FLOYD SPERRY: I think that will clear it up now.

Now, I will have to recognize Linn Sherman, if you don't mind, Bill, and then we will get back to you.

MR. WILLIAM MURRAY: May I be next?

MR. FLOYD SPERRY: Yes, you surely can. And then Francis Breidenbach follows you.

MR. LINN SHERMAN: I just wanted to ask a question, Floyd.

MR. FLOYD SPERRY: Surely.

MR. LINN SHERMAN: This Commission that you have here, what is the term of office of that committee? Is it appointed over three years? Maybe you are coming to that. I was just wondering.

MR. FLOYD SPERRY: I think we provided for that.

PRESIDENT OEHLERT: Yes. They are staggered.

MR. LINN SHERMAN: How long are they appointed?

JUDGE W. C. LYNCH: Terms are fixed by the Legislature.

PRESIDENT OEHLERT: Three-year periods suggested.

MR. FLOYD SPERRY: It is recommended that it be a three-year period. But what we are trying to do here is going to require a great deal of legislative action because we get into all of these constitutional amendments, and we haven't prepared that legislation as yet. But we will do so in the event that you want us to go ahead with this plan. Does that clear up your question, Linn?

MR. LINN SHERMAN: The question in my mind is, are these six commissioners who are to be appointed by the governor all to be appointed at one time so that any governor could, in effect, have almost a majority of the appointments on that Commission?

JUDGE W. C. LYNCH: No; the act provides, Linn, that no more than one-third of the Commission shall be selected in any three-year period. It is bearing in mind just exactly what your point is—which is a good one—and that is why we provided this. It is a three-year deal and it is staggered. Linn, the reason that we didn't put in this act some of those particular specific things is that in looking over the acts of Illinois and

Iowa, for example, they are documents of some 10, 15 pages, and we got to bear in mind that if this is adopted this is going to be a constitutional amendment and we felt that when people saw something like that, first of all they wouldn't understand it, they wouldn't take the time to read it, and consequently they may not vote intelligently on it, they would just vote no. We have tried to boil this down into something that even a judge could understand. (Laughter)

MR. WILLIAM MURRAY: Mr. Sperry.

MR. FLOYD SPERRY: Then to clear that up, the answer would be that not more than one-third of the members of the Commission could be appointed in any three-year period.

MR. LINN SHERMAN: Would that be a part of the constitutional amendment?

JUDGE W. C. LYNCH: Yes.

MR. FLOYD SPERRY: That is correct.

Now we are on Bill Murray.

MR. WILLIAM MURRAY: I wanted to say that Judge Burdick mentioned this matter to me the other night, and I think he is right about keeping the membership of the Commission local within that district for a given district appointment. The part that I now see that is in there that I wanted to express opposition to is the fact that the surviving district judge is on there. It seems to me that this might create kind of a dynasty situation. For instance, Judge Burdick in his bailiwick there; I don't think he should have a finger in selecting his companion on the Bench. I am sure that my remarks here are taken only to be citing an example. They are not against either judge in that district—where I have to work with them. (Laughter) This is just a thought. I don't know what the view of the members is on this, but I would rather keep the surviving judge off of that committee. I think it is better. Thank you.

MR. FLOYD SPERRY: Well, Bill, the answer to your suggestion there is that under our plan the district court judges will not be members of the Commission. Judge Burdick has only suggested that we change it to include them, but we haven't included them under the present plan.

Now may we get to Francis Breidenbach.

MR. FRANCIS BREIDENBACH: Mr. Sperry, I just wanted to comment just briefly with respect to Judge Burdick's remarks and tell the members just a little bit about the suggestions that took place in the committee. One of the reasons we felt that the committee should be composed as it is at the present time, Selection Commission, the primary object of the entire plan is to take politics out of this matter of judicial selection. Now, we felt that North Dakota is a small enough state so that a highly regarded lawyer, well known for his competency and so forth, would have no trouble and in most cases would be well known across the State. The two people, for instance, from his district would not have the control of the situation, and we felt they wouldn't be subject to the same pressures that a state-wide Commission would in selecting a district judge. In other words, by having a completely local commission within that district, even though it be small, say six members, these members might, in certain circumstances, be subjected to a great deal of pressure which we felt that a state-wide committee would not be sub-

jected to, and thereby thinking that a state-wide committee would be more objective in its selecting.

MR. FLOYD SPERRY: It is certainly correct, Fran, that we agreed upon that arrangement. However, rather than to see the plan fail and to see it go down the drain, I would rather yield to an amendment in accordance with the recommendations of Judge Burdick.

So now I would like to get back to Judge Lynch again. I think you had some other features of it that you wanted to talk about.

JUDGE W. C. LYNCH: Yes. Thank you, Floyd. I think, though, that before we leave that subject that it would be well to make an observation here, and that is this: That I think we would be very naive if we would believe that there would not be any changes in this plan if adopted by the State Bar Association and presented to the Legislature. I am sure that there are going to be many changes that we may want to make or that the lawyers, or the State Bar Association may want to make, and I don't think that we should get too concerned—in my own opinion—I don't think we should get too concerned with the actual mechanics or the specifics of this act, because certainly it is subject to change. What we have tried to do here is to give a framework within which the Legislature can act, and to do more than that, would be to try to draft the exact wording of the constitutional amendment at this time which would, perhaps, take a three-day session.

Now, if we can move on, then, or consider this nomination appointment provision, the act, as it is drafted, provides that if a stalemate arises—once again in a case where perhaps there may be some politics—and politics, by the way, is not a dirty word—but in case a stalemate could arise, say that the governor does not exercise his authority, for some reason or other he does not want to appoint any of the three nominees, this plan provides that within 30 days from the date that the Judicial Nominating Commission gives the governor the names of the nominees the governor must act. If he fails to do so, the Chief Justice or the Acting Chief Justice—and then we put a time limit on there, within 15 days after that—makes the appointment.

Is there any further discussion or further questions on that first part of the plan? (No response) If not, we will move on to the term of office.

Now, this plan has been sent to every lawyer, of course, in accordance with the resolution of the State Bar Association, at least 15 days, I believe, prior to the time that you gentlemen came here. And so I assume that you have taken the time to at least briefly scan the plan, and therefore I will not be too specific. But under the terms of office, generally it provides that the district court judges will have the same term, lengths of term, as the Supreme Court Judges; namely, 10 years. And that is, of course, in accordance with the American Bar Association plan. And I do not wish to cast any aspersions on the members of the Supreme Court, but my own opinion, frankly, is that it is more important—and I mean this—more important to have good judges in the trenches down in the district court level than perhaps in the Supreme Court. And therefore the term has been made the same; 10 years.

Now, the meat of the plan perhaps is in the Judicial Nominating Commission and in this question of term of office, for in this portion of the

act it is provided that the electorate will vote on the question of, "Shall the judge be retained in office or removed." And this is a wide departure from the direct election as we have it today. It provides that at the end of the term, or in the first three years after his appointment, the judge will run on his record. And the question that will be presented to the electorate is, "Shall Judge So-and-So"—and many times they call him Judge So-and-So (Laughter)—"be retained in office or not." And you vote just yes or no. This is the portion of the plan that I believe will have the most discussion, most opposition. And perhaps this would be a good time to take a coffee break. We aren't going to be able to finish this.

MR. FLOYD SPERRY: I was just wondering, if there are no objections we would like to go on, and I think we could probably finish the presentation in probably some 15 or 20 minutes and then we could have a coffee break.

PRESIDENT OEHLERT: Well, what is the consensus? Do you want a coffee break now or should we finish this and have our coffee break? (No response) Okay, we will proceed.

MR. FLOYD SPERRY: At this time I would like to present to you Professor James P. White. Jim is teaching law, and particularly legislation, at our University Law School. He just completed his second year there. And because of the retirement of Dean Thormodsgard, he will be, upon the effective date of the dean's resignation, the acting dean until a full-time or a permanent dean has been selected. Jim has been with us many times. He has done a great deal of writing, a great deal of research work. He has made many trips to Bismarck to help us out on matters of this kind, and we felt that we should have a student of his caliber on this committee. Now, Jim is going to talk to you about the statistics of plans of this kind where they have been acted upon or at least initiated in other states. So at this time I would like to have Jim take over and carry on that discussion.

PROFESSOR JAMES WHITE: I might say this is going to be very brief because I am not a statistician. But I have compiled a few statistics—I think the majority of which probably most of you are familiar with.

As Floyd mentioned, this plan came into existence in 1937 in Missouri—the so-called Missouri Plan. This was the original plan and it has been considered in various forms by the American Bar Association, the American Judicature Society, Continuing Legal Education Institutes, etc., since that time, and was finally approved by the American Bar Association in 1962. However, Missouri did adopt it in 1937 and it was considered by a number of states immediately after the adoption of the so-called Missouri Plan. It wasn't however, until after the war in the late 1940's that it received additional impetus from the late Chief Justice Arthur T. Vanderbilt, who resigned as dean of the University of New York Law School to become Chief Justice of the New Jersey Supreme Court and reorganized the New Jersey court system—which interestingly enough at that time had 16 courts constitutionally provided for.

A number of states have considered a plan somewhat akin to this model A. B. A. plan or, indeed, to the plan that we are considering now. And Judge Lynch had mentioned the Illinois plan and the Iowa plan. Now, Illinois has a constitutional amendment coming up before the

people this fall. It is somewhat more complex than the model A. B. A. plan or somewhat more complex than our plan. The Iowa plan, which is a variation, again, on the A. B. A. plan, was passed by two successive sessions of the Iowa legislature and the first of this current month was approved in a referendum vote. And so it will become effective the first of January.

This plan that we are submitting to you probably is most closely related to a plan which Alaska adopted in its new constitution. Of course, prior to that time Alaska operated under a territorial court system, so this was the first time.

Some states have adopted certain aspects of the Missouri Plan, or the A. B. A. plan, but these are the states that currently are concerned with it. Now, I might just state that I believe at the present time 13 states, 13 out of the 50 states, including North Dakota, have some sort of committee of the State Bar Association or commissions appointed by one of the branches of government under the statutory authorization to consider a plan of this type. So this is not anything unique that is coming forth in North Dakota. This is certainly something that is being considered throughout the country.

And I would like to also add that North Dakota certainly is not a state that is badly in need of drastic judicial reorganization. As Mr. Sperry and Judge Lynch have pointed out, we feel this is basically the system we now have in North Dakota with some modifications of it and it is only an attempt to do what we feel the law must do and independent intelligent lawyers must do: Constantly improve our judicial system, our legal system. This is the reason that this plan has come forth.

But these are roughly some of the states. I won't bore you with giving you any more details, but you see this is the trend which is taking place in the country, and we are representative of this trend, and, indeed, are making relatively minor revamping of our judicial articles of the constitution in comparison to what a great many other states have to do.

MR. FLOYD SPERRY: Thank you, Professor White.

We have now presented the outline of the plan to you and we will be happy to try to answer your questions, if you have some more, and then if there are some motions to change the plan we will be glad to consider those now.

I would like to add that we don't wish to rush this. I am sorry, frankly, that we couldn't take it up this afternoon as the program indicated. We expected that. In fact I told different people that we planned to do it at that time. But because of this incident in which the speaker for this morning became involved, we just had to do it this way or else there wouldn't be enough time for him to speak on that very interesting and highly important subject of Products Liability. So I hope it is understood that we didn't try to rush this on. In fact, I preferred to do it this afternoon. But the way things worked out we just had to do it this morning.

Now, are there any other questions that any of you would care to ask us? Mr. Nielson.

MR. THOMAS NIELSON: On page 4 of this mimeographed thing that was mailed out, the last sentence states, "No member of a Judicial Nomi-

nating Commission shall hold any elective State, Federal, or County office or office in a political party, and he shall not be eligible for appointment to a state judicial office so long as he is a member of a Judicial Nominating Commission and for a period of three years thereafter." Is that the system used by the American Bar Association?

MR. FLOYD SPERRY: Yes, that is correct. And on the original plan as prepared and submitted by the American Bar Association there is a comment on that. The comment is this: "The proposed Judicial Nominating Commission also follows the American Bar Association plan, which recommended that the list of nominees be made by an independent agency. The makeup of the Commission could be a combination of a number of variables. The committee feels, however, that no group should have fixed representation and that all appropriate interest in the State can be represented through appointments as provided in this Section. Provision is made for the participation of non-lawyers in the selection process. The disqualifications are self-explanatory."

It comes under that latter part of it. In other words, the purpose of that is to keep all possible politics out of the Nomination Committee.

MR. THOMAS NIELSON: Well, this "three years thereafter," is that the period of time that the American Bar Association recommends?

MR. FLOYD SPERRY: That is correct, Tom. We talked about that quite a bit. Some of us thought it should be cut down to one year, and possibly eliminated altogether. But that is the American Bar Association recommendation.

MR. THOMAS NIELSON: The American Bar Association doesn't recommend five years, does it?

MR. FLOYD SPERRY: I could be wrong about that, now. I thought I had a copy of that in my hand.

JUDGE W. C. LYNCH: I think they do. I can't find it here, but as I recall our discussion the American Bar Association plan does provide that a member of this Commission could not be appointed to a state office for five years thereafter. We thought that was a little too long; we cut it down to three. The purpose, of course, is that any member of this Commission cannot be a party office holder at the time he is a member of the Commission, and we want to make sure, and the American Bar Association plan is designed to make sure, that he doesn't get an appointment shortly thereafter to keep it out of politics.

MR. FLOYD SPERRY: I am very sorry, Tom. And I apologize to the rest of you also. It was five years under the A. B. A. plan. We changed that so many times I had forgotten just what it was when we started out. But it was five years and we cut it down to three.

MR. THOMAS NIELSON: Thank you.

MR. FLOYD SPERRY: Thank you, Tom.

MR. HAROLD SHAFT: Mr. Chairman, it seems to me—I don't know whether I can be heard or not.

MR. FLOYD SPERRY: We can hear you.

MR. HAROLD SHAFT: In the last 12 hours I have been taken with a new disease named by the American Medical Association as Haig & Haig-laryngitis. (Laughter)

MR. FLOYD SPERRY: I think I understand your problem, Harold. (Laughter)

MR. HAROLD SHAFT: The only thing I wish to say in connection with the plan, as complicated as it appears and as many ramifications that are necessarily involved, it seems to me that as to the details of the plan this convention as a whole is entirely too large and unworkable body to discuss the individual amendments to the measure. I feel that the committee has done a wonderful job in preparing this that has been done. There are minor amendments which I would favor, and I am sure there are minor amendments which many of us would favor. But I think we would be here until the Legislative Session arrives if we were to try to take care of all those amendments at this time. I would therefore move that the proposal of the committee be approved in principle, the committee to continue its work on the matter and to revise and refine the same in the months ahead.

MR. FLOYD SPERRY: Thank you, Harold. I think this is the time for me to turn it back to our President, Lew Oehlert.

PRESIDENT OEHLERT: Thank you, Floyd and Judge Lynch and Jim White.

May I suggest, Harold—and this is purely a suggestion of the Chair—what do you think of the idea of incorporating in your motion that it be subject to the final approval, direction and so on of the Executive Committee?

MR. HAROLD SHAFT: I would consent to that.

PRESIDENT OEHLERT: Would you like to restate it, Harold.

MR. HAROLD SHAFT: I move that the report of the committee and its proposed measure be accepted in principle, that the committee continue its work of refining, amending and modifying the same until it has arrived at what seems to be the best ultimate conclusion, that the report of the committee then be submitted to the Executive Committee and upon the Executive Committee's approval that the same be submitted to the Legislature with the approval of the North Dakota State Bar Association.

PRESIDENT OEHLERT: Very well stated. Is there a second?

MR. JOHN HJELLUM: Second.

PRESIDENT OEHLERT: John Hjellum?

MR. JOHN HJELLUM: Right.

PRESIDENT OEHLERT: John Hjellum, of Jamestown.

MR. ALOYS WARTNER: Mr. President.

PRESIDENT OEHLERT: I will hear Mr. Wartner.

MR. ALOYS WARTNER: It would seem to me that in passing the motion that this body would go on record as favoring the selection of judges as proposed by the committee's report. I do not favor it at all. I believe that we are taking the selection away from the people in whose hands I feel it ought to remain. Maybe there ought to be some changes, but I do not feel that this body should just take it upon itself to turn the final decision over to the council. I think that if there are going to be any

changes made that it ought to come back to this body in order that we may make some determination as to what ought to go before the Legislature. In fact, I don't think that it ought to go to the Legislature next time in the form that it is presently in. I feel that there should be more study. Personally, I could go on and on. I am sorry I wasn't here earlier, but I still feel that we are taking the wrong step in trying to select judges in this manner.

PRESIDENT OEHLERT: Thank you for your views, Mr. Wartner.

MR. THOMAS NIELSON: I would like to make a substitute motion that this matter be tabled until this afternoon at its place on the printed agenda in case there are any members at this convention who are not aware of the fact that it is being heard right now.

A VOICE: Second.

PRESIDENT OEHLERT: There is a substituted motion that it be laid over until this afternoon. Now, gentlemen, I only call your attention to the mechanics of this Annual Meeting. Mr. Hursh is to arrive, I think at 11:45. I only raise it for your attention. If we are going to give him due time we are probably going to usurp most of the afternoon. Now, we certainly are going to have a coffee break here in a few minutes. We have election of officers that is scheduled for 11:00. I felt we should maintain that schedule in fairness to the candidates. So may I suggest from the Chair that you amend your motion and have it laid over until after the coffee break, if we need such a motion. We are about to have a coffee break, anyhow.

MR. THOMAS NIELSON: Well, it is just my thought that if this thing passes this morning it is always going to be under a cloud because there are members who will state, "Well, I thought that was going to be on in the afternoon and I wasn't there because of that."

PRESIDENT OEHLERT: Well, we have a motion, the main motion before the group. The coffee is ready to serve and I am going to hereby declare a coffee break and we will take it up as soon as the coffee break is over. Does that meet with any dispute? (Applause)

... Coffee Break ...

PRESIDENT OEHLERT: Let us go on the record. As the Chair recognizes the parliamentary situation that is now before us, we have before us a substituted motion. And before I do anything with that motion I want to call on Floyd Sperry for just a moment.

MR. FLOYD SPERRY: I will be very brief about this. I really don't think we have a parliamentary question. I think the motion to table comes ahead of the other motion and that we must dispose of it.

PRESIDENT OEHLERT: It is not a motion to table, it is a motion to adjourn to 2:00.

MR. FLOYD SPERRY: I thought it was a motion to table. I am sorry. Was that your motion, Tom?

MR. THOMAS NIELSON: Well, the motion was to table it until this afternoon so that the members who are at this convention and may not be here this morning and are not aware that this matter is being brought

up out of the order of the printed agenda might be here this afternoon when they expected it to be on.

PRESIDENT OEHLERT: May I comment on that, Floyd? Excuse me. That when this Annual Meeting is in session, as I understand it, all members are supposed to be present. These matters of emergency often occur, and I am sure that all of you and each of you will appreciate the fact that sometimes under emergencies we have to advance a program a little or delay it because of the necessities of running an Annual Meeting.

Now sir, if you still want to make your substituted motion, of course your Chair will honor it. On the other hand, if you deem it advisable to withdraw it, the Chair would appreciate it. (Laughter) Very well. Do you make your motion?

MR. THOMAS NIELSON: I have already made it and the people—

PRESIDENT OEHLERT: Do I hear a second?

MR. JOSEPH McINTEE: Second.

PRESIDENT OEHLERT: Very good. Now you have heard the substituted motion that this be deferred, as I understand it, Mr. Nielson—Till what hour?

MR. THOMAS NIELSON: In accordance with the printed agenda.

PRESIDENT OEHLERT: Well, what does the agenda say?

MR. THOMAS NIELSON: The agenda says from 1:45 until 3:00 p. m. this thing is supposed to be on.

PRESIDENT OEHLERT: Until 1:45. That is the sense of the motion and the second. Did you understand it, the second?

MR. JOSEPH McINTEE: Correct.

PRESIDENT OEHLERT: Is there any further question on the substituted motion.

A VOICE: Question.

PRESIDENT OEHLERT: All those in—

A VOICE: Mr. President, I offer an amendment to the substituted motion, adding thereto the words that anyone who was present at the morning session will not be permitted to speak either for or against the motion this afternoon. (Laughter)

PRESIDENT OEHLERT: I will have to declare that motion out of order. The question has been called for. But in fairness to our Chairman, who has done a terrific amount of work on this, I am going to give him 30 seconds. (Laughter)

MR. FLOYD SPERRY: That will give me enough time to get up and sit down again. (Laughter) Without the necessity of your knocking me down.

I would like to say, in voting on this motion, I told you the position that we found ourselves in: We weren't happy about having to present it this forenoon rather than in the afternoon. But that is the position that we found ourselves in. That was the only time we had. And I think

probably it could be brought up again this afternoon even though we pass on it this morning. But I do want to say that we are not adopting anything. All we are doing at the most is passing this plan over to our Legislative Committee where the legislation will be drafted, and from there it will go to the Legislature. It will be debated before the judicial committees in the two houses, there will be amendments made to it. And Mr. Shaft's motion suggests that. It will come before the Executive Committee meeting again, and I think we are taking it a little too seriously at the present time. Because we are not adopting a plan, we are only making it possible to present it to the Legislature.

PRESIDENT OEHLERT: Any further discussion? (No response) I will call for the vote on the substituted motion. (Question submitted) I say the no's have it. We will now vote on the main motion. Was there a second to the main motion? I think there was. Mr. Hjellum. Right. Is there any discussion on the main motion, Mr. Shaft's motion?

A VOICE: Question.

PRESIDENT OEHLERT: Question has been called. (Question submitted) (Laughter) Well, frankly your Chairman is a little uncertain on that. I don't know who was shouting the loudest. I am going to recognize a few more discussions. Bill Daner, from Bismarck. And then I will get to you, Mr. Wartner. You have spoken once already.

MR. ALOYS WARTNER: I wasn't asking for the floor, I just wanted to know if there was other—

PRESIDENT OEHLERT: Oh, excuse me. I thought you raised your hand.

Go ahead, Bill.

MR. WILLIAM DANER: Mr. Chairman, Gentlemen: I don't have any real fixed opinion on this thing, but I have got some questions in my mind and that is why I would like to raise it to all of you. I just wonder whether we should act at this session. I think that this group has done an outstanding job of studying the problem. I think they have got a good proposal if you are for the proposal. In principle. There are many, many ramifications of this thing that need to be ironed out. I personally didn't get a copy of the mimeographed sheet that was sent out. I don't know how many others missed it. The questions in my mind are these:

No. 1, I am not convinced that we have a need for a change. I am not for change just for the sake of changing. I think we have got a good Bench now, and I don't think it is an accident. I think it is because our present system has worked.

No. 2, the proposal to have a man run on his record doesn't satisfy me. You can't beat something with nothing. If we do happen to get an incompetent or bad judge, he is going to have to be very bad before you can defeat him under this kind of a system, it seems to me.

No. 3, when you get to this question of taking it out of politics, I wonder if we are not just shifting the politics from the mass political area to a pressure group on a smaller group.

These questions, I think, are important. I think the full body needs to think about this thing. I would favor defeating the motion before us, and let's put this thing over for awhile.

PRESIDENT OEHLERT: We will recognize Judge Lynch.

JUDGE W. C. LYNCH: Bill, I think your proposals are well taken and deserve a lot of thought. I differ with the committee in one respect, and that is this: It goes back to our basic point that this is not the last final say of the plan. My alternative solution, in my own mind, is that once the judge has been appointed by judicial selection committee, or plebiscite like we have it, I think that it could be drafted so that he would take on all comers just as we do at the present time. In other words, we wouldn't vote simply on his record. The important point, in my mind, is to get the right man in there initially, and if he is the right man he is going to be tough to beat and I don't care who he runs against. That is a concession that I would make, for example, that I differ with some of the other members of the committee. But I think it points out, Bill, the room for changes within the plan itself.

And I have one further thing: From our study we have found that 56½% of all judges, Supreme Court and District Court, in the state of North Dakota were initially appointed.

PRESIDENT OEHLERT: Any further discussion? The Chair temporarily and impliedly is ruling that the vote was a standoff. Go ahead. Clyde Duffy, Devils Lake.

MR. CLYDE DUFFY: Bill Daner has made my talk for me. I didn't know he was going to do so. I merely want to second what Bill Daner has said in all respects. I think we have done a very good job in selecting judges as we are doing today. I think that it is better to continue along that line than it is to jump to something that probably will not meet with legislative approval. I do not think that you are going to eliminate all politics by turning the job of selecting judges even to lawyers, because out of the 299 that are attending this convention, dare say there are 285 politicians amongst them. (Laughter) And if you are going to try to do that, I would go one step further and I would have the members of the Supreme Court and the district judges be the committee that did the selecting rather than to confer it on the hybrid of lawyers and laymen appointed by the governor, which I do not believe will eliminate politics at all. And I definitely do not believe that the members of that committee, if you are going to have laymen selected, should be from those who take so little interest in politics that they don't even serve as precinct committeemen. For those reasons I shall now move, in accordance with Bill Daner's suggestion, that this matter be deferred until the next session of this Bar Association.

MR. WILLIAM DANER: Second the motion.

MR. FORSYTH ENGBRETSON: Second.

PRESIDENT OEHLERT: You mean by that, Mr. Duffy, that it will be this afternoon?

MR. CLYDE DUFFY: No.

PRESIDENT OEHLERT: I didn't understand your motion.

MR. CLYDE DUFFY: I mean it will be delayed until the next meeting.

PRESIDENT OEHLERT: Well, you didn't say that. At least I submit you didn't.

MR. WILLIAM MURRAY: Mr. Oehlert.

MR. FRANK JESTRAB: Mr. Chairman.

MR. CLYDE DUFFY: The 1963 session of the Bar.

PRESIDENT OEHLERT: As I understand your motion, Mr. Duffy, it is to the effect that this matter be laid over until the next Annual Meeting of this Association in 1963. Is that the sense of your motion?

MR. CLYDE DUFFY: And the committee continued.

PRESIDENT OEHLERT: And the committee continued. Was there a second to that motion?

MR. WILLIAM DANER: Second the motion.

PRESIDENT OEHLERT: We will give Bill Daner the second.

MR. WILLIAM MURRAY: Mr. Oehlert.

PRESIDENT OEHLERT: Bill Murray, of Bismarck.

MR. WILLIAM MURRAY: I think the parliamentary situation is that there was a vote taken on the main motion and we are entitled to a division.

MR. FRANK JESTRAB: Division was called for.

PRESIDENT OEHLERT: Was there a division called for? I didn't hear the division called. The Chair stands corrected if that was the situation. Then I will defer Clyde Duffy's motion if a division was called for. And we have good witnesses to that effect. I will declare your motion out of order and we will have a rising vote on the original motion of Harold Shaft and his second. That is the ruling of the Chair unless it is appealed.

MR. WILLIAM DANER: Will you explain what this motion means?

PRESIDENT OEHLERT: Yes, I will. I think everybody understands it more or less. Harold Shaft's motion was that this committee be continued and that we generally direct the Executive Committee to pass on the final recommendations of this committee and that the final authority with respect to it be lodged in the Executive Committee. Now, was that the sense of your motion, Mr. Shaft?

MR. HAROLD SHAFT: That was the sense of it, plus the fact that I did move that we approve in principle the plan.

PRESIDENT OEHLERT: That is what I said. It was generally approved in principle. There was a second of John Hjellum on that. I now ask for a division of the membership. Those in favor of that motion will please stand. And I will direct Judge Lynch and Jim White to make the count.

... Those in favor of the motion stood up. ...

Have you completed your count? We will doublecheck it. We will ask those who would vote "no" on this motion to now stand, and we will ask the others to sit down. We will count the noses and see how we are.

... Those in opposition to the motion stood up. ...

Our two tellers advise that 70% vote "no." Is that correct.

JUDGE W. C. LYNCH: That is right.

PROFESSOR JAMES WHITE: Yes.

PRESIDENT OEHLERT: So I declare the motion lost.

Now, under those circumstances I think we should probably go into our matter of elections, gentlemen. We are 20 minutes late on that. Unless someone else has a motion on the matter before the house.

MR. CLYDE DUFFY: I believe the motion that I made is now in order.

PRESIDENT OEHLERT: Very well. Will you restate it just in substance, Clyde, please.

MR. CLYDE DUFFY: The motion was that action on this proposal be delayed until the 1963 session of the convention and that in the meantime the committee be continued for further study.

PRESIDENT OEHLERT: Thank you very much. Is there a second?

MR. ARLEY BJELLA: Second.

PRESIDENT OEHLERT: Is there any further discussion on that motion?

A VOICE: Question.

(Question submitted)

PRESIDENT OEHLERT: The motion is carried. It is laid over until the 1963 Annual Meeting. Thank you very much, fellows, and I am sure that every member of this meeting thanks you for your discussion.

Now, before we go into elections, I submit that we should lay down a few ground rules. Thus, we will elect first the secretary-treasurer; next a new vice president; and then the president. Immediately after such three elections we will elect our Bar Association Delegate to the American Bar Association, which latter election is required under our constitution and by-laws in every even-numbered year. As to each office, would you kindly hold all seconding speeches until all nominating speeches for all candidates to a particular office involved are made. Nominating speeches should be made from the rostrum; seconding speeches from the floor. Please hold all nominating speeches to four minutes, if possible, and seconding speeches to one minute. In the event there are more than two candidates for any office, we will hold a primary and then a final ballot, with the two top candidates in the primary ballot to comprise the only two candidates in the second or final ballot.

Now, is E. Forsyth Engebretson in the room? (Mr. Engebretson arose) You are the chairman of the balloting committee, or teller committee. Is Richard Rausch in the room?

MR. RICHARD RAUSCH: Present.

PRESIDENT OEHLERT: Very well. Pat Conmy in the room?

MR. PATRICK CONMY: Present.

PRESIDENT OEHLERT: And is Bill Strutz in the room? William A. Strutz. (No response) The first three named, then, will act as our tellers. And if you three gentlemen would come forward we will probably need you. You can assume any of these chairs that you like.

In line with what has been stated, unless there is an appeal, I will now entertain nominations for the office of secretary and treasurer of our Association for the next ensuing fiscal year of our Association.

MR. RAY WALTON: Mr. Oehlert, Members: I am going to make a very short nominating speech. During the last year we have been served by Mr. Harry M. Pippin in the office of secretary-treasurer. I have made an inquiry and find that there is some expense in connection with changing officers in the Association at that level, and consequently, in order to save the Association some expense in this connection, I move that Harry M. Pippin be re-elected secretary-treasurer for the year 1962-63.

A VOICE: Is that the only reason? (Laughter)

MR. RAY WALTON: That is the only reason I can think of. (Laughter)

PRESIDENT OEHLERT: Are there any further nominations to the office of secretary and treasurer? (No response) If not, I will entertain the usual steam-roller motion.

MR. ROBERT DAHL: So moved.

MR. CHARLES FESTE: I was asked to second the nomination of Harry Pippin. I would like to do that now. (Laughter)

PRESIDENT OEHLERT: Very well. I asked for further nominations and there were none and the steam roller was made in the interim. (Laughter)

(Question submitted)

Motion is carried. The secretary will now cast the unanimous ballot in favor of Harry Pippin as secretary and treasurer. (Applause)

Harry has done an excellent job. He has done everything that the officers requested. He has made an excellent report, and I think he deserved it for another year.

Now, in line with what I have also stated, we will entertain nominations for the office of vice president of our Association for the next ensuing fiscal year. The Chair recognizes Jim Jungroth, of Jamestown.

MR. JAMES JUNGROTH: It is a pleasure for me to place in nomination a gentleman who is presently the president of the Fourth Judicial District Bar Association, has been the past president of the Stutsman County Bar Association. He has been on the Executive Committee of the State Bar. He has been the chairman of the Continuing Legal Education Committee for two years and has generally been very active in Bar Association activities. I therefore submit the name of Herman Weiss, of Jamestown, for the office of vice president.

PRESIDENT OEHLERT: You have heard the nomination of Herman Weiss to the office of vice president of our Association. Are there any other nominations? We will have the seconding speeches later.

MR. FRANCIS REICHERT: Mr. President.

PRESIDENT OEHLERT: Francis Reichert?

MR. FRANCIS REICHERT: Right.

PRESIDENT OEHLERT: You have the recognition of the Chair.

MR. FRANCIS REICHERT: Mr. President and fellow members of the Bar Association: I wish to make a nomination speech not only as a personal and great admirer of a man that I nominate for vice president, but also as the most immediate past president of the Sixth Judicial District Bar Association that is present at this meeting. You will surmise, of course, that our candidate that I propose to nominate is a member of the Sixth Judicial District Bar Association, which lies in the southwest area of North Dakota. This man was born and raised in North Dakota, strictly and in every sense a native product, has resided here all of his life. He has practiced in this state for 30 years, excepting only an interval of a few years that he spent during World War II as a member of the Military Services in the South Pacific. He is presently the unopposed candidate for his eighth term as state's attorney of the county in which he resides, Hettinger County. He has for very many years been an active member of this Association. He served for a number of years on a committee appointed by this Association for the purpose of studying a revision of the probate laws and the probate procedural forms, and as chairman of such committee, after many years of diligent effort, in 1956 such change in the Code and change in the procedural form was adopted by this Association. He has more recently, and is presently, a member of the Traffic Safety Committee, and only last month was co-chairman of a three-day meeting of this committee in Bismarck in which they taught and instructed over 20 police magistrates and enforcement officials in the state of North Dakota—a committee assignment and meeting which was regarded as very successful. He has always been extremely active in Bar Association work, as I have already intimated. He is a past president of the Sixth Judicial District Bar Association. As such he served upon the Executive Board of this Association. He has never—which I think is quite an outstanding feat—he has, since World War II missed only one meeting of this Association. And although departing a little bit from the general in the past in our Association, he comes from a small town. He comes from a small-town practice. But nonetheless he is pledged to us, who back his candidacy, the proposition that he will dedicate all his full time, if necessary, to his office if so elected as vice president of this Association. Therefore, gentlemen, I present to you the name of Reuben J. Bloedau of Mott, as vice president of this association.

PRESIDENT OEHLERT: Thank you, Mr. Reichert. The name of Reuben Bloedau, of Mott, North Dakota, has also been placed in nomination for the office of vice president of your Association. Are there any further nominations? (No response) Hearing none, we will now call for the seconding speeches. And please limit them to two or three. I will call for seconding speeches on Mr. Herman Weiss. The Chair recognizes Arley Bjella, from Williston.

MR. ARLEY BJELLA: Mr. Chairman, based, as Francis said, on my personal friendship of Herman Weiss, and also on the fact that he has been one of the hardest and most conscientious workers in the state setup to make this one of the best Bar Associations in North Dakota, and on his record in that capacity, I am honored and pleased to second the nomination of Herman Weiss.

PRESIDENT OEHLERT: Thank you, Arley. Any other seconding speeches on either one of the candidates? I will recognize anyone who stands.

MR. WILLIAM MURRAY: Mr. Oehlert.

PRESIDENT OEHLERT: Bill Murray, of Bismarck.

MR. WILLIAM MURRAY: This is a difficult situation because there are two such good candidates, and it is particularly embarrassing not to second the man from our own district. But I wanted to say with a great deal of enthusiasm that I second the nomination of R. J. Bloedau. As many of you know, I also come from Mott, originally. He has the distinction of having beaten my father for state's attorney in 1936. (Laughter) I don't know if that is a qualification. But he is a fine dedicated lawyer, a fine dedicated member of this Association. The real reason that I want to put forth is that this Association should give recognition at this time to the small-town lawyers. The presidency has rotated now through the larger cities for several years ever since we had Mr. Sperry in. Now Mr. Sperry has abandoned the small town. (Laughter) It has been quite awhile since we had anyone from the sixth district. Now, Herman Weiss is an excellent candidate, would make a superb president. He knows that I sincerely think that. But there are other times, other years in the future. I want to urge this upon those of you who don't know Mr. Bloedau as I know him that he is a fine candidate and is worthy of your support. If my opinion is worth anything. So I do second that with a great deal of enthusiasm.

PRESIDENT OEHLERT: Thank you, Mr. Murray. I will recognize Bob Chesrown of Linton.

MR. ROBERT CHESROWN: Mr. Chairman, delegates to this great convention: Certainly it is wonderful that we should have two candidates of such outstanding ability. However, like my good friend Mr. Murray has said, I believe it is time, gentlemen, that we pass this thing just once more out to the small town. Therefore I take great pleasure in seconding the nomination of R. J. Bloedau. Thank you.

PRESIDENT OEHLERT: Thank you, Bob Chesrown. Milt Higgins, of Bismarck.

MR. MILTON HIGGINS: Mr. Chairman, I think that what has been said on both sides here is very pertinent, but I personally want to say that I welcome an opportunity to second the nomination of Reuben Bloedau. Quite regardless of the size of these towns, he is an outstanding lawyer of large caliber, and for many years I have urged him, whenever a vacancy afforded in that district, to stand for a judgeship because I think he is eminently qualified both as a man and as a lawyer. I have great admiration for him. I have known the man quite well. I used to live and practice in the Sixth District, as many of you know. And therefore I think we couldn't have any better candidate than Mr. Reuben J. Bloedau, and I second his nomination for vice president of this Association.

PRESIDENT OEHLERT: Thank you, Mr. Higgins. We have now had three seconding speeches on behalf of Mr. Bloedau. I will recognize anyone wanting to make further seconding speeches on behalf of Mr. Weiss.

MR. WILLIAM KUNKEL: Mr. President.

PRESIDENT OEHLERT: Mr. Kunkel, of Carrington.

MR. WILLIAM KUNKEL: I am a member of the Fourth Judicial District Bar Association, and coming from a small country town and a small county, I appreciate what you say about country lawyers. I think the

Fourth District is unique in that we even have a country lawyers' association. We admit to that our big-city cousins from the cities of Jamestown and Bismarck. It gives me a great deal of pleasure to rise and second the nomination of Herman Weiss because I assure you country lawyers that are here that he treats us country cousins just as though we were big-city cousins. (Laughter)

PRESIDENT OEHLERT: Thank you, Mr. Kunkel. We have now had three seconding speeches on behalf of each candidate. Unless you require the Chair otherwise, I am going to declare the seconding speeches sufficient and I will ask the tellers to prepare ballots.

MR. WILLIAM LANIER: Mr. President.

PRESIDENT OEHLERT: Excuse me, Mr. Lanier.

MR. WILLIAM LANIER: I don't rise to second, but in relation to the matter we just dispensed with before taking up these elections, and in agreement with my good friend, Clyde Duffy, I would like to point out that both the chairman of the Democratic-NPL Party and the chairman of the Republican Party and the vice chairman of the Republican Party all made some of the major speeches in that last matter. (Laughter)

PRESIDENT OEHLERT: I would say there is nothing particularly unique about that. (Laughter) Thank you, Mr. Lanier. That is what makes our Association. We disagree and agree to disagree and still can be friends—and be to the interest of our Association.

Would you pass the ballots, please, and collect them as quickly as you can.

While the ballots are being counted, fellows, you might be interested to know that in the Second Judicial District the president that has been elected is Erwin Brendel, of Mohall, I believe; and in the Fourth Judicial District, John Romanick, of Washburn, has been elected president; and of the Sixth Judicial District, Ward Kirby, of Dickinson. So these three men will be automatic members of our incoming Executive Committee for next year. I thought you might just like to know that.

I might also add that under our by-laws in the even-numbered years the even-numbered judicial districts elect their new district president, and in the odd-numbered years the other situation prevails.

And while they are counting the ballots, we will be coming shortly to the matter of an Association Delegate to the A. B. A. Each state has the right to elect out of its membership at its annual meeting, each State Bar Association, a so-called "Association Delegate" to the American Bar Association, and depending on the amount of their members they will have more of them if they have a greater number of members. We, in view of our membership of around 650-some, have the right to only one Association Delegate. And we will be coming up to that election in a few moments, Floyd Sperry being the present Association Delegate. And then, as you may know, and if I may just briefly refer, particularly to some of the younger members, Herb Nilles, who recently passed away, has been the so-called "State Delegate." Now, that is where the confusion comes in. But if I may say, the State Delegate is considered a delegate of the American Bar Association who is elected solely by the members of the State Association who are members of the American Bar Association. I think our membership in the American Bar is about 60-some per cent. We are one of the top associations in percentage that of

our members are also American Bar Association members. And on that point, I might continue and say that in view of Herb Nilles' election at the last balloting under this A. B. A. setup, of which this Association has no jurisdiction except that we furnish our members who in turn become A. B. A. members, there is now a vacancy. It's rather unique. Some of you may think, "Well, why doesn't this Association elect?" We cannot. We have no jurisdiction over that. But the House of Delegates, chairmanned now, I think, by Mr. Fitz, will, in due course, call for another election, which will come out and the ballots will come out to all members of our Association who are members of the American Bar Association. And that election will be held sometime after February of 1963. And the usual procedure will be followed in that election in view of the vacancy of Herb Nilles' passing, will follow the same procedure as the last election. I thought you might be interested in that information. That has been checked and verified through the A. B. A. office, and we have also checked the A. B. A. Constitution and By-laws. Are there any questions of anyone on that score? (No response) I thought you might like to know that.

I might also add that our Association Delegate will serve and will impliedly have two votes at the American Bar meeting in San Francisco in view of the fact that we have a vacancy in the A. B. A. state delegacy. So whoever is elected on that point will automatically be accorded, I think, two votes since we have one American Bar and one State Delegate.

The Chair recognizes the report of the balloting committee and declares that Reuben Bloedau was elected vice president of this Association. (Applause)

We will next proceed to fill the office of president of our Association for the next ensuing year.

MR. JOHN ZUGER: Mr. President.

PRESIDENT OEHLERT: John Zuger, of Bismarck.

MR. JOHN ZUGER: I place in nomination the name of J. F. X. Conmy. He is a fine individual, a thoroughly professional lawyer, and he is a man that we will all be proud of and who will furnish the leadership we need for the coming year in the Bar Association.

PRESIDENT OEHLERT: The name of J. F. X. Conmy has been placed in nomination for the office of president of our Association for the ensuing year. Are there any other nominations? (No response) Hearing none, the Chair will entertain the usual steam roller.

MR. JOHN HJELLUM: I will make it.

PRESIDENT OEHLERT: John Hjellum is recognized. Steam-roller motion has been made. Is there a second?

A VOICE: Second.

MR. HARRY LASHKOWITZ: Second.

PRESIDENT OEHLERT: I recognize Harry Lashkowitz as the second. You have heard the motion, the steam roller. (Question submitted) The motion is carried. (Applause)

At this time we will not call for any remarks from our new vice president and president because they will be afforded time tonight at the

banquet, and we are running just about right. So we will next call for nominations to the office of Association Delegate, our State Bar Association Delegate, to the American Bar Association, to hold office for the next ensuing two-year period.

MR. FRANK JESTRAB: Mr. President.

PRESIDENT OEHLERT: Mr. Frank Jestrab, of Williston, the Chair recognizes.

MR. FRANK JESTRAB: Mr. President, members of the Association: For the second or third time it is my very proud privilege to place in nomination the name of Floyd Sperry as Association Delegate to the House of Delegates in the American Bar Association. Floyd has served us outstandingly well. He has done an extremely good job for us. During the past years that he has been a member of the House of Delegates, he has acquired a good deal of very valuable experience. That experience he expends for us. This office, particularly, is not something that you give to somebody as sort of a bauble or a ribbon to wear on their coat. We send them down there to work for us. And the most productive worker that I know for the job is Floyd Sperry, not only because of his devotion to Bar Association work that is demonstrated at each of these Annual Meetings for as long as I can remember, but also because of the accumulated experience. And it is a great pleasure for me to again place in nomination the name of Floyd Sperry as Association Delegate to the House of Delegates of the American Bar Association. Thank you very much. (Applause)

PRESIDENT OEHLERT: Thank you, Mr. Jestrab. The name of Floyd Sperry has been placed in nomination as our Association Delegate to the A. B. A. The Chair recognizes George Soule, from Fargo.

MR. GEORGE SOULE: I would just like to very, very briefly second the nomination of Floyd Sperry. I think in view of Herb Nilles' passing it is very important that we have a continuity in our representation in the American Bar Association. So I do urge that everyone vote for Floyd. Thank you.

PRESIDENT OEHLERT: It is a little out of order in view of the admonitions of the Chair. Are there any further nominations. I asked first of all that all nominations be made. We accept it, Mr. Soule. Any further nominations? (No response) There are no further nominations?

MR. EVERETT PALMER: Mr. Chairman, I will make the usual steam-roller motion.

PRESIDENT OEHLERT: Mr. Palmer. Everett Palmer.

A VOICE: I was supposed to make a third seconding speech and I would like to make it. (Laughter)

PRESIDENT OEHLERT: Just a moment. The Chair has got to recognize Everett Palmer because he stood up first.

A VOICE: Remember, you are in my district. (Laughter)

PRESIDENT OEHLERT: If you want to withdraw your motion, Mr. Palmer, you may do so. (Laughter)

MR. EVERETT PALMER: I think this is the only time I can overrule him, so I stand on my motion. (Laughter)

PRESIDENT OEHLERT: The motion is for a steam roller in favor of Floyd Sperry as the Association Delegate to the A. B. A. Do I hear a second?

MR. J. O. THORSON: Second.

PRESIDENT OEHLERT: I have got to recognize Bill Lanier, of Fargo, because he stood up first.

MR. WILLIAM LANIER: Mr. Chairman, I normally object very strenuously to this steam-roller tactics of this Bar Association, but in this particular case I am very happy to be in accord with it.

PRESIDENT OEHLERT: Then, as I understand it, you second this motion. (Laughter)

MR. ROY ILVEDSON: Mr. Chairman.

PRESIDENT OEHLERT: Mr. Roy Ilvedson, of Minot.

MR. ROY ILVEDSON: I want to say this first to you fellows, because I will never stand up for rest at a convention, that this affair that you put on last night at the Country Club was just terrific, and I tried to cooperate at the bar there. And I know it cost a lot of money so I want to say—I have been talking to a lot of lawyers—we want to thank you lawyers for putting on a real good party up there.

Now, I would like to say that I second the nomination (laughter) of Mr. Bar Association of North Dakota, whom I consider Floyd Sperry.

PRESIDENT OEHLERT: We will accept your seconding nomination. Let the Resolutions Committee take heed of the very fine remarks of our past president, Roy Ilvedson, as to what should be accorded the local bar associations of Morton and Burleigh Counties. I think several of the members of that Resolutions Committee are in this auditorium.

The motion has been made, steam roller, in favor of Floyd Sperry as the Association Delegate of our Association to the American Bar Association to serve for the ensuing two-year period. (Question submitted) The motion is carried.

We have six minutes. I am going to call on Bill Murray for a brief report on his Procedural and Adjective Law Committee. Bill Murray in the room? (No response) He wanted to be heard. I asked him to stay. We will not keep this august body waiting. The waiver of the report has already been approved, so it will be included in the *Law Review* of these proceedings.

Is there a member of the State's Attorneys' Association present who would like to make an announcement about some things? I was asked to maybe give them a minute. We can do it now if there is anyone here. Are you Jerry Mack?

MR. JEROME MACK: That is correct.

PRESIDENT OEHLERT: Jerry Mack, of Grand Forks, is recognized by the Chair.

MR. JEROME MACK: Thank you, Mr. Oehlert. And members of the Bar: Mr. Paulson, from Jamestown, requested that I ask all of you lawyers to take back with you a copy of this petition which in substance

would change all the elected offices to a four-year term and that probably you could all get some signatures on these petitions and then return them either to him or to the sheriff in Stutsman County there at Jamestown by the end of next week. And we would all be indebted to you if you would do that because we need about 25,000 signatures and he stated if he could probably get about 3,000 from the lawyers here it would be much appreciated and helpful. Thank you.

MR. THOMAS NIELSON: Could I ask a short question? Is it your belief that this would pertain to county judges in view of the fact that it only refers to one section of the constitution, where a two-year term for county judges is mentioned in two sections of the North Dakota Constitution? Is that your understanding?

MR. JEROME MACK: Well, sir, I honestly don't know.

MR. THOMAS NIELSON: I see.

MR. JEROME MACK: He just asked me to do this and it is actually his work and I can't tell you exactly how extensive it is other than what the document itself states.

PRESIDENT OEHLERT: Mr. Mack, I think Bill Paulson, of Valley City, is president of the State's Attorneys' Association?

MR. JEROME MACK: No.

PRESIDENT OEHLERT: Well, what is his capacity? Would you state it?

MR. JEROME MACK: Yes. He is an officer of the State's Attorneys' Association. Carlton Nelson is the president this year. And it is that association that is attempting to get this constitutional amendment through.

PRESIDENT OEHLERT: We have another minute or two. Is there any other business, new business or old business, that has been overlooked by the Chair or otherwise that should be brought to the attention of this body?

MR. KENNETH KNUTSON: Mr. Chairman.

PRESIDENT OEHLERT: Your name, please.

MR. KENNETH KNUTSON: Knutson, from Minot. In anticipation of the hospitality of the Burleigh County Bar and Bismarck, the Ward County Bar, hoping to get the convention next year, had decided to leave one man home until this morning so that we would have somebody to present the invitation in a sparkling manner. I must report to the Chair that Mr. Shaft's Haig & Haig laryngitis has reached epidemic proportions among the Ward County group. The official invitation to hold your convention at Minot is filed with the Secretary on behalf of the Ward County Bar Association. I just wanted to say on behalf of the officers and the individual members, we hope to see you in Minot next year.

PRESIDENT OEHLERT: Thank you very much. The matter will be referred, of course, to the Executive Committee that determines matters of that nature.

The Chair will now declare our morning session adjourned, and we will reconvene as the program states after lunch.

The Chair also wants to thank the Balloting Committee. I think I overlooked that. We appreciate your work.

... The meeting then adjourned at 12:00 noon. ...

FRIDAY AFTERNOON SESSION

June 29, 1962

The meeting convened at 3:15 o'clock, President Oehlert presiding.

PRESIDENT OEHLERT: I find on checking that we have a little more business than we thought we had, which is usual in this sort of thing. We have our court reporter back now, so we will take care of a report before we start fielding questions on Products Liability. So with that I would like to introduce our chairman of our Procedural and Adjective Law Committee, namely our own good friend, Bill Murray. Bill, you have the rostrum.

PROCEDURAL AND ADJECTIVE LAW

MR. WILLIAM MURRAY: I am quite aware of the fact that I was called a couple of times, and curiously enough I really was over at the bank this last time; I wasn't where it might be expected a person would be. I will make this brief; I will get right down to brass tacks.

When the Bar Association re-organized its committees, which I think was about in '59, they combined a lot of things into this committee, and it now includes all such things as, for instance, mineral law and probate law and a lot of other things—and tax matters. Many of these things are fields in which I am not expert.

It also does include criminal law. However, for practical purposes this is the committee that deals not just with rules, but, as I understand it, with all the mechanics of the actual trial of lawsuits as distinguished from these more esoteric subjects that we hear discussed at bar meetings.

Now, I have prepared a written report. I don't think it is good; I think it is boresome to read off things of this type. And it is going to be printed, they said. But I would like to make a few comments on it.

I think the members of the Bar are aware that there suddenly appeared on the scene—it was mysterious to me—a set of rules for District Court practice sometime during the last year, and I understand that they originated up in the Fifth District and I think they were thrashed out by the Judicial Council. Now, these include many mechanical things, such as, for instance, I think you stand up when you object and when an attorney is examining witnesses to avoid this Perry Mason situation of hanging over witnesses. They did not originate with this Rules Committee, but we have been picking at this for quite some time to try to find out everything we can on them. It is very important to take a critical attitude on things of this type, because some day these are going to be put in effect and then it will be too late for you gentlemen to complain about them.

We have this Rules Committee and it is scattered all over the state, and my experience has shown me that when I call a meeting we get four or five people there—and some never come. So instead of this I sent a copy of these proposed rules, when they reached my hands, to each mem-

ber of the committee, and then I took samplings throughout the state and we got some quite vociferous reactions to them. I also show in my report that I personally conferred with the justices of the Supreme Court—we had a nice session one day up there in the Chambers—about these rules. I learned that many of the things that we have objected to on them, the Court was aware of these things and was making corrections in them. They also have assured me that there will be a formal hearing held on these rules before they are adopted by the Supreme Court, and every member of the Bar, as I understand it, is going to get a copy of them and will be given an opportunity to appear at this hearing and argue about these rules, whether you like them or not. So I commend this to your attention. Don't just throw it in your "in" basket when they come in, but look at them and if you don't like something about them, please complain about them. Or better still, appear at the hearing when it is held before the Supreme Court.

During this year we have concerned ourselves also with some other things. There have been a number of cases recently in Federal Court in the last few years where attorneys were appointed in cases. In one case the case lasted, I think, nine weeks, and then the Lenders Service last year lasted four and a half months. I was not one of those who was appointed; I was one of the paid ones. But these are the kind of things that should concern attorneys. This was almost disastrous financially. And I have been in touch with the Senate Judiciary Committee, Senator Kefauver, from Tennessee, on this and have learned again, perennially, he has introduced a Public Defender Bill for the Federal Courts to try to get some compensation. I think we realize that it is only natural that we concern ourselves with money and fees, things of that type, timekeeping records. But the public comes in contact with the courts often through criminal practice and we should also concern ourselves with the public-service aspect of our profession. Among those things is the defense of criminal cases for indigents in State Court; that is, to the Bar Association, we are back up to \$25 a day. And the way some judges interpret that it usually works out to \$50, at least. So that part seems to be all right.

I want the Association to know that I have been in touch with the State's Attorneys' Conference—whatever they call their organization—and we had a program at Minot. That is a very fine conference—perhaps even superior to this one. And we are trying to keep in touch with them at all times.

When an attorney has some grievance about some matter of procedure—it could be probate, it could be joint tenancy (these sort of things that I don't have much to do with)—they should bring it to the attention of our committee, or perhaps better still, to the attention of the Legislative Committee—I think it is called the Legislative Action Committee. We should constantly be watching our procedure, clean it up, straighten it up, and to make it more efficient. I am also at your service when you have these problems on procedure. We should watch them. These are the actual bread-and-butter items of law business, this is the actual practice of law, this Procedure Committee, and we should constantly be monitoring it and watching it.

I try to keep in touch with other associations, such as the Wisconsin Association. I am constantly watching what they are doing there. And we stick our nose in this Committee into all kinds of fields that aren't

our business. I have been trying to help these people that want to change our method of judicial selection. As we know today, this didn't seem to be very successful. But, anyway, we try to support these people. I am corrected by the President. It is turned over for further study. From my experience in things like the Legislature and practical politics, it often means a defeat. (Laughter)

I want to say, however, that we understand this. This will go on for several years. And due to the work of dedicated people, like Floyd Sperry, this thing will go over. But it might take time.

I want to thank you, Mr. President. I am sorry for taking up so much of your time. Thank you very much. (Applause)

PRESIDENT OEHLERT: Thank you, Bill. Bill and his committee have done another tremendous job.

I must report that I poured water on the end of your cigar. (Laughter) I didn't know you wanted it anymore. (Laughter) It smelled a little like it might be just about ready to become deceased. (Laughter)

I think at this time we might also now go into the fielding of questions on the Products Liability matter. And we are going to have to cut it short, fellows, because we have the Mechanic's Lien Law yet to cover and we have the Resolutions Committee and the Auditing Committee. So I will turn the mike over now to our good chairman, Harold Hager, again to field these questions. Harold.

. . . . Question and Answer Period on Products Liability

PRESIDENT OEHLERT: We have to take care of the Auditing and Resolutions Committees.

MR. JOHN HJELLUM: Mr. President, some of us have given some additional thought to this Judicial Selection matter that was discussed this morning, and I would like to make the following motion: I move that the State Bar Association request the Legislative Assembly, acting through the Legislative Research Committee, to conduct a study during the next biennium of the prevailing methods of judicial selection throughout the United States with a view of possible improvement in our own present system of judicial selection and tenure and that our committee on judicial selection and tenure assist the Legislative Research Committee in this research.

PRESIDENT OEHLERT: You have heard the motion that Mr. Hjellum has made. Is there a second?

MR. ROBERT ALPHSON: Second it.

PRESIDENT OEHLERT: Bob Alphson, of Grand Forks, second. Is there any further discussion? As the Chair recognizes this motion, this is merely further in elucidation of our motion that we passed as an Association before. Is there any further discussion? Mr. Engebretson, of Bismarck.

MR. E. FORSYTH ENGBRETSON: Mr. President, I was just wondering if there were any members—well, I see Clyde Duffy sitting back there—I just have this thought—I don't know whether it is valid or not—but I was just wondering on this kind of a matter whether the State Bar Association should ask the Legislative Research Committee to do work on

a program that is so essentially a matter for the lawyers to try to decide. It just kind of seems to me that if you do that you are going to involve a Legislative Research Committee that is made up largely of non-lawyers, and I very much doubt that you would get the type of a result that you would like.

PRESIDENT OEHLERT: Any further discussion? Thank you, Mr. Engebretson. Any further discussion? (No response) If not, I will put the question. (Question submitted) The motion is lost.

We will next call upon the Resolutions Committee for a report, and the Chair will recognize Lynn Grimson of the Resolutions Committee.

RESOLUTIONS

MR. LYNN GRIMSON: Mr. President and members of the Bar Association: As you all know, the Association is already on record in many areas, and we do not feel that it is necessary to take up the time today to repeat any of those fields. However, we do have one resolution that was presented by the Court Reporters' Association that I would like to read:

WHEREAS, it has been demonstrated and it is established that accurate and precise reporting of trials and other legal procedures is a prime requisite to effectuate justice to litigants and to aid in prompt disposition of legal causes, and,

WHEREAS, the present salary of the Official Court Reporters in North Dakota generally is not comparable to that of other jurisdictions, with the result that this State is losing extremely competent and qualified reporters to other states, to the possible detriment of exact administration of justice in North Dakota, and,

WHEREAS, such circumstances should be rectified by a modest increase of basic salary for court reporters with the view of retaining qualified reporter personnel in our State, and to insure that court reporters qualified by education and experience, with appropriate moral and ethical traits, be available for appointment to this essential and important aspect of court administration.

NOW THEREFORE, BE IT RESOLVED by the North Dakota State Bar Association of North Dakota in convention assembled, that it will approve and support a Bill in the next legislature for a salary increase for the North Dakota Court Reporters to effectuate the purposes and aims as set forth above.

The committee moves the adoption of this resolution.

PRESIDENT OEHLERT: Do I hear a second?

MR. WILLIAM LANIER: Second.

PRESIDENT OEHLERT: Is there any further discussion? (No response; question submitted) Motion is carried.

MR. LYNN GRIMSON: I believe, Mr. President, that there are two resolutions that were presented to the Resolutions Committee during the coffee break at a time when the Committee did not have any opportunity to discuss them, and it might be just as well to ask if there is a desire to have those resolutions presented from the floor.

MR. HERBERT MESCHKE: I have one I would like to give.

MR. DAVID KESSLER: Mr. Chairman.

PRESIDENT OEHLERT: I will recognize Herb first, and then I will come to you, Dave. Herb Meschke, of Minot.

MR. HERBERT MESCHKE: Mr. Chairman, I find that the epidemic of Shaft's Disease has other symptoms than those that were described this morning. I find they also disappear during the day, so I have gained the physical courage to present this resolution. I move the following resolution:

RESOLVED, that this Association does not endorse any political views of guests invited to its meetings, nor does it endorse any political views of any of its officers.

RESOLVED FURTHER, that no officer of this Association shall express partisan political views in the name of the Association, either through public news media or publications of this Association.

PRESIDENT OEHLERT: Is Jim Conmy in the room?

VICE PRESIDENT CONMY: Yes.

PRESIDENT OEHLERT: Would you take the Chair, please.

... Vice President Conmy then took the Chair. . .

VICE PRESIDENT CONMY: You have heard the proposed resolution. I will await further request for action on it from the floor.

MR. CLYDE DUFFY: Mr. Chairman.

VICE PRESIDENT CONMY: Mr. Duffy.

MR. CLYDE DUFFY: I move that the resolution be laid on the table.

MR. CHARLES FESTE: There was no second to it.

MR. MILTON HIGGINS: Mr. Conmy. I second the resolution as offered by Mr. Meschke.

VICE PRESIDENT CONMY: Well, we have a second to the resolution and a motion that it be laid on the table. Is there a second to that motion.

MR. CHARLES FESTE: I second that motion.

VICE PRESIDENT CONMY: Unless there is a desire for discussion—and I do not believe that it would serve any purpose, although I will hear those if you want to discuss it—I will put the question. The motion is to lay the resolution on the table. (Question submitted)

A VOICE: Division.

VICE PRESIDENT CONMY: He wants a count, I guess. He talks about a "division." I will ask, then, that those in favor of laying the resolution on the table please rise. (Those in favor stood up) All right, I will ask those opposed to laying the resolution on the table to rise. (Those opposed stood up) You may sit down. The motion to lay the resolution on the table has carried.

... President Oehlert then resumed the Chair ...

PRESIDENT OEHLERT: All right, fellows, that is why we have a great Association. This is a free country.

Now, are there any further resolutions from the floor? Oh, I promised to hear Dave.

MR. DAVID KESSLER: May I come up?

PRESIDENT OEHLERT: You surely may.

MR. DAVID KESSLER: I am happy to say that I think I have a resolution here that will not endanger such static electricity that this last one did (laughter) and will not result in the Chairman relinquishing his podium. (Laughter) I think it is a very innocuous resolution but one that I hope we will go along with. I regret that it was not presented to the Committee in time to consider it. The resolution reads this way:

WHEREAS, we recognize the urgency of instructing all Americans in the full scope and aims of Communism and the increasing threat it poses to the free world and to our democracy and freedom under law, to the end that an informed citizenry may successfully defend and preserve our American heritage; and

WHEREAS, our educational institutions afford the best means of developing sound programs of instruction in this area; and

WHEREAS, these institutions and our educators, in accepting this responsibility, must be given public understanding and support;

NOW, THEREFORE, BE IT RESOLVED by the North Dakota State Bar Association:

(1) That we encourage and support our schools in the presentation of adequate instruction contrasting the Communistic system with our American system of freedom under Democracy, thereby helping to instill a greater appreciation of democracy and freedom under law and the will to preserve that freedom;

(2) That to insure the highest quality of instruction in this area, the State Department of Public Instruction be urged to provide the appropriate training of instructors and the recommendations of suitable books and teaching materials to implement the teaching of this subject through the high schools in the State of North Dakota.

Mr. Chairman, I move the adoption of this resolution. And in doing so I might state, this is an outgrowth of a group in Grand Forks that took a course in the subject of contrasting Americanism with Communism and this resolution has been passed by a number of organizations throughout the state, designed to encourage the teaching and understanding of the threat of Communism and to encourage combating it in this country.

PRESIDENT OEHLERT: You have heard the motion, gentlemen. Do I hear a second?

MR. RAYMOND RUND: Second.

PRESIDENT OEHLERT: Raymond Rund, of Hope, North Dakota, seconded it. Is there any discussion of the resolution or motion? (No

response) I will put the question, then. (Question submitted) Motion is carried.

Is there anything further, then, on the resolutions, gentlemen?

MR. MILTON HIGGINS: Mr. Chairman, I have a resolution I would like to offer:

BE IT RESOLVED, that this Association deplores recent efforts to obtain the impeachment of Chief Justice Warren of the United States Supreme Court on unspecified charges and reaffirms its dedication to the principle that a free and unintimidated judiciary is essential to the government of our Country.

I move that resolution.

PRESIDENT OEHLERT: You have heard the resolution. Is there a second to the motion?

MR. FRANCIS BREIDENBACH: Second.

PRESIDENT OEHLERT: Francis Breidenbach seconded the motion. Is there any further discussion on the motion relating to the resolution? (No response; question submitted; carried)

Are there any further motions or resolutions from the floor? (No response) If not, I will turn it back to the chairman, who has some more resolutions.

MR. LYNN GRIMSON: I have one more resolution that should not raise any comment or any discussion, I don't believe.

WHEREAS, the Burleigh and Morton County Bar Associations have provided for this Sixty-second Annual Meeting of the Association superior accomodation and excellent entertainment, and have again surpassed all expectations, and

WHEREAS, many distinguished lawyers of other jurisdictions have taken time from busy lives to assist in our program and to visit with us, and

WHEREAS, our officers and committees have presented to us a well-planned and stimulating program,

NOW THEREFORE BE IT RESOLVED by the State Bar Association of North Dakota, in Annual Meeting assembled, that we express our sincere appreciation to the Burleigh County Bar Association, the City of Bismarck, and the Grand Pacific Hotel for the superior arrangements for this Annual Meeting; and to the Morton County Bar Association for the barbecue and entertainment of Wednesday evening.

BE IT FURTHER RESOLVED that we express our appreciation to Dean Robert J. Farley and to Dean Clarence Manion for their visit to North Dakota and their excellent addresses at the luncheon and banquet meetings.

FURTHER, that we express our thanks to Robert D. Hursh for the excellent discussion on Products Liability and to Richard Larsen and Vern W. Moss, Jr., and Everett Drake for the assembly on Estate Planning, both fields in which we can use further knowledge.

FURTHER, that we thank Cyrus Field, President of the Minnesota

State Bar Association, and Leo Heck, President of the South Dakota State Bar Association, for their visit to us and their neighborly assistance to our Association.

FURTHER, we express appreciation to the law book companies and all others who contributed to our enjoyment and learning at this meeting.

LAST, but definitely not the least, we thank President Lew Oehlert and Executive Director Al Schultz, the Executive Committee, and all other committees for their untiring efforts in behalf of the business of this Association during the past year and for furthering the position of the State Bar Association of North Dakota as the leader among the Associations of the United States.

I move the adoption of this resolution.

PRESIDENT OEHLERT: Well, maybe I better have Jim field that one, too.

MR. LYNN GRIMSON: I don't think it is necessary. (Laughter)

PRESIDENT OEHLERT: You have heard the resolution. Is there a second?

MR. GEORGE SOULE: I will second it.

PRESIDENT OEHLERT: George Soule seconded it. Any further discussion?

MR. WILLIAM LANIER: Mr. Chairman, we are not only now asked to sponsor this evening's speaker, but we are now asked in advance to approve what he says. No thank you.

PRESIDENT OEHLERT: Well, is there any further discussion? It is a free and open meeting. I can assure the gentlemen and ladies of this Association that there will be no political matters that will be discussed at any of our meetings except such political implications as may be found by the listeners.

MR. E. FORSYTH ENGBRETSON: Question.

(Question submitted)

PRESIDENT OEHLERT: The resolution is passed.

That is all on the resolutions. We will now call for John Zuger, chairman of the Auditing Committee. If you could, John, make it short. (Laughter)

AUDITING COMMITTEE

MR. JOHN ZUGER: Mr. President, members of the Association: The Auditing Committee has met and has gone over the audit report for the period June 16th, 1961, to June 15th, 1962. The books of the Association have been audited by certified public accountants of Williston. The Auditing Committee Report—incidentally, I am not going through it in detail—is being filed with the Executive Committee. We recommend that there be certain corrections made in the audit as filed prior to its adoption by the Executive Committee. I move the report be accepted and filed.

PRESIDENT OEHLERT: Thank you, John. We appreciate very much

the work of the Resolutions Committee, Lynn Grimson and the members, and also the Auditing Committee.

You have heard the motion on the Auditing Committee.

MR. EVERETT PALMER: I will second it.

PRESIDENT OEHLERT: Everett Palmer, of Williston, seconded it. Is there any further discussion on that? I might say that this audit, gentlemen, is, I think, accurate arithmetically, but there are certain little categories yet as to this trust account. We have one item of matters that come from the Supreme Court filing that got into the general income and it should be over in the trust account. That rectification will be made.

There was a second. Is there any further discussion on the auditing report of the Auditing Committee? (No response; question submitted) Motion carried.

Now I am trying to conserve as much time as we can for our Continuing Legal Education Committee on the Mechanic's Lien Law. I don't know whether we will have any formal session after this committee does its work, so maybe at this time if there is any old business or new business that any of you gentlemen feel you want to bring to the attention of the Chair at this time, I think maybe this would be the appropriate moment. Mr. Palmer.

MR. EVERETT PALMER: The only thing I would like the record to show that the committee on Memorials have filed their report with the Executive Secretary and that the recognition of the contents of the report will be given tonight at the banquet.

PRESIDENT OEHLERT: Very well said, Everett. I am glad you mentioned that. The report will be printed of the Memorials and Fifty-Year Award Committee, but the real formal presentation will be made tonight at the banquet. So that takes care of that.

Is there anything else? (No response)

— MEMORIAL —

Saul E. Halpern, long time Glen Ullin attorney and civic leader, died of a heart attack in Bismarck, North Dakota, on June 15, 1961.

He was born in Minneapolis, Minnesota, on November 11, 1900, the eighth of twelve children. He grew up in Hebron and was one of the two Hebron High School graduates of the class of 1917.

He received his law degree from the University of Minnesota in June, 1924, and was admitted to the Minnesota Bar.

Mr. Halpern was admitted to the North Dakota Bar in January of 1926 and in February of that same year he established a law practice in Glen Ullin, North Dakota.

His professional career included being Glen Ullin City Attorney from 1926 through 1949 and for 34 years he was conciliation commissioner acting as a referee in bankruptcy for Morton County under the Frazier Lemke Act.

He had been active also in mediating labor disputes and on occasion had represented the governor of North Dakota.

Mr. Halpern served as Morton County Judge from 1949 to 1951, and was also active in politics. He was nominated for Attorney General in 1954 on the Democratic ticket but his health did not permit him to make an active race. Mr. Halpern had practiced most of his career alone until he formed a partnership with Mr. T. J. Boutrous as a partner in 1956 and Mr. Boutrous is still practicing in Glen Ullin.

From 1947 to 1951 he served as President of the North Dakota School District Reorganization Committee.

Mr. Halpern was also past president of the Glen Ullin Lions Club and a past master of the Hebron Masonic Lodge and had been very active in Masonic circles.

Mr. Halpern was very active in civic affairs and received many awards, including the Silver Beaver Award which is the Boy Scouts of America's highest award given to an adult volunteer scouter. He served for many years on the Glen Ullin School Board and served for many years as clerk.

Mr. Halpern was married to Jeanette Goodman in Minneapolis who died on April 12, 1954. He later married a widow, Mrs. Orpha H. Laden of White Fish Bay, Wisconsin, on his birthday, November 11, 1954.

Mr. Halpern leaves his wife, two daughters, one son, one grandson, six sisters and three brothers.

Memorial services were held on June 23 and representatives of many faiths and religions were gathered to pay their final tribute and respects and he was eulogized for his long and faithful services to his city, state, and fellow man.



REPORT OF THE TITLE STANDARDS COMMITTEE OF
THE STATE BAR ASSOCIATION OF NORTH DAKOTA

The Title Standards Committee met on October 20, 1961, at Fargo, North Dakota, and on May 18, 1962, at Bismarck, North Dakota.

Following the revision, re-printing and distribution of all title standards in 1961, the Committee completed and adopted a new index for the title standards book. Printing and distribution will take place this summer. Revision of the "General Standard" was adopted by the Committee and a re-printed copy thereof will be distributed to all subscribers with the new index.

Current projects and subjects under study by the Committee:

1. Standard conveyancing forms.
2. Title standards in connection with conveyances involving partnerships, corporations and unincorporated associations.
3. Limitation on foreclosure of real estate mortgages, as enacted by Section 28-01-43, North Dakota Century Code.
4. Constructive notice of bankruptcy proceedings.
5. Limitation on cancellation or enforcement of contract for deed.
6. Implementation of title standard 1.06 in view of the 1961 amendment to Section 47-19-07, North Dakota Century Code.
7. Checklist of matters outside the scope of an abstract of title to which an examiner may wish to refer in his certificate or opinion.

These and many other subjects of special interest were discussed at Committee meetings which frequently serve as informative sessions for exchange of views on problems which have confronted Committee members. Such problems occasionally give rise to a major study and the ultimate adoption of title standards.

The Title Standards Committee plans to broaden the scope of its activities in several ways: it has been concluded that the Committee should meet at least four times annually with meetings to be scheduled in March, May, September and November at the call of the Chairman. Membership of the Committee should be increased by four to six members of SBAND who have particular interests in titles. A program of work should be adopted so that studies can be carried out and completed on a time-table basis.

Respectfully submitted,

Paul K. Pancratz, Chairman
Robert A. Birdzell
Daniel J. Chapman
John Doerr
Jonathan C. Eaton, Jr.
Ernest R. Fleck
Edward M. Peterson
John A. Richardson
Henry G. Ruemmele
Lyle W. Selbo

1962 REPORT OF THE INFORMATION AND
SERVICE COMMITTEE

The information and Service Committee of the State Bar Association of North Dakota wishes to report the following activities for the year 1962:

SUBCOMMITTEE ON MILITARY LAW: This subcommittee was relatively inactive during the year. It has been suggested by the Executive Committee that a short article be prepared by the committee covering the Soldiers and Sailors Civil Relief Act for publication in the Bar Association Newsletter. No steps have been taken at this time. During the course of the year the Executive Committee passed a resolution that all lawyers be urged to make their services available, without charge, to all needy servicemen being activated into the Armed Forces of the United States. It is suggested by the chairman that some specific activities and goals be put forth to this committee by the Executive Committee.

NEWSLETTER: The SBAND Newsletter has been primarily published under the leadership of the Executive Secretary of the Bar Association. During the year, the Newsletter had, on occasion, increased from the regular eight page publication to twelve pages. More space is always needed and most articles are required to be cut considerably in order to find necessary room. The Newsletter committee intends to publish articles in the future emphasizing legal economics, continued legal education and public relations. Legislative activities will also be given considerable attention during the Session. The Newsletter enjoys a mailing list of 900, composed of lawyers, The American Bar Association, other bar associations, and other interested organizations.

SUBCOMMITTEE ON PUBLICATION OF LEGAL PAMPHLETS: This subcommittee appears to become more active each year. During the past year this subcommittee specifically prepared and revised the Jurors Handbook and printed and distributed the same to the various Clerks of Court for distribution to jurors at the beginning of each jury term. In addition, the committee reviewed the pamphlet on Traffic Safety which was printed and distributed through the Bar Association. Also this subcommittee has reviewed and revised countless numbers of news releases which have been distributed for publication in local newspapers containing brief comments on pertinent legal problems. The subcommittee specifically has requested an expression from the Executive Committee as to the desirability of either a limited or widespread program of pamphlet publication by the State Bar Association taking into consideration the considerable expense that can be run up by printing costs.

SUBCOMMITTEE ON WORLD PEACE THROUGH LAW: As in the past, this committee has been chairmaned by Mr. Harold W. Bangert. During this year Mr. Bangert has had considerable correspondence with the chairman of the American Bar Association's Special Committee of World Peace through Law, particularly looking to the development of formal proposals to be made to platform committees of political parties concerning World Peace through Law. In addition,

this committee has arranged for a set of the North Dakota Code to be deposited in the American Law Library in London.

SUBCOMMITTEE ON ABA MEMBERSHIP: Previously this committee had obtained memberships in the American Bar Association at the time of the bar examinations where the committee held a banquet in conjunction with the American Bar Association and at that time signed up the members. However, this past year the members were signed up at the law school during their senior year on the condition that they pass the bar examination. This method met with considerable success as 33 of the 36 members of the senior class joined the American Bar Association. This method also saved considerable expense of planning and preparing the banquet in Bismarck. The committee suggests that the same methods be used in following years.

LAW DAY: At the time of this report a complete report from the subcommittee chairman is not available. However, again displays, posters, stickers, and other advertising materials were distributed throughout the state with each local Bar Association having their own chairman. Again a proclamation was signed by the governor, and all news media were notified and spot announcements of Law Day were made on May 1. The Burleigh County Bar Association took part in a Law Day—Loyalty Day parade and Supreme Court Justice Morris presented a Law Day address. There were numerous talks given in the Walsh County area. Most of the activities seemed to be concentrated in the Burleigh County area and it might be advisable in future years to find out exactly what their program was and have other counties follow this program. On the whole, this program seems to have made some progress but there is undoubtedly a great deal of work ahead in order to perfect the program.

SUBCOMMITTEE ON COURTROOM RADIO AND TV: There was no activity whatsoever in this committee during the previous year. The policy seems to be to await steps to be taken by the Radio and TV organizations and apparently they have not been too interested in pursuing the matter lately.

SUBCOMMITTEE ON AMERICAN CITIZENSHIP: This was the fourteenth continuous year of conducting the Constitutional Award program. The procedure used by this subcommittee is completely set-up and seems to work well. A spring announcement is sent to each North Dakota high school from the Executive Director's office which gives the high school to designate a student to receive the Constitutional Award. The method by which the student is chosen is always left to the school officials; some schools use competitive examinations while others are chosen by composite choice of the faculty members. Selections are made by the committees of attorneys in the local areas to make the presentations, usually at commencement exercises. Information is given to each of these members of the bar as to the nature of the program. A bronze key and letter of commendation signed on behalf of the State Bar Association is presented to the student in each school receiving the award. Each school is given an opportunity of selecting whomever they choose to make the award, however, they are urged to use the local attorneys. The heavy response from the schools in this program has required us to use some attorneys on numerous

occasions in one year. 195 North Dakota high schools participated in the program this last year, as compared with 192 in 1961, and 189 in 1960. 137 attorneys were requested to make the presentations. The response of the attorneys was gratifying. The committee wishes to extend its thanks and appreciation to the many attorneys who, throughout the State of North Dakota, cooperated with the committee in the presentation of the Constitutional Awards to the students this year. In addition, the committee wishes to express its appreciation to the Executive Director for his active participation in preparing and handling the initial announcements and other assistance given by him.

Respectfully submitted,

JOHN G. SHAFT, chairman

Subcommittee of Publication of Legal Pamphlets

Charles Feste, Chairman
Donald R. Hansen
Frank T. Knox
James Lesky

Subcommittee on World Peace through Law

Harold G. Bangert, Chairman
Judge Thomas J. Burke
Myron H. Atkinson, Jr.
John Hjellum

Subcommittee on ABA Membership and Junior Bar

Robert McConn, Chairman
Russell R. Mather
John G. Shaft
Lavern C. Neff
Richard L. King

Subcommittee on Law Day

Dale Jensen, Chairman
Clinton R. Ottmar
John Hjellum

Subcommittee on Courtroom, Radio and Television

Roy Ployhar, Chairman
Robert Palda
W. F. Reichert
J. Gerald Nilles

Subcommittee on American Citizenship

Mark F. Purdy, Chairman
Herbert L. Meschke
LeRoy A. Loder
Richard H. McGee

Subcommittee on Military Law and
Civil Defense

Lynn G. Grimson, Chairman
Robert Burke
Idean M. Locken
Leibert L. Greenberg
Thomas W. Nielson

Subcommittee on Newsletter

Alfred C. Schultz, Chairman
C. Emerson Murry
William A. Strutz
Patrick A. Conmy

TRAFFIC SAFETY COMMITTEE

The Traffic Safety Committee held one general meeting. This was held at Minot, North Dakota, on the 2nd day of December, 1961. At this time preliminary plans and time of Traffic Court Conference was discussed and set. The Committee decided to limit the conference to the Traffic Court, County Justice Court and prosecutors. A sub-committee was appointed to study needed traffic legislation and especially driver's licenses. A. T. Hackenberg who has made a study of driver's licenses, particularly pertaining to the age of drivers, was appointed to make a report to the legislative sub-committee.

The Traffic Court Conference was held at Bismarck, North Dakota, on the 3rd, 4th and 5th days of May 1962, at the Municipal Country Club. Even though the program was limited to Courts and prosecutors a very interested group of 75 persons attended the conference. George T. Dynes and Rueben J. Bloedau served as Co-Chairman of the event. They had the meeting very well organized. A very interesting program was presented jointly by the Traffic-Safety Directors of the American Bar Association, the Northwestern Traffic Institute and local talent. A very interesting presentation was given by a panel of religious leaders, moderated by Harold J. Holmes, Director, Religious Activities of the National Safety Council, on the Moral responsibility toward Traffic laws. We are greatly indebted to Milton Moskau of the American Bar Association's Director Traffic Division and Judge Fisher of the Northwestern Traffic Institute for their valuable aid in presenting a valuable program. The Committee also is grateful for the fine assistance of Al Schultz, Executive Director of our State Bar Association for all his fine assistance in arranging and planning a successful program.

Members of the Committee feel that the name of the Police Magistrate Courts in the State should be changed, possibly, to Municipal Courts as the present name is misleading. The constitution prohibits the abolishing of the Court but apparently there is no prohibition against changing its name. An effort will be made through legislation in the next session of the legislature to bring this about. We hope it will receive the support of the Bar in general.

Traffic affects the lives of each one of us. When we face the statistical analysis that 80% of the accidents are unnecessary, the importance of an effective Traffic-Safety program cannot be underestimated.

Respectfully submitted,

Odin J. Strandness, Chairman
George T. Dynes
Rueben J. Bloedau
A. T. Hackenberg
Joseph C. McIntee
Wallace L. Herreid
David Garcia
Fred Arneson
William Lanier
Carlton G. Nelson
Shelley J. Lashkowitz
Lyle E. Huseby
Eugene K. Anthony

LEGAL ECONOMICS COMMITTEE

Your committee met in Fargo, North Dakota, on two occasions, October 13, 1961, and March 10, 1962. At the first meeting there were discussed the fee schedule, professional corporations, desk manual and the economic survey. At the second meeting the committee discussed office management, speakers bureau on legal economics, desk manual, economic survey and a draft of a bill providing for professional corporations.

Subcommittee members are as follows: John S. Whittlesey, professional corporations; Kirk Smith and Robert Vaaler, desk manual; Kenneth G. Pringle, economic survey; present and assisting in the work of the committee were Richard L. Healy and James H. Williams. President L. H. Oehlert and Executive Director Alfred C. Schultz were present and provided valuable suggestions at both meetings.

Fee Schedule: No letters have been received suggesting any specific changes in the schedule. The undersigned has heard several comments to the effect that the minimum fee suggested for real estate mortgage foreclosure is too low. The committee came to the conclusion that the figure was merely a suggested minimum and probably was satisfactory for a routine matter and that it was appropriate and contemplated by the schedule to request a larger fee where the same was justified by the time and work involved. It is recommended that the committee continue to follow up on the use and application of the schedule and to keep it current by making such changes, additions and deletions as are indicated by its use and application. It is also recommended that the committee coordinate with the office of the executive director and provide speakers to assist Schultz in attending meetings of attorneys and speaking on the theory of the schedule as well as upon such related topics as office management, time records and the significance of the recent economic survey.

Economic Survey: This survey made in 1961 was distributed at the 1961 annual meeting of the bar and was published in the April, 1962, issue of the North Dakota Law Review. The survey verified a significant result obtained in three other states, namely, that the net of the timekeeper approximates the gross of the non-timekeeper. It is recommended that every attorney review this analysis, that every effort be made by future members of this committee to bring the result of this survey before meetings of attorneys and that its contents be used by speakers who

appear and discuss the general field of legal economics. It is also recommended that the committee consider the making of another survey several years hence in order to determine whether or not association work on matters of office management, fee schedule and timekeeping has resulted in any increased efficiency of practice.

Desk Manual: This work is now in the final stages of preparation. Target date for publication is the first quarter of 1963. The manual will be designed to be of use to all attorneys regardless of experience, but will be of particular benefit to the young practitioner. It is hoped that it will be possible for all new members of the bar who intend to practice in North Dakota to receive a copy upon admission. It is recommended that Smith and Vaaler, now on this subcommittee, continue as members of the Legal Economics Committee until the desk manual is completed, published and distributed and that future revision of the manual be a continuing and special project of this committee.

Professional Corporations: At the second meeting of the committee Whittlesey presented a fourteen page report and a draft of a proposed bill that he had prepared during prior months; steps were outlined for providing working copies to the other professional groups in the state and for obtaining their suggestions and approval. Since the initial presentation by Whittlesey, this committee and Whittlesey have been working closely with your executive director and R. W. Wheeler, Chairman of Legislative Committee, in order to make sure that the report and proposed draft are studied and acted upon by the other professional groups in North Dakota and in order to establish a broad base from which to introduce this proposed legislation in 1963. Many states have passed legislation which permits various professional groups to practice their calling within a corporate entity without disturbing the traditional and legal relationships between the professional and the person whom he serves; many other states are considering the passage of such legislation. One of the objectives of this effort is to make available to the self-employed professional, if he desires to take advantage of the law, certain economic benefits, such as pension arrangements, which are not now open to him. It is expected that a further and more complete report will be made at the 1962 annual meeting. It is recommended that the association approve this bill and authorize the Legislative and Legal Economics Committees to urge its passage at the next meeting of the legislature.

In closing, the committee would like to restate and emphasize the closing paragraph of its 1961 report:

It is not presumed that the approach of the Legal Economics Committee can solve all of the problems of our profession. However, to the extent that this approach has been neglected, a committee of this type can provide a valuable service, especially if it directs itself to the particular problems of the bar in North Dakota. The committee hopes that its work thus far has been of assistance and that it will continue to receive the support and cooperation that has enabled it to serve its function in the past.

Respectfully submitted,

A. J. Greffenius, Chairman

REPORT OF THE LEGISLATIVE COMMITTEE

The Legislative Committee of your association has considered legislative proposals and problems submitted by members of the Bar, other committees of the association, county and state officials, and individual members of the committee. Some of the legislative proposals, while deemed meritorious, were considered by their nature inappropriate for introduction by SBAND as part of its legislative program.

Your committee recommends that the proposal of the legal economics committee for legislation authorizing professional corporations be given top priority by SBAND for enactment in the 1963 legislative session. Our association should provide the leadership necessary to obtain the coordinated support of other associations of professional people for a bill generally satisfactory to all professions. The legislative committee, in cooperation with the legal economics committee, is presently engaged in this effort.

While the position of the Internal Revenue Service with respect to profit sharing plans of professional corporations is not yet crystalized, it is believed that action by a number of state legislatures will best insure an ultimate government position eliminating the prejudice against the position of the professional taxpayer.

This legislation has received a very respectable amount of study by the legal economics committee; it may require substantially more to best meet the "Kintner Regulations" and minimize the possibility of a further legislative problem when the federal tax law involved is fully developed.

Your committee further recommends the introduction and support of legislation:

1. Eliminating the inconsistency in statutory time to answer garnishee summons existing between Sections 32-09-07 and 32-09-14.
2. To subject the property of a deceased joint tenant to the debts of the decedent.
3. Authorizing the use of microfilming equipment by registers of deeds, providing for the availability of the necessary viewers to per use microfilm.
4. Permitting a landowner to withdraw the estimated compensation deposit filed with the Clerk of Court in condemnation proceedings without being bound by the evaluation upon which the deposit is based. This will remove the present inequity under which use of the money and use of the land are both denied during proceedings.
5. Providing for the payment of moving costs incurred by an owner of condemned real estate in relocating personal property as a result of condemnation of his land.
6. To spell out the treatment of costs either imposed or not recovered in Justice Court where a change of venue has occurred.

The committee decided it should take no action with respect to the proposed Uniform Commercial Code which failed passage in the last legislative session. If the committee on uniform laws secures SBAND support for reintroduction of the measure, the legislative committee will work diligently to secure its enactment.

Your committee recommends that the budget for 1963 include such an amount as the executive committee might find both possible and reasonable for expenses of the legislative committee that will necessarily be incurred during the legislative session.

Respectfully submitted,

R. W. Wheeler, Chairman
Adam Gefreh
Floyd B. Sperry
Howard A. Freed
Norbert J. Muggli
Ralph G. Beede
Ralph J. Erickstad
Aloys Wartner, Jr.
John Hjellum
John O. Garass
Walter O. Burke
Jack G. Stockman
P. W. Lanier, Jr.
Robert L. Eckert
George Longmire
Harold R. Jensen
Roy A. Holand
Donald C. Holand
Elton W. Ringsak
Lee F. Brooks
Bruce Van Sickle
William J. Daner
Robert L. Vogel
Thomas W. Nielsen

ANNUAL REPORT OF CONTINUING LEGAL EDUCATION COMMITTEE

The Continuing Legal Education Committee has two functions to perform, namely to arrange for and plan Institutes for the Bar Association during the year in which the Committee serves and also to arrange for and plan the educational sectional meetings to be presented at the Annual Meeting.

The first meeting of the Committee was held on September 16, 1961, and after considerable discussion it was decided to hold one two-day Institute rather than to have two one-day Institutes as had been previously the practice.

It was also decided to have an Institute on "Family Law" and this was held at Grand Forks, North Dakota on February 23 and 24, 1962. In addition to the lawyers, the clergy, people interested in public welfare activities and students attending the University interested in this topic were invited to attend. The meeting was well attended and well received and I feel that a similar Institute should be held in two or three years.

In order to be able to plan a program that would be of interest to the attorneys throughout the state at the Annual Meeting, a questionnaire was sent out by this Committee to each attorney and he was given an opportunity to indicate his choice of subjects to be presented at the Annual Meeting.

It was found that a great deal of interest was shown in "Products Liability" and in the topic "Estate Planning, Will Drafting, Joint Tenancy and Tax Consequences Thereof". Consequently, it was decided to arrange for the presentation of these topics at the Annual Meeting, and it was decided that a panel discussion should present the topic on "Estate Planning, Will Drafting, Joint Tenancy and Tax Consequences Thereof".

We had one subcommittee meeting thereafter and it was determined that the President be authorized to arrange to have the panel discussion carried by three Minneapolis attorneys and by one local attorney.

In addition to this, it was decided that a member should discuss the "New Mechanic's Lien Law" and this topic will be discussed at the Annual Meeting.

It was felt by the Committee that when the annual convention is limited to two days that there is not sufficient time to provide for sectional meetings, and it was decided that the educational presentation should be made directly to the entire membership attending and given only one time.

If it is decided to continue the Annual Meeting on a two day basis, it would be my personal recommendation that this practice be continued.

Respectfully submitted,

Harold Hager, Chairman
Herman Weiss
Robert L. Burke
James H. O'Keefe
Cyrus N. Lyche
Leland G. Ulmer
John C. Gunness
George Soule
John M. Nilles
Ross C. Tisdale
Paul Matthews
A. F. Arnason
William J. Daner

REPORT OF THE COMMITTEE ON JUDICIAL SELECTIONS

During the past year, the Committee on Judicial Selections was not called upon to conduct any plebiscites for nominations for appointment of District Judge or Supreme Court Judge. Had the Committee been called upon to conduct any plebiscites among members of the Bar, the members of the Committee were prepared to put the necessary procedure in operation immediately.

John T. Traynor, Chairman
Harold D. Shaft
John C. Haugland
Olaf M. Thoreson
Paul L. Angeberg
Alton R. Kringlie
T. P. McElroy, Jr.
Leo Broden
Eugene Coyne
James H. Williams