

1969

Proceedings of the Nebraska State Bar Association House of Delegates Meeting, 1969

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Nebraska State Bar Association, president

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PRESIDENT CHARLES F. ADAMS

NEBRASKA STATE BAR ASSOCIATION
HOUSE OF DELEGATES

WEDNESDAY MORNING SESSION

October 29, 1969

The opening session of the House of Delegates of the Nebraska State Bar Association, convening in the Fontenelle Hotel, Omaha, Nebraska, was called to order at nine-forty o'clock by Leo Eisenstatt of Omaha.

LEO EISENSTATT: Gentlemen, with your permission, I will perform the ceremonial function of calling to order the House of Delegates of the Seventy-Fifth annual State Bar meeting. My function today is a very pleasant one, a two-fold pleasant one: First of all, I am making official the fact that my term of office as Chairman of this august body is terminated and I retire into the wings with some mixed emotions, mostly pleasant.

I have the distinct honor of introducing to you your new Chairman, Bert Overcash, whom I know from many, many years of close association in the law practice and in the work of the Bar. I know that Bert will do a great job as Chairman and I wish him well. I hope that in these interesting times, presented with the problems of the profession, that you and he will carry forward our Association to greater and greater pinnacles of success. So it gives me great pleasure at this time to turn the gavel over to Mr. Bert Overcash of Lincoln, Nebraska.

CHAIRMAN BERT OVERCASH: Thank you, Leo. I know all of us are here because we have a responsibility to the Bar. I know that Leo has been a dedicated officer of this Association and this House and has spent a lot of time in the work and the responsibility. I hope that we can carry on in the same manner that he and the House have been performing in the past.

I particularly welcome today the new members of the House.

Mr. Secretary, will you call the roll?

... Roll call ...

SECRETARY GEORGE H. TURNER: Mr. Chairman, we have a quorum.

CHAIRMAN OVERCASH: Members of the House, having a quorum, I declare the meeting validly organized.

Mr. Secretary, will you make the motion for the order of the day?

SECRETARY TURNER: Mr. Chairman and members of the House, I move that the printed calendar be adopted as the order of business for the day, with this exception: That the report of the Advisory Committee be made a special order at one-thirty and the report of the Committee on Reorganization be made a special order at two o'clock.

CHAIRMAN OVERCASH: Is there a second to the motion?

CHARLES F. ADAMS: I second the motion.

CHAIRMAN OVERCASH: Those in favor of the motion will say "aye;" those opposed the same. I declare the motion carried. That will be the calendar for the business of the day, and we will therefore proceed in accordance with the calendar.

The first item of business on the agenda will be the statement of the President of our Association. It is my privilege to introduce to you and bring before you Charlie Adams, President of our Association.

STATEMENT OF PRESIDENT

Charles F. Adams

Thank you, Mr. Bert Overcash, and Leo Eisenstatt for the years of service he has given this Association.

Just a few comments, particularly beamed to those of you who are new members of the House of Delegates. You are the policy-making group. In the old days when we didn't have this House of Delegates it was possible to do a little legislating in the closing hours of the annual convention, and somebody could bring in a resolution to make the grasshopper the state insect, or a resolution making sin perfectly legal, and he could get enough votes to pass it. Then the newspaper comes out the next day—"The Bar Association does this and that." We don't do that any more.

Hopefully you've done your homework in several areas: First, the pink pamphlet with all our committee reports; the second important thing which will come up for your attention this afternoon

is discussion of the report of the Committee on Reorganization; the third most important matter is the new Code of Professional Responsibility which you are going to be asked to approve.

Just a couple of comments on those two areas. As to the reorganization, I hope that you will approach this from the standpoint as to whether we need drastic and sweeping changes in our structure just for the sake of change, or whether there are specific weaknesses that ought to be corrected. I think it should always be borne in mind that whatever we do in this respect must have the approval of the Supreme Court before it becomes effective.

I personally believe that the financial control should remain in the hands of the Executive Council. Unexpected financial demands and requests are continually being received by the Association and could have quite adverse effects on the Association unless they were granted or acted upon promptly and with careful consideration.

I will give you an example. Just last week I got a letter from Bernard Segal, President of the American Bar Association, asking if the Nebraska Bar Association would underwrite the expense of distributing copies of the new Code of Professional Responsibility to every lawyer in Nebraska. I am going to recommend to the Council this noon that we do that. It will cost around \$300. Obviously it has not been a budget expense. That is just an example of the things that your Executive Council is confronted with, and I do feel that the matter of rigid budgetary controls could have an adverse effect, if they were too rigid.

As to Code of Professional Responsibility, you have all received copies of that. I hope you have reviewed it—I won't say "studied it" because it is too complicated and involved a document.

The current issue of the AMERICAN BAR JOURNAL, on the President's Page, contains a very fine discussion of this new Code, and among other things Mr. Segal said, "I need not emphasize the vast changes that the law, the legal profession, and the constituency they serve, the whole of our society, have undergone in the century and decade since the Canons were first drafted. The simple generalizations of the old Canons no longer constitute acceptable standards of conduct for lawyers in the complex relationships of the profession today.

"This was the reason that the distinguished committee, headed by President-Elect, Edward L. Wright, which former President Lewis Powell appointed in 1964, wisely concluded that merely amending the Canons would not suffice. A new approach and an entirely new form were needed.

"The result, after five years of intensive research, debate, and drafting by the committee, with a conscientious exploring via the views of thousands of judges, lawyers is the Code of Professional Responsibility effective January 1, 1970."

Lastly, I would like to call your attention to the speaker for our dinner tomorrow night. Bob Murphey from Nacogdoches, Texas, has spoken to nine or ten Bar Associations this year. He has spoken to the Judicial Section of the ABA, and I think you will find him a very delightful and a very entertaining fellow. I hope you all come! Thank you so much.

CHAIRMAN OVERCASH: Thank you very much, Mr. President.

The next item on our agenda is the report of the Secretary-Treasurer.

REPORT OF SECRETARY-TREASURER

George H. Turner

Mr. Chairman and Members of the House: I have submitted to each of you a copy of the annual audit. I think I also sent you a copy of the letter of transmittal from Peat, Marwick, Mitchell & Company who state they have examined the receipts and disbursements for the year ended August 31, 1969, in accordance with generally accepted auditing standards. They find that the cash transactions are properly accounted for. They show a total cash receipts during the year, ending August 31, 1969, of \$70,700.

The principal items of expenditure have been salaries, publications, and the annual meeting.

We ended the year with a cash balance of \$10,620, and the audit shows an excess of receipts over disbursements of \$5,564, which is somewhat unusual.

CHAIRMAN OVERCASH: Thank you very much, George.

Do I hear a motion to approve the report of the Secretary-Treasurer?

LEO CLINCH, Twentieth District: I so move.

CHAIRMAN OVERCASH: It has been moved. Is there a second?

THOMAS W. TYE, Twelfth District: I second it.

CHAIRMAN OVERCASH: The question is, Shall the report of the Secretary-Treasurer be approved? Those in favor say "aye;" those opposed "no." I declare the report approved.

The next item on the agenda is the introduction of resolutions. Are there any resolutions by others than members of the House to be presented? If there are, there will be a committee appointed. Mr. Secretary, do you have any resolutions?

SECRETARY TURNER: I do not.

CHAIRMAN OVERCASH: There being no resolutions, we will then proceed to the next items of business. It was the practice last year, and maybe earlier, that those reports of committees that do not require any action by the House would be approved in a blanket motion and resolution. In that manner, the time of the members is not taken up with reports that do not require any action. I assume that each member has read all the reports, at least has looked at them. I am not going to abstract the reports. They are set forth in full.

As your new Chairman I did, however, read the reports carefully and I wrote each Chairman and placed the report in either one of two categories, either one requiring action by the House or one not requiring action. Those not requiring action I informed the Chairmen that no report was necessary but if they desired to make a report, the House would be pleased to hear them.

You have on your desk, I believe, a blanket motion covering those reports for which no action is required. If you would care to take your calendar in the printed program, you can check off the following number of the items as being included in the blanket report. That will enable you to see how we proceed through the agenda. Those in the blanket report are Agenda numbers 5, 7, 9, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 33 and 34.

Before proceeding to action on the blanket motion, let me ask if there is any member of any of those committees, the chairman or any member, who, notwithstanding the blanket motion, would like to make a report orally to the House. There being none, we are then in a position to take up the blanket motion, a copy of which is on your desk. Do I hear a motion that this blanket motion be accepted and that these reports be approved, and that the special committees be continued as provided in the report?

WILLIAM J. BAIRD: I so move.

CHAIRMAN OVERCASH: It has been so moved. Is there a second?

LEO CLINCH, Twentieth District: I second the motion.

CHAIRMAN OVERCASH: There has been a second. The question is, Shall the blanket motion be approved by the House? Those in favor will say "aye;" those opposed "no." I declare the blanket motion passed and the reports accepted and approved and the special Committees continued as provided in the resolution which is on your desk.

BLANKET MOTION RE COMMITTEE REPORTS

RESOLVED that the following committee reports be received, approved, adopted and incorporated in the proceedings of this meeting as filed and as shown in the printed program:

STANDING COMMITTEES

Committee on American Citizenship
Committee on Unauthorized Practice of Law
Committee on Legal Aid
Committee on Procedure
Committee on Crime and Delinquency Prevention
Committee on Public Service

SPECIAL COMMITTEES

Daniel J. Gross Nebraska State Bar Association Welfare and Assistance Fund
Special Committee on Family Law
Special Committee on Publication of Laws
Special Committee on Medico-Legal Jurisprudence
Special Committee on Keaton-O'Connell Legislation
Special Committee on Lawyer Referral
Special Committee on Cooperation With Law Schools and on Admission to Practice
Special Committee on Legal Economics and Law Office Management
Special Committee on Water Resources
Special Committee on Administrative Agencies
Special Committee on Rules of the Road
Special Committee on Cooperation with the American Law Institute
Special Committee on World Peace Through Law
Special Committee on Oil and Gas Law
Rocky Mountain Mineral Law Foundation

That all of the special committees listed above be continued; that

all committees continue to carry out during the ensuing year the charges and responsibilities heretofore given them and report to the House of Delegates at the midyear and annual meeting of 1970.

Committee reports approved by blanket motion follow:

REPORT OF THE COMMITTEE ON AMERICAN CITIZENSHIP

No meeting was had by the Committee at the mid-year meeting held in Lincoln this summer for the reason that no members were present so as to function.

The Committee continues to recommend that the Bar Association give us direction as to functions and responsibilities so that a purpose can be directed. We continue to urge that the members of the Bar Association exercise their individual and collective efforts to promote respect for the law both within the Courts and within all areas of government on the local, state and national levels.

Jack L. Craven, Chairman
Everett A. Anderson
Rollin R. Bailey
Glenn A. Burbridge
Wendell P. Cheney
Sarah Jane Cunningham
Donald E. Endacott
Fred R. Irons
Richard L. Kuhlman
Francis D. Lee
Lewis R. Leigh
Peter E. Marchetti
Howard W. Spencer
Clyde R. Worrall
Nile Johnson

REPORT OF THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

SIMULATED PROCESS

The Committee continues to work actively with the Nebraska Collection Agency Board. The Collection Agency Board and the Nebraska Collectors Association have both ruled against the use of forms which simulate government agency notices, as well as

forms simulating court process. The State Board has taken action against non-resident collection firms which have used simulated process forms in Nebraska collections, where those firms have been licensed to do business in Nebraska or have actively solicited business in Nebraska. At the request of the Board, the Unauthorized Practice of Law Committee has made complaint against firms located in other states which are not licensed to do business in Nebraska and do not solicit business in Nebraska, but which make efforts to collect from Nebraska residents by use of forms simulating court process. The cooperation between the Nebraska Collectors Association and the Collection Agency Board and the Unauthorized Practice of Law Committee is an example of the benefit of cooperative efforts which can arise between lawyers and lay agencies when relationships are carefully nurtured. This cooperation has been of mutual benefit to lawyers and collection agencies, but, more importantly, has been of great benefit to the public. Prime beneficiaries are hard-pressed persons who might otherwise be frightened by unhampered use of simulated process forms by collection firms.

WILL FORMS

Several lawyers directed the attention of the Committee to ads in Nebraska papers offering will-form kits for sale by National Will Forms Company in Texas. The Committee complained to a newspaper running these ads, which, on advice of counsel, terminated the advertising contract. About this same time, on February 12, 1969, the Court of Civil Appeals of Texas rendered its decision in *Palmer vs. Unauthorized Practice Committee of the State Bar of Texas*, 438 S. W. 2d 374, holding that sale of will forms to the public by an untrained layman constituted unauthorized practice of law in Texas, and affirmed an injunction against the offering for sale to the general public of wills and will forms. The Nebraska Committee also submitted the advertising and the forms to the Federal Trade Commission, which has advised the Committee that it has referred the complaint to its Deceptive Practices Division.

H&R BLOCK

From time to time over the years the Nebraska Committee has received complaints about the activities of various offices of H&R Block. None of these complaints has been supported by sufficient evidence to merit affirmative action by the Committee. The Committee does note, however, that the Texas Bar obtained a consent decree limiting the activities of H&R Block firms in Texas to the simple preparation of tax forms which require no legal determinations.

REAL ESTATE TAX PROTESTS

One of the major real estate firms in the state last spring solicited a number of its clients for appearances before the Board of Equalization of its county to protect tax valuations. The Committee believed that the solicitation represented that the firm would appear as advocate for a client before the County Board of Equalization, and left uncertain the services the firm might render if there were an appeal from the ruling of the Board. After reviewing the matter with the firm and its legal counsel, the firm modified its letter to make it certain that the real estate agent offered only its expert services as a witness on the question of valuation, and recommended that the clients consult legal counsel for advocacy and legal representation before the Board and upon appeal. The Committee was interested in the comment of the real estate firm that employees in the Assessor's office prepare protest forms, but has not pursued that question further.

CONFERENCE COMMITTEES

The Committee developed in detail the question of independent conference committees with the Committee on Reorganization of the Nebraska Bar. The Committee pointed out the traditional function of a conference committee to review, propose, attempt to agree upon and process through the Bar Association and the other lay or professional group statements of principles of conduct, and to review complaints of improper activity, either by lawyers or by members of the other group, as the limited scope of activity of a conference committee. The Committee pointed out that sections of the Bar would remain free to form joint committees with other organizations to sponsor institutes, promote legislation of mutual interest, consider substantive questions and similar matters. The Unauthorized Practice Committee remains firm in its conviction that conference committees with such limited scope of authority and activity should be constituted to work with other lay and professional groups, and all matters relating to statements of principles, and compliance with such statements should be vested in such independent conference committees. Such committees can more effectively perform their functions, as proved by the experience of conference committees in the American Bar Association, and as graphically demonstrated in Nebraska in the cooperation between the Bar Association and the Nebraska Collectors Association, mentioned above.

Albert T. Reddish, Chairman
Ronald G. Sutter, Vice-Chairman
Bevin B. Bump

Joseph C. Byrne
Edward F. Carter, Jr.
Raymond M. Crossman, Jr.
John P. Ford
J. Taylor Greer
LaVerne H. Hansen
Francis J. Kneifl
Joseph L. Krause
August Ross
Edward Shafton
Bernard Sprague
J. Marvin Weems

REPORT OF THE COMMITTEE ON LEGAL AID

Your Legal Aid Committee refers you to the report by the Committee on the Availability of Legal Services and its findings and recommendations.

Local Bar Associations must lead the way and promote locally financed Legal Aid offices.

Robert R. Camp, Lincoln, Chairman

Allen J. Beermann, Lincoln
P. J. Heaton, Jr., Sidney
J. H. Myers, Kimball
Edwin C. Perry, Lincoln
Johnson E. Story, Grand Island
Donald L. Wood, Scottsbluff

REPORT OF THE COMMITTEE ON PROCEDURE

The principal activity conducted by your Committee on Procedure during the past year was seeing that certain recommendations made by the Committee on Procedure during the previous year were converted into proposed legislation and ultimately adopted by the 80th Session of the Nebraska Legislature.

Four Bills were adopted by the Legislature, reflecting recommendations of the Committee on Procedure. The first of these Bills is LB 375, which amends Section 25-824, R. R. S. 1943 as amended. The effect of this Bill is to eliminate the previous requirement that every pleading of fact must be verified. When the Bill becomes effective, ninety days after the adjournment of the Legislature, pleadings of fact will not require verification, either by the party, his agent, or attorney. However, allegations or de-

nials made without reasonable cause and found untrue shall subject the party pleading the same to the payment of reasonable expenses to be taxed by the Court. The adoption of this provision is one more in the piecemeal adoption of Federal Rules of Civil Procedure.

Further adopted was LB 376, which cures a defect which has existed for some time, in connection with adoptions. Under the provisions of LB 376, a person serving in the armed forces of the United States who has been continuously stationed at any military base or installation in the State of Nebraska for a period of one year immediately preceding the filing of the Petition for adoption is deemed to be a resident in good faith of the State of Nebraska and the county where such military base or installation is located so as to authorize them to file a Petition for adoption. In particular, with installation such as the Offutt Air Base, this provision has long been necessary and will eliminate some inequities which have existed heretofore.

The third provision recommended by the Committee on Procedure and now adopted into law is LB 377, pertaining to the Dead Man's Statute. LB 377 amends Section 25-1202, R. R. S. 1943 as amended to provide that the prohibitions of the Act shall not apply in actions arising upon unintentional tort.

And lastly, LB 1039 was adopted. LB 1039 purports to amend Section 38-110, R. R. S. 1943, and Section 38-122, R. R. S. 1943, as amended, and Section 38-123, R. R. S. 1943 as amended, and create a new section, all concerning the matter of settling claims of minors. Basically the Bill permits claims of less than \$1,000.00 to be settled by approval of the Court and thereafter not to require any additional accounting or bond upon certain conditions as provided in the Bill being met. Moreover, if the value of the personal property in the minor's estate is more than \$1,000.00, but less than \$3,000.00, the Court may, in its discretion, order that the assets be invested and release the guardian from bond and additional accounting. This is a first step in attempting to simplify the procedure involved in settling claims of minors while still providing adequate protection for the minor. The Committee will continue to examine this matter in hopes that certain other provisions may be implemented which will further simplify the settlement requirements.

During the coming year, the Committee will turn its attention to a matter which has been a point of discussion for many years, but which has not resulted in any concrete, over-all action. This involves the matter of re-examining the entire Rules of Civil Procedure. The Committee has, on several occasions, recommended to the Bar that action be taken to commence an over-all study of the

Rules of Civil Procedure in hopes that something similar to the Federal Rules might be adopted. The thought is that the rules should be simplified so that the merits of the law suit become the principal important item, as opposed to the matter of pleadings.

During the coming year, your Committee will continue to meet and hope to make specific recommendations to the association at its next Annual Meeting. The Committee further invites members of the Bar Association to direct items of concern to the Committee in order that it might direct its attention to these matters and make recommendations.

D. Nick Caporale
Kenneth H. Elson
Richard S. Harnsberger
David L. Herzog
Hans J. Holtorf
Keith Howard
Daniel D. Jewell
C. Thomas White
John C. Mitchell
William T. Mueller
Albert G. Schatz
Warren C. Schrempp
Robert E. Sullivan
Thomas A. Walsh, Jr.
Norman Krivosha, Chairman

REPORT OF THE COMMITTEE ON CRIME AND DELINQUENCY PREVENTION

A meeting of the committee was held in conjunction with the mid-year meeting of the Bar Association. At the meeting and as a result of other communications with the members of the committee, suggestions for areas of study for the committee have been:

1. Consider possible recommendation that Nebraska adopt the Uniform Juvenile Court Act and the Model Rules for Juvenile Courts.
2. Consider recommendation that a section on criminal law be established by the Bar Association.
3. Consider legislation for expungment of criminal records where such records are interfering with rehabilitation. The 1969 legislature has broken the ice with LB 1379 and further study from the crime preventive standpoint is recommended.

The committee has no specific recommendations other than that the committee be continued and that the studies continue.

Don Brock, Chairman

REPORT OF THE COMMITTEE ON PUBLIC SERVICE

Law Day activities again showed significant progress this year. Our state chairman, Tedd C. Huston, made an intensive effort to increase the number of county chairmen. As a result, active chairmen served in eighty-two counties—the highest number involved in the history of Law Day observances in Nebraska.

Charles E. Oldfather acted as vice-chairman for the state. We are pleased to report that he will be the state chairman for 1970 and has preparations for the program well under way.

The press, radio and television media were more generous than ever in helping bring the message of Law Day to the people of Nebraska. There was an increase in the number of news stories, pictures and editorials as well as special radio and television programs. There was also added participation by churches and patriotic societies. The theme, "Justice and Equality Depend Upon Law—and You!" was highly relevant to current issues.

Two public service awards were presented at the last annual meeting. An award of appreciation was made to the Nebraska Broadcasters Association for support of Law Day activities and other public service programs produced by our committee. The president's award was given to Judge Edward F. Carter for his sponsorship of Boys State and many other notable public services in Nebraska.

Our budget permitted us to produce a second television program in the "Mark Middleton, Attorney at Law" series on lawyer-client relations. Once again this was made possible by the cooperation of KUON-TV, University of Nebraska Television, producer of the program, and by the participation of volunteer actors from the Lincoln Community Playhouse. The scripts for these programs are written by our public relations counsel and approved for use by our committee.

Nebraska Educational Television used the program twice on its statewide network and also repeated the 1968 videotape. KOLN-KGIN-TV of Lincoln and Grand Island carried the new tape, and we have a telecast scheduled for the wide area covered by KFBC-TV out of Cheyenne, Wyoming and Scottsbluff, Nebraska. KMTV of Omaha has indicated the program will be carried there with the second half of the tape, which is a panel discussion, involving a

panel of Omaha attorneys. We are now transferring these programs from videotape to 16 mm sound film for use in the schools.

We are continuing our popular "Mark Middleton, Attorney at Law" radio tapes—a series which we prepare and produce for public service use by twenty-six Nebraska stations. We are making the Missouri Bar film-strips on client relations available on request. We were pleased by the comment of Bernard J. Klasek, Superintendent of Public Instruction for Saline County, that he had found them "very good" for school use.

We were represented at the National Institute on Bar Public Relations in Chicago, January 25, 1969, by our public relations counsel. The primary subject under discussion was "Bar-Media Developments." A full report on the conference was made to our committee. We stand ready to work for the development of better relationships with the media in Nebraska. Much has been accomplished along this line in other states and we will become involved whenever the Association wishes us to do so.

A new television public service program is being inaugurated. Station KETV has agreed to feature five legislative reports in consecutive newscasts in connection with its 5:30 P.M. news. Members of the Association will review the following areas of legislative action for the information of the public: education, taxation, law enforcement, open housing and the courts. This series of interviews will run shortly after the legislature adjourns.

Our committee has two regular meetings each year, plus special meetings whenever action is needed. It is a truly dedicated committee and one with a growing tradition of service to the Association. The possibilities for expansion of our program are many and we are challenged by them. We hope that a way can be found to open the doors to these opportunities through increased funding of the program.

The Committee therefore recommends that its program be intensified and expanded to the fullest extent permitted by the budget of the Association.

Claude E. Berreckman
Frederick S. Cassman
Lawrence S. Dunmire
Dale E. Fahrnbruch
L. Raymond Frerichs
James R. Hancock
Tedd C. Huston
Soren S. Jensen

Richard A. Knudsen
Edmund D. McEachen
Robert A. Nelson
Allen L. Overcash
Charles Thone
Dennis D. Burchard
Michael T. McKim
Milton R. Abrahams, Chairman

**REPORT OF THE
TRUSTEES OF THE DANIEL J. GROSS NEBRASKA STATE
BAR ASSOCIATION WELFARE AND ASSISTANCE FUND**

The Daniel J. Gross Nebraska State Bar Association Welfare and Assistance Fund was established under the terms of the Last Will and Testament of Daniel J. Gross, Omaha attorney who died November 12, 1958. The sum of \$25,000.00 was set aside to be administered by trustees appointed by the Nebraska State Bar Association, such funds to be used "for charitable and welfare purposes of active practicing Nebraska lawyers, their wives, widows, and children."

The Executive Council of the Nebraska State Bar Association on July 12, 1959, accepted the gift and resolved that the funds be administered by a board of three trustees to be appointed by the president of the State Bar Association. At the same time, the then president, Joseph C. Tye, named as trustees, attorneys Harry L. Welch of Omaha, chairman, Earl J. Lee of Fremont, and John C. Mason of Lincoln. Following the death of Mr. Lee in 1963, Lester A. Danielson, Scottsbluff attorney, was appointed to the vacancy.

The Executive Council of the Nebraska State Bar Association by resolution has granted the trustees of the fund the authority to disburse and distribute for welfare and assistance purposes, from either income or principal or both, such amounts, on such occasions and to such active practicing Nebraska lawyers, their wives, widows and children, as they in their sole discretion, determined by a majority vote of the members of the Board of Trustees, may determine. The trustees have considered numerous requests of lawyers and their dependents, and have granted benefits upon showing of need and incapacity of the applicants to otherwise provide for themselves.

The Executive Council of the State Bar Association also has granted the trustees the right to accept and receive any other

contributions that may be made to the fund, and to manage, administer and disburse these additional funds in the same manner as the original funds.

The Executive Council has provided that the proceeds of the fund shall be invested in a manner permitted and authorized by Sec. 24-601 of the Revised Statutes of Nebraska, 1943 (Reissue of 1956). A good portion of the fund has been invested by the trustees in securities after consultation with investment specialists.

It is provided that the fund shall terminate and wind up its affairs when all the assets shall have been disbursed and distributed.

As of June 30, 1969, the fund had a cash balance of \$13,125.64 and securities of the value of \$24,879.24, or total assets of \$38,004.88.

Harry L. Welch, Chairman
John C. Mason
Lester A. Danielson

REPORT OF THE COMMITTEE ON FAMILY LAW

The first agendum of the Committee in September, 1968, was to determine what its function might be and what the scope of that function would be. Through correspondence and one meeting of the Committee in June, 1969, it was determined that the Committee would concern itself with studying proposed legislation in the areas in which the American Bar Association Family Law Section has committees. These are:

Adoption	Juvenile Law and Procedures
Alimony, Maintenance and Support	Law and Family Planning
Custody	Marriage Law
Divorce Laws and Procedures	Paternity
Family Law Judges	Practicing Lawyer
Interprofessional Cooperation	

It is proposed that the Committee study proposed legislation in these areas and make recommendations to the Standing Committee on Legislation of the Nebraska Bar Association.

Accordingly the Committee has accepted for study the third tentative draft of the Revised Uniform Adoption Act of May 19, 1969. It is also considering the first tentative draft of the Uniform Minor Student Capacity to Borrow Act of May 16, 1969. Both issue from the National Conference of Commissioners on Uniform State Laws.

Secondly, when the Nebraska Committee for Children and Youth asked President Adams to have the Nebraska Bar participate in preparation of Nebraska's participation in preparations for the 1970 White House Conference on Children and Youth, he asked the Committee on Family Law to cooperate. The Committee was represented at the first organizational meeting for that conference.

Since one of the functions of the Nebraska Committee for Children and Youth is to develop legislation concerning family law in Nebraska, it seems proper that the Committee on Family Law cooperate with the N.C.C.Y. The N.C.C.Y. is appointed by the Governor.

Therefore this Committee recommends that the Committee be continued in order to carry out the functions outlined above.

LeRoy E. Endres, Omaha, Chairman
Dale E. Fahrnbruch, Lincoln
Margaret R. Fischer, Omaha
Janice L. Gradwohl, Lincoln
Robert M. Harris, Scottsbluff
Lloyd W. Kelley, Jr., Grand Island
Charles I. Scudder, Jr., Omaha

REPORT OF THE COMMITTEE ON PUBLICATION OF LAWS

Further progress has been made in utilization of electronic data processing with the Nebraska statutes. All current statutes through December 1968, are on magnetic tapes and are available for all problems requiring electronic retrieval of the statutes. Presently pending before the 1969 Legislature is Legislative Resolution 82, which recommends continuance of the programs of electronic retrieval of Nebraska statutes, placing the current legislation in computer readable form, and study of the feasibility of programs for the electronic processing of legislative bills and the publication of statutes. This Resolution, if it receives favorable action, will provide the vehicle for further investigation of electronic processing of legislative bills during the Legislative sessions and publication of statutes. This Committee will counsel with the Nebraska Legislative Council in this regard. **It is accordingly recommended that this Committee be continued.**

Richard M. Duxbury, Chairman
Richard L. DeBacker
John M. Gradwohl
Vance E. Leininger

Pliny M. Moodie
Winsor C. Moore
Robert A. Munro
Lawrence L. Reger
William F. Ryan
Lyle E. Strom
Peter J. Vaughn

REPORT OF THE SPECIAL COMMITTEE ON MEDICO-LEGAL JURISPRUDENCE

Several years ago this Committee, in conjunction with the Medical-Legal Committee of the State Medical Association, adopted an Inter-Professional Code of Conduct. The Code was reviewed at the meeting of this Committee, and the Committee felt that a campaign should be undertaken for the distribution of the Code to members of the State Bar Association and the State Medical Association. It was felt by some of the members of this Committee that the Code was an unknown entity to many members of the Bar and of the Medical Association.

It has been further suggested that the paragraph in the Code concerning complaints be amended to provide for a committee of five to analyze any complaints submitted to it by members of either the Bar Association or the Medical Association. There would be two members from the Bar Association and two members from the Medical Association and an alternate from each. When a complaint is submitted by a member of the Bar Association, the fifth member and presiding chairman would be a doctor, and vice versa.

It was also resolved that an investigation should be conducted into the adoption of the Medical Malpractice Analysis Committee which would hear all medical malpractice claims, and if such a claim was substantiated by evidence, medical proofs would be submitted for the plaintiff. It was felt that hearing should be had in the Bar to hear the voice of both plaintiff and defense counsel as to the propriety of this procedure. Some of the Committee members felt that the medical profession was receptive to such an adoption. The Committee has much background material on this type of analyzing committee which would be of help in resolving the matter.

The American Psychiatric Association requested the State Bar Association to help out in a legislative program dealing with mental health. The Chairman designated Charles E. Wright and Ivan A. Blevens to act as a sub-committee to work with and assist the

Psychiatric Association, and it is hopeful that the sub-committee will have a report at the conclusion of this legislative session.

The Committee is continuing to carry on its work, and it is our recommendation that the Committee be continued.

Harry L. Welch, Chairman
 Ivan A. Blevens
 Charles M. Bosley
 Joseph P. Cashen
 Kenneth Cobb
 Charles E. Kirchner
 Joseph H. McGroarty
 Robert D. Mullin
 William H. Riley
 Thomas W. Tye
 Eugene P. Welch
 Charles E. Wright

REPORT OF THE SPECIAL

COMMITTEE ON KEATON-O'CONNELL LEGISLATION

At the 1969 Annual Meeting of the House of Delegates of the Nebraska State Bar Association the following resolution was adopted:

"BE IT RESOLVED by the House of Delegates of the Nebraska State Bar Association that the President of the Nebraska State Bar Association is directed to appoint a special study committee to study the Keaton-O'Connell Plan and other similar proposals, and with full authority to present its views as the views of the Nebraska State Bar Association on these proposals."

In February, 1969, the following members were appointed by President Charles Adams:

M. J. Bruckner, Lincoln
 Howard E. Tracy, Grand Island
 Frank L. Winner, Scottsbluff

At the time the foregoing resolution was adopted, it was anticipated that Keaton-O'Connell legislation would be offered in the 1969 Session of the Nebraska Legislature.

The principal function of the committee during the past year was to watch for any legislation of this type which might be offered in the Nebraska Legislature. None was offered. Therefore, it was not necessary for the committee to make any recommendations.

Judging from the experience of other states, it is the committee's opinion that this legislation will be introduced in the Nebraska

Legislature eventually. Furthermore, the problems of automobile accident reparation will continue to be a matter of serious interest to all bar associations, and a matter on which the Nebraska State Bar Association should be prepared to make specific recommendations at the appropriate time.

Therefore, we recommend continuation of this special committee within the framework of the original resolution. However, we suggest that the name of the committee be changed to "Special Committee on Automobile Accident Reparations."

M. J. Bruckner, Chairman
Howard E. Tracy
Frank L. Winner

REPORT OF THE SPECIAL COMMITTEE ON LAWYER REFERRAL

The function of this committee is to offer assistance to any bar associations in the state who may be interested in establishing a lawyer referral service. Although there has occasionally been discussion about the possibility of setting up services in cities other than Omaha and Lincoln, the fact remains that these two cities are the only ones in the state which now have operating referral services. For those members of the association who may be unfamiliar with the purpose of a referral service, its function is to provide a means whereby persons who do not know a lawyer, but can afford to pay one, can be referred to an attorney for legal help. The normal referral plan contemplates a panel of attorneys who have agreed to accept cases in rotation and who have further agreed to grant an initial consultation with a client for a nominal fee, usually \$7.50 or \$10.00. The fees for any additional work is subject to agreement between the client and the attorney. Persons seeking an attorney through the referral service are asked either to call the referral office on the telephone or to appear at the office in person. The secretary of the service first establishes that the prospective client has a legal problem and that he does not already have an attorney. The client is then referred to a member of the panel and an appointment is made for the client to see the attorney at a specific time and place. A common method of financing the plan is to charge an annual registration fee to each lawyer member of the panel, usually \$10 to \$15.

The heart of any referral program is publicity. The public must be made aware of the fact that the local bar association offers a plan whereby persons who do not know an attorney may find one. The most common method of publicizing the service is through the

Yellow Pages of the telephone directory. Other methods are by radio, television, newspaper ads, pamphlets and word of mouth. From an ethical standpoint it is perfectly proper for a bar association to advertise its referral service extensively as long as no specific attorney is mentioned by name. A referral program offers a fine way for a bar association to render a public service and at the same time to educate the public on the type of help that an attorney can render. There are approximately 260 referral services in operation throughout the United States. An American Bar Association survey has revealed that in 1968 no less than 163,902 persons were referred to attorneys through established referral services and from these referrals the attorneys collected total fees of over one million dollars. The referral program is constantly growing because it offers a unique opportunity for lawyers to serve both the public and themselves. People are becoming more and more aware of their legal rights and obligations. Legal aid serves the poor; the well-to-do find attorneys through traditional methods. Lawyer referral serves those persons in between—the persons of moderate means who can afford to pay a modest fee but who do not know a lawyer and who do not know how to go about finding one.

The growth of the lawyer referral program in Nebraska is illustrated by the fact that in Omaha approximately 500 referrals were made to attorneys in 1967, while in 1968 the number more than doubled to approximately 1200. Total fees collected by attorneys on the referral panel were \$9,500.00 in 1967 and over \$15,000.00 in 1968. One of the cases handled by a referral panel lawyer last year resulted in a fee of \$3,300.00. In Omaha there are approximately 120 lawyers on the referral panel out of a total bar association membership of over 500.

The American Bar Association Standing Committee on Lawyer Referral has this year published a new Handbook for Referral Services. This book contains all the information that a bar association needs to know in setting up and running a referral service. Copies may be obtained by writing the American Bar Association headquarters in Chicago. The members of your state committee also stand ready to advise and assist any local bar association that might be contemplating a referral program.

John R. Dudgeon
Richard R. Endacott
Charles A. Nye
Donn C. Raymond
Arnold J. Stern
Frank B. Svoboda
Alfred G. Ellick, Chairman

REPORT OF THE SPECIAL COMMITTEE ON COOPERATION WITH LAW SCHOOLS AND ON ADMISSION TO PRACTICE

A meeting of the Committee was held on June 27, 1969 at the Mid-Year Meeting of the Association. The Committee respectfully reports:

1. Dean Henry Grether of the University of Nebraska Law School reported on progress being made in the implementation of the provisions of LB 429 of the 1967 Legislature under which the Supreme Court had adopted a rule making provision for the limited practice by law students under the supervision of a member of the Bar.

2. The present rules for admission to practice were reviewed and no changes were recommended.

3. The Committee again discussed the conditions and inadequate design of the physical facilities of the University of Nebraska and Creighton Law Schools. In connection with the University of Nebraska Law School, the Committee urges that consideration be given to the establishment of a "Law Complex," which would incorporate the University of Nebraska Law School, living facilities for married and single law students; a Judiciary Building; headquarters for the State Bar Association; an adequate library to serve all of the facilities, and adequate parking.

4. The Committee feels it serves a purpose in its availability for advice and assistance, and is a means by which the Law Schools and the Bar can consider matters of mutual concern, and it is accordingly recommended that the Committee be continued.

Larry G. Carstenson
Dean James A. Doyle
Dean Henry M. Grether, Jr.
Julian H. Hopkins
M. A. Mills, Jr.
Robert D. Mullin
Hon. John E. Newton
Marvin G. Schmid
Robert G. Simmons, Jr.
Charles E. Oldfather, Chairman

**REPORT OF THE COMMITTEE ON
LEGAL ECONOMICS AND LAW OFFICE MANAGEMENT**

The major accomplishment of the Committee this year has been in the area of professional incorporation. The Nebraska Professional Corporation Act, LB 330 drafted by the Committee, was passed by the Nebraska State Legislature during this session. Prior to passage, opposition developed to the Bill, and there were times when it appeared to be in serious jeopardy. The final vote of the Legislature was 32 to 10 in favor of the Bill as originally introduced. A great deal of work was required in order to achieve this result and the Committee regards the adoption of the Bill as a significant accomplishment.

The Legislation requires approval by the Supreme Court of Nebraska before attorneys can incorporate; and the proposed rule to be submitted to the Supreme Court which would authorize lawyers to incorporate, and which was adopted by the House of Delegates at the 1968 annual meeting, is to be presented to the Court by the Executive Council.

The Committee is still giving further study to the possibility of a traveling seminar on Economics and would welcome suggestions from members of the Bar concerning particular subjects of interest to Nebraska lawyers. The Committee cooperated with the Nebraska Association of Legal Secretaries in presenting a seminar in October for the legal secretaries. The Committee is also keeping close contact with the activities of the American Bar Association in the Legal Economics field and the activities of Bar Associations in our neighboring states.

The Committee has other projects under consideration, and it is recommended that it be continued.

Lansing Anderson
Thomas R. Burke
Harvey D. Davis
Thomas M. Davies
Richard A. Dier
Kenneth H. Elson
Clinton J. Gatz, Jr.
Robert A. Munro
Robert G. Simmons, Jr.
Benjamin Wall
James J. Fitzgerald, Jr.
Edward A. Cook, III
Carlos E. Schaper
Thomas W. Tye
Howard H. Moldenhauer, Chairman

REPORT OF THE SPECIAL COMMITTEE ON WATER RESOURCES

In connection with the Nebraska State Water Plan, on June 19, 1969, the Nebraska State Soil and Water Conservation Commission approved publication of Nebraska water law and programs as a part of the Framework Study. The volume, to be designated Appendix E, will survey problem areas and state and federal programs.

During the past year, Committee members have offered a number of comments on various water studies and on proposed legislation, and on June 27 the Committee met in Lincoln to discuss various matters including future activities. A written report by the Committee appears in the April 1969 issue of the Nebraska State Bar Journal [18 Neb. B. J. 60-66 (1969)], and another will be prepared for publication after the Legislature adjourns. **It is recommended that the Committee be continued.**

Merrell L. Andersen
Auburn H. Atkins
Cecil S. Brubaker
Vincent L. Dowding
Ralph J. Fischer
Richard S. Harnsberger, Chairman
John Samson
Lyle Winkle

REPORT OF THE SPECIAL COMMITTEE ON ADMINISTRATIVE AGENCIES

The Administrative Agencies Committee has continued its review initiated last year of all state agencies pertaining to the adoption of rules of practice and procedure. For the benefit of the members of the Bar having occasion to appear before these various agencies, the following portion of this report specifies the agencies having adopted rules and their availability:

DEPARTMENT OF AERONAUTICS

Although the statutory authority of this Department would enable it to hold contested hearings, the Director advises that there have been no such hearings in recent years and consequently no rules of procedure have been adopted.

DEPARTMENT OF AGRICULTURE

Rules of practice and procedure, which apply both to new licensing hearings as well as licensing revocations have been adopted and filed with the Secretary of State. They are available at no charge by writing to the Director of Agriculture, Department of Agriculture, State House, Lincoln, Nebraska.

DEPARTMENT OF BANKING

No rules of procedure have presently been adopted, but the new Director of Banking is preparing the same which should be completed and published during the fall of 1969. At the outset of each hearing, a mimeographed sheet outlining the procedures is distributed to the participants. This sheet is available upon request from the Director of the Department of Banking, State House, Lincoln, Nebraska.

BOARD OF EQUALIZATION

Rules of procedure have been adopted and filed with the Secretary of State and may be obtained at no charge by writing to the Legal Division, Tax Commissioner's Office, State House, Lincoln, Nebraska.

DEPARTMENT OF EDUCATION

Rules of procedure have been adopted and filed with the Secretary of State. The present supply has been depleted, but they are being revised and updated and will be available by the end of the year, by writing to the Commissioner of Education, State House, Lincoln, Nebraska.

HEALTH DEPARTMENT

Rules of procedure have not been adopted, but are presently being drafted. They will be available by the end of the year and may be obtained by writing to the Director of Health, State House, Lincoln, Nebraska.

INSURANCE DEPARTMENT

No rules of practice or procedure have been adopted, but LB 1238, enacted May 26, 1969, specifically provides rules of procedure for the Insurance Department. Although this department technically would come within the jurisdiction of the Administrative Procedure Act, this specific statutory enactment of procedural rules would eliminate the practical necessity of such rules under the Administrative Procedure Act.

LABOR DEPARTMENT

This Department has no rules of practice or procedure. In contested proceedings related to various aspects of unemployment compensation, the District Court rules of procedure are followed. More specific information relating to these procedures can be obtained from Mr. Wayne Hatcher, Department of Labor, State House, Lincoln, Nebraska.

LIQUOR CONTROL COMMISSION

Rules of practice and procedure have been adopted and filed with the Secretary of State, and may be obtained at no charge from the Liquor Commission, State House, Lincoln, Nebraska.

MOTOR VEHICLE LICENSING BOARD

Rules of practice and procedure have been adopted and filed with the Secretary of State, and may be obtained at no charge from the Motor Vehicle Licensing Board, State House, Lincoln, Nebraska.

DEPARTMENT OF MOTOR VEHICLES

Rules of procedure have been adopted and filed with the Secretary of State and are available at a cost of 60¢ per page, from the Secretary of State, State House, Lincoln, Nebraska.

OIL AND GAS CONSERVATION COMMISSION

Rules of practice and procedure have been adopted and filed with the Secretary of State and may be obtained at no cost from the Oil and Gas Conservation Commission, Box 105, Sidney, Nebraska. An excellent article "Practice and Procedure in Administration of the Nebraska Oil and Gas Conservation Act," by Lowell C. Davis, appears in 41 Nebraska Law Review 545.

POWER REVIEW BOARD

Rules of practice and procedure have been adopted and filed with the Secretary of State and may be obtained at no cost from Mr. Dan Jones, Secretary, Power Review Board, State House.

RAILWAY COMMISSION

Rules of practice and procedure have been adopted and filed with the Secretary of State. Several years ago, copies of these rules were distributed to all attorneys requesting the same at no charge. Additional copies are not presently available but are being updated.

and will be available after the first of the year, by writing to Mr. M. B. McManaman, Executive Secretary, Nebraska State Railway Commission, 1342 "M" Street, Lincoln, Nebraska.

TAX COMMISSION

Rules of procedure have been adopted and filed with the Secretary of State and may be obtained at no charge by writing to the Legal Division, Tax Commissioner's Office, State House, Lincoln, Nebraska.

VETERANS AFFAIRS

Rules of procedure pertaining to the Veterans Aid fund have been adopted and may be obtained by writing to the Department of Veterans Affairs, 12th Floor, Capitol Building, Lincoln, Nebraska.

DEPARTMENT OF WATER RESOURCES

Rules of practice and procedure have been adopted and filed with the Secretary of State and may be obtained at no charge by writing to the Department of Water Resources, State Capitol, Lincoln, Nebraska.

In addition to the above work, the committee also reviewed several items of legislation introduced before the last session of the Legislature, pertaining to administrative agencies.

As this is a special committee, it is recommended that the work of the committee be continued.

Samuel Van Pelt, Chairman

REPORT OF THE

SPECIAL COMMITTEE ON RULES OF THE ROAD

During the 1969 session of the Legislature the Committee gave its attention to a number of bills dealing with rules of the road.

It has been hoped that, through the auspices of the Legislative Council, a bill would be prepared and introduced this session for a systematic and comprehensive revision of the statutes dealing with rules of the road. This did not materialize, however.

On the hope that such a revision can be prepared before the next session of the Legislature, we recommend the continuation of the Committee.

Patrick W. Healey, Chairman
John O. Anderson
Theodore J. Fraizer
Marvin L. Holscher
A. J. Luebs
E. Merle McDermott
George H. Moyer
Wallace Rudolph
Albert G. Schatz
David A. Svoboda
Fred J. Swihart

REPORT OF THE COMMITTEE ON COOPERATION WITH THE AMERICAN LAW INSTITUTE

The 1969 annual meeting of the American Law Institute was held at Washington, D.C., in May. The Nebraska Bar Association was well represented, those attending as elected and ex officio members of the Institute being the Honorable Paul W. White, Chief Justice of the Nebraska Supreme Court; the Honorable Hale McCown, Justice of the Nebraska Supreme Court; Charles F. Adams, President of this Association; John C. Mason; Laurens Williams; and the Chairman of your Committee, Edmund D. McEachen.

At the meeting a half day was spent in discussion of a MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE; a day was spent in discussion of the RESTATEMENT OF THE LAW, SECOND, TORTS; a half day was spent in discussion of a preliminary draft #1, concerning fixtures, presented by the Review Committee for Article 9 of the Uniform Commercial Code; a half day was spent on RESTATEMENT, SECOND, CONTRACTS, and a day was spent on discussion of the RESTATEMENT OF THE LAW, SECOND, CONFLICT OF LAWS.

A major project of the Institute was completed with final approval of the official draft of the RESTATEMENT OF THE LAW, SECOND, CONFLICT OF LAWS. This accomplishment reflects intensive work of the Institute over a period of 17 years, and is a substantial revision of the original RESTATEMENT of this area of the law. It should be a valuable tool for lawyers, in a complex field in which research in the past has been most difficult.

Another area of work of the Institute, of major interest to Nebraska lawyers, was the consideration of Preliminary Draft #1 produced by the Review Committee for Article 9 of the Uniform Commercial Code, and relating to the subject of Fixtures. This preliminary draft and the Institute's study thereof demonstrated

the need for major revision of Article 9 of the Uniform Commercial Code relating to Fixtures, but further demonstrated the need for further intensive study and revision of the Preliminary Draft #1 produced by the Review Committee created by the permanent Editorial Board for the Uniform Commercial Code. These amendments thus are not ready for presentation to our Association or for proposed amendment of the UCC as adopted by the Nebraska Legislature, but are of considerable interest and importance to Nebraska lawyers.

The Institute is continuing its work on the MODEL PENAL CODE. As previously reported, although not finalized, the preliminary drafts of this Code have been used as reference material in drafting of revisions of Penal Codes in a number of states; were used extensively in development of the Criminal Code adopted by the City of Omaha in 1967; and have been used as reference material by the Ad Hoc Committee appointed by the Governor of Nebraska to study crime control and criminal justice.

The Joint Committee on Continuing Legal Education of the American Law Institute and American Bar Association has continued to develop study materials and encourage development and growth of state organizations for the purpose of continuing legal education. At the present time, well over half of the states have organizations to promulgate continuing legal education with professional directors and staffs, including our neighbors, Colorado, Kansas, and Missouri. Development of such an organization, and further efforts in continuing legal education for members of the Nebraska Bar, are matters which our Committee believes should receive continuing study by this Association.

Your Committee further recommends continuing efforts to revise Nebraska's Statutes in those few areas in which they depart from the Uniform Commercial Code, in order to provide desired uniformity in commercial law throughout the country.

Your Committee feels that the Committee should be continued and that the Nebraska Bar Association should continue to be represented at meetings of the American Law Institute by a liaison member. The Restatement and other studies of the Institute have enormous impact in the Courts and on the law throughout the nation. The Nebraska Court has made frequent use of these materials in its decisions. The Committee feels that it is most important that the State be represented in the studies conducted by the Institute and take an active part in its decisions.

The Committee recommends that the Committee and its work be continued.

Edmund D. McEachen, Chairman
Hale McCown
James A. Doyle
Allan Garfinkle
John C. Gourlay
Henry M. Grether, Jr.
Fred T. Hanson
Daniel B. Kinnamon
Thomas N. Wright

REPORT OF THE SPECIAL COMMITTEE ON WORLD PEACE THROUGH LAW

Your committee continues to receive voluminous reports and information with reference to the activity of the Nations participating in this program.

The Conference on World Peace Through Law and the World Assembly of Judges was held in Bangkok, Thailand September 7-12, 1969. We do not have reports as to the activity and any final action taken at this conference. The program included many items relative to treaties and disarmament as well as Nuclear Energy and the Law of Space.

Some ambitious fellow has prepared a proposed World Constitution. If any of you are interested in studying such a document we will be glad to furnish you a copy. If it ever gets to the stage of the United States seriously considering adoption it will require a great deal of study and an unusual amount of care and concern.

This being a special committee appointed for the purpose of cooperating with the ABA Committee on World Peace Through Law it is therefore recommended that the committee be continued.

J. C. Tye, Chairman

REPORT OF THE SPECIAL COMMITTEE ON OIL AND GAS LAW

The Special Committee on Oil and Gas Law of the Nebraska State Bar Association submits the following report:

We have had no meetings of the Committee, but the Chairman has been in correspondence with all members of the Committee and

we feel that we are keeping abreast of the legal problems of the Oil and Gas Industry in Nebraska.

The 1969 Legislature has not considered any legislation of major importance to the Industry. The oil and gas activities in the state are limited at the present time, but there are indications that the coming year will bring considerable activity.

Leasing activities for uranium have been conducted in Western Nebraska and from 20,000 to 30,000 acres are now under lease. We understand that, geologically, Brule clay underlying the surface in Western Nebraska may hold a potential as an ore of fissionable material, and the suggestion has been made that the scope of the Committee should be expanded to include all minerals.

The members feel that the Committee should be continued so that there will be a group of interested lawyers active in the practice of oil and gas law to consider any advisable changes in the statutes or legal developments of interest to the Industry and the bar in general, and we, therefore, recommend that the Committee be continued for another year.

Paul L. Martin, Chairman
Robert J. Bulger
John T. Carpenter
Kenneth Fritzler
P. J. Heaton, Sr.
Hans J. Holtorf
Jack R. Knicely
Bernard L. Packett
Ivan Van Steenberg
Floyd E. Wright

REPORT OF THE TRUSTEE OF THE ROCKY MOUNTAIN MINERAL LAW FOUNDATION

Vail, Colorado, was chosen as the site for the Fifteenth Annual Institute of the Rocky Mountain Mineral Law Foundation held in July of this year, a departure from past practice of holding the Institute on a university campus. Vail is unique in that it is primarily a winter resort but the same fine facilities were available in its beautiful Colorado setting. The registration was the largest registration for at least ten years and the happy combination of a working Institute with the Colorado scenery made the Institute worthwhile.

The Rocky Mountain Mineral Law Foundation was organized in 1955 to promote research and continuing legal education in

Natural Resources Law. After fifteen years of service, the Foundation is considered by those concerned with Natural Resources Law to be the outstanding contributor to research material and education in the field and the annual institutes are now recognized as essential educational experiences for those who must develop and maintain their proficiency in this area of the law; be they attorneys, executives, landmen or educators.

During the past year the Foundation has continued distribution of its publications, including the Annual Institute Proceedings, the three Gower Federal Services (Oil and Gas, Mining and Outer Continental Shelf), the American Law of Mining, the Law of Federal Oil and Gas Leases, the Rocky Mountain Mineral Law Review and the Water Law Newsletter. In addition, the Foundation last year completed the legal study of the Federal Oil and Gas Leasing System for the Public Land Law Review Commission under the direction of Professor Joseph Geraud from the University of Wyoming College of Law and has published a second edition of the popular Landman's Legal Handbook originally published in 1957 by the Denver Legal Staff of the Continental Oil Company.

The membership now consists of fifteen law schools, ten bar associations, seven mining industry associations and four oil and gas industry associations, with eight additional trustees at large and three additional trustees for the regional Rocky Mountain Oil and Gas Association. This membership makes a total of forty-seven trustees.

The legal study of the Federal Oil and Gas Leasing System which was carried out for the Public Land Law Review Commission by the Foundation was completed last year under the supervision of Joseph Geraud and Professor Michael McIntire of the University of Wyoming and the many other consultants and research assistants who worked on the project. The total cost to the Commission was \$64,025.87, well below the ceiling of \$98,000.00 allowed by the contract. The completed study consists of three volumes totaling more than 1500 pages.

There is considerable personal satisfaction in being a member of an organization contributing so much to the oil and gas industry. I have enjoyed my opportunity of serving the Foundation.

The Institute for the year 1970 will be held in Albuquerque, New Mexico, with headquarters at the Sheraton Western Skies Motor Hotel. The facilities are excellent and I feel sure that any member of the Bar Association attending the Institute will find his attendance of general benefit to his continuing legal education.

Paul L. Martin

CHAIRMAN OVERCASH: We will then proceed to the agenda. The next item on the agenda is No. 6, the Report of the Committee on Continuing Legal Education.

HAROLD ROCK, Fourth District: Mr. Chairman, Mr. Strasheim is not here but he asked that I present the report.

CHAIRMAN OVERCASH: Would you come forward and do so.

REPORT OF COMMITTEE ON CONTINUING LEGAL EDUCATION

Harold Rock

I am Harold Rock, a member of the Continuing Legal Education Committee. The report of the committee is in the program. It would have been included in the blanket motion except for the final paragraph, I'm sure, and it is the intention of the committee only there to print a plea to those other sections and groups that hold or carry on any kind of a continuing legal education program to contact and try to use the Continuing Legal Education Committee as a filtering center to attempt to avoid conflicts or duplications in programs. I don't know that that requires any special action by the House. It was put in there, as it is every year, just to flag this request of the Continuing Legal Education Committee.

But I do move the adoption of the report.

CHAIRMAN OVERCASH: Thank you. Is there a second to this motion?

HOWARD H. MOLDENHAUER, Fourth District: I second the motion.

CHAIRMAN OVERCASH: Those in favor of the motion approving the report of the Committee on Continuing Legal Education will say "aye;" those opposed the same. I declare the report approved.

The report of the committee follows:

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND CONTINUING LEGAL EDUCATION

The Committee on Legal Education and Continuing Legal Education respectfully submits the following report:

The Committee under the leadership of John Gradwohl arranged and presented a panel discussion of the Kasner film on the "Irrevocable Trust" at the Mid-year Meeting held in Lincoln this past June 27, 1969.

At the Mid-year Meeting the Committee recommended that the Executive Council or the House of Delegates, whichever is appropriate, endorse the Standards of Fair Conduct and Voluntary Cooperation adopted on October 11, 1968, by the 1968 National Conference on Continuing Legal Education held in Chicago, Illinois, under the auspices of the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. Your Committee Chairman was in attendance at that conference. It is not known whether the House of Delegates or the Executive Council has acted on the recommendation, and if that has not been done, the Committee renews its request for the approval of such standards.

The Committee has undertaken as a principal project preparation of a Real Estate Manual for distribution at the 1970 annual meeting which will be on that subject. The Committee will also be working in cooperation with the Section on Real Estate, Probate and Trust Law on the oral program to be presented at that meeting.

At the suggestion of retiring President Adams, your Committee is studying the possibility of obtaining Federal funding for Continuing Legal Education projects under Title 1, Higher Education Act of 1965, this having been done in South Dakota.

It should be noted that various Sections of the Association acting independently continued to make available outstanding programs of Legal Education and Continuing Legal Education in the state. Among these contributions are the Bridge-the-Gap program presented by the Junior Bar Section in Lincoln during the month of June on an annual basis, the Institute on New Legislation presented in September of this year also by the Junior Bar Section, the Great Plains Federal Tax Institute presented in November or December of each year on an annual basis and others.

There are other Legal Education and Continuing Legal Education activities being presented throughout the state on which the Committee does not have information. This situation requires that I repeat for emphasis a recommendation made in previous years. This recommendation is that the Committee be used as a coordination and information center for all Legal Education programs or Continuing Legal Education programs that are carried on in Nebraska. Those responsible for putting on such programs should be charged with informing the Chairman of the Committee as to the

particulars of such activities. This is not to suggest that the Committee be given any control over—but only the information concerning—Legal Education.

Jerrold L. Strasheim, Chairman

CHAIRMAN OVERCASH: The next item on the agenda is No. 15, Report of Special Committee on Availability of Legal Services—Mr. Urbom!

AVAILABILITY OF LEGAL SERVICES

Warren K. Urbom

Gentlemen, the report, you will see, is on Page 29 of the program, and I can supplement it only to this extent. The general thrust of it is that this House last year authorized our Committee to put a deadline of March 1, 1969, on all local Bar Associations to either have in existence a plan for providing legal service to the indigent or indicate that there was no need for one in that particular local area and that at that time the State Bar Association would establish a state-wide program for the providing of free legal service to the indigent. Unfortunately, at about the March 1 deadline, we discovered that there are probably no federal funds available for funding any new legal service programs. As a result of that, the State Committee, even though it had already written to all the Bar Associations placing this deadline on them, was unable to institute a state-wide program, because our directive has been to operate under a grant from the O.E.O., and since there were no funds reportedly available for that purpose, there was nothing we could do about it. We went before the Executive Council and asked their guidance and they approved what we then were doing, which was simply urging local Bar Associations to establish legal aid services, not funded through the O.E.O. but funded in any way that they saw fit to fund them, including voluntary service or local funding.

The report shows the response that we have had by Bar Associations across the state. There is one local program in existence of a Legal Aid nature, which means the program is staffed by local lawyers on a voluntary basis. It covers four counties in the Sixteenth Judicial District, and the latest report I have is that it is functioning very nicely and seems to be filling the need in that locality.

There, now, since this report was written, is a plan being proposed in Scottsbluff County which would be funded under federal

programs through the O.E.O., at least an application is being made, and hopefully sometime in the fairly near future there will be funds available. It is simply that there are not now funds available, but that does not mean there will not be in the future. Scottsbluff is moving forward and hopefully will be successful in establishing a program.

I also pointed out in the report that the NEBRASKA LAW REVIEW received a grant for the purpose of making a study throughout the State of Nebraska regarding the need for legal service programs. That study did go on this summer, and the anticipation had been that the report of that study would be available to us by that time. I received a letter, however, day before yesterday from the LAW REVIEW saying that the report is not ready, but the target date for the report is January 1 of 1970. Hopefully, that report will be of considerable assistance to our committee in determining whether there is any need in the State of Nebraska for more legal service centers, and if so in what particular areas.

Mr. Chairman, that completes my report. I think no action is required except perhaps for the continuation of the committee, and the continued efforts by that committee to either find funds through the O.E.O. or any other government service, for the establishing of such further legal services as appear to be necessary. I so move adoption.

CHAIRMAN OVERCASH: Is there a second to the motion by Mr. Urbom?

JOHN W. STEWART, Third District: I second the motion.

CHAIRMAN OVERCASH: Is there any discussion of this report?

HAROLD L. ROCK, Fourth District: Mr. Chairman, I wonder if that committee has considered the Canons at all in connection with the availability of legal services, and I refer to the A.B.A. Canons. It seems that their function has been rather limited here. Maybe the title of the committee is a little misleading. Maybe Mr. Urbom could answer that.

MR. URBOM: What specifically did you have in mind?

MR. ROCK: The Canon is found under DR 2103 but it refers to a nonprofit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of these services. Have you given any . . .

MR. URBOM: This has to do with the furnishing of group legal services. Our committee has had it under consideration but has taken no action in any direction regarding it, Harold. Yes, we do have it in mind.

MR. ROCK: But no action.

MR. URBOM: That's right, no action.

MR. ROCK: In the same connection, without belaboring it, has the committee given any consideration to the Murphy amendment presently pending?

MR. URBOM: No, we have not as a committee. The Murphy amendment, as I understand it, would permit the Governor to veto any legal service program that is instituted in the state. The committee has not discussed the subject at all. I am aware of the amendment. I personally have no strong feelings about it. I am not concerned about our Governor, but we might be concerned in the future about our Governor, I grant, and what his attitude on that kind of thing is. Our Committee however, has not taken a position on it. We simply have not discussed it.

If anybody has any guidance for us in that direction, we would be glad to hear it, because my personal thought has been that it is a matter on which, although we ought to be interested, I personally am not upset about the possibility of the Amendment insofar as Nebraska is concerned, but there may be other states that ought to be violently opposed to it.

SECRETARY TURNER: Warren, will the results of the LAW REVIEW survey be published in the REVIEW?

MR. URBOM: Yes, the LAW REVIEW study, as I understand it, will be published in the LAW REVIEW. That was one of the conditions of the grant. It will be published. Whether it is the full report or merely some observations from the report, I do not know, George, but I do know that there has to be a publication in NEBRASKA LAW REVIEW, so we will get it, but we may also get a fuller report. I don't know.

CHAIRMAN OVERCASH: Harold, does that answer your question?

MR. ROCK: Yes, thank you.

CHAIRMAN OVERCASH: Is there further discussion on this report? This is a very active committee and it has a thorough report. It's a matter of public service that the Bar is involved in. Does anyone else have an observation?

I take it no action is required except the approval of the motion to approve the report. Those in favor of approving the report will say "aye;" those opposed the same. The report is approved.

The report of the committee follows:

**Report of the Special Committee
on the Availability of Legal Services**

SUMMARY OF ACTION BY HOUSE OF DELEGATES NOVEMBER 6, 1968:

In keeping with the committee's continuing efforts to obtain the establishment of local plans for providing free legal service to the indigent and to establish a state-wide plan in those areas not covered by local plans, the House of Delegates approved the following recommendations:

1. That continued efforts be made by the committee to encourage local bar associations to formulate a local plan through the Office of Economic Opportunity, or otherwise, until March 1, 1969, at which time the committee would formulate a state-wide plan, excluding only Omaha and Lincoln and those areas where it has been affirmatively demonstrated that no real need exists for any type of plan;
2. That thorough exploration be made with the Office of Economic Opportunity to determine whether a judicare program might be acceptable for the entire State of Nebraska, except Omaha and Lincoln, which already have local programs in effect, and if the incorporation of judicare in some form has some prospects of being approved, the state-wide plan to be formulated by the committee include such judicare features as are deemed advisable by the committee.

ACTIVITIES OF THE COMMITTEE SINCE NOVEMBER 6, 1968:

In accordance with the approved recommendation, communication was had with the Office of Economic Opportunity. The responses, both written and oral, have been that the Office of Economic Opportunity will not consider funding any judicare program until the plan now in effect in Wisconsin has been in operation for at least one or two more years. The Office of Economic Opportunity says that experience to this time shows that a judicare program is more expensive than a program entailing the use of full-time salaried lawyers.

Letters were sent to all local bar association presidents and secretaries, whereby the bar associations:

- A. Were urged to establish local plans for serving the poor, either with or without federal financing;
- B. Were informed that the deadline of March 1, 1969, had been approved by the House of Delegates and that our committee would proceed with a state-wide plan with federal financing shortly after March 1, 1969, to include all areas not having a satisfactory local program or not having conducted a thorough and objective study revealing the lack of a need; and
- C. Were informed of the lack of the availability of federal funds for financing judicare programs.

Most of the bar associations did not respond. Where there was a response, however, the following developments have occurred:

Sixteenth Judicial District—Don Biehn of our committee met with the association on February 12, 1969. Shortly after May 1, 1969, the Sixteenth Judicial District completed the organization of a legal aid program financed by the local bar association and the use of office space furnished without charge by the Northwestern Nebraska Community Action Council. The plan includes Box Butte County, Sheridan County, Dawes County, and Cherry County, with offices in the Neighborhood Centers in Chadron, Alliance and Gordon and the Lawyers Conference Room in the Court House in Valentine. Essentially, each office is open one day a week and staffed by lawyers on a rotating basis. As of September 10, 1969, the Sixteenth Judicial District reported that the plan was working smoothly and that 49 instances of eligible persons had been handled.

Lincoln County—The Lincoln County Bar Association appointed a committee which undertook an investigation and concluded that the need for a legal aid service program did not exist in Lincoln County at the present time.

Dawson County—Inquiry was made on April 2, 1969, as to what other programs had been initiated and it was informed of the details of the legal aid program of the Sixteenth Judicial District.

Adams County, Phelps County, Franklin County, and Kearney County—Each responded essentially that it would establish a satisfactory program, probably as part of the Tenth Judicial District Bar Association.

Tenth Judicial District—There has been no response from the Tenth Judicial District Bar Association. A copy of the legal aid program of the Sixteenth Judicial District was furnished to the Tenth Judicial District Bar Association on July 1, 1969.

Ninth Judicial District—In June, 1969, it expressed interest in establishing a voluntary program, not funded with federal money. We have conferred personally and communicated by letter with the president with regard to a program similar to that of the Sixteenth Judicial District.

Washington County—The Washington County Bar Association discussed the problem and found no need for legal services that are not being met.

Seventh Judicial District—It has reported that its investigation indicates no need for any form of a legal service program.

Custer County—Although the Custer County Bar Association decided in February, 1969, reaffirming a decision made two years previously, that it would not be feasible for it to attempt to carry on a separate plan, there appeared from correspondence with the Central Nebraska Community Action Program, Inc. in August, 1969, that there may be some developing interest.

Hall County—By action of February 4, 1969, the association announced the favoring of the establishing of a federally funded legal services program to cover Hall, Merrick, and Hamilton Counties. Since that time, however, it has become apparent that no federal funds currently are available for the establishment of a new program.

Shortly before the March 1 deadline, we received information to the effect that no federal funds through the Office of Economic Opportunity would be available for the fiscal years 1969 or 1970 to finance any new legal service program. On June 28, we reported this to the Executive Council and since then have simply been encouraging local associations to establish legal aid programs with the use of local funds.

The Nebraska Law Review received a grant from the American Bar Foundation to conduct a survey of the availability of legal services in Nebraska. That survey has been conducted during the summer of 1969 and presumably a report of the results of the survey will be available by the time of the annual meeting of the Nebraska State Bar Association.

It is obvious that the committee has not been able to establish a state-wide plan of legal services, because of the lack of the availability of federal funds. Whether those funds will become available in the foreseeable future is unknown.

In view of the foregoing, it hereby is recommended:

1. That continued efforts be made by this committee or its suc-

cessor to promote the establishment of locally funded and operated legal aid programs;

2. That the committee or its successor remain aware of all possible sources of federal monies for funding of legal service programs, including the Office of Economic Opportunity and the Department of Housing, Education and Welfare, and that a study be made to determine the advisability of legislation for matching state funds under an HEW plan.

Warren K. Urbom, Chairman
 Donald L. Biehn
 William D. Blue
 Robert R. Camp
 Robert B. Crosby
 Louis B. Finkelstein
 Herbert J. Friedman
 Donald E. Girard
 Donald W. Pederson
 Howard E. Tracy
 Raymond J. Walowski

CHAIRMAN OVERCASH: The next item on the agenda is No. 18, Report of Special Committee on County Law Libraries.

REPORT OF COMMITTEE ON COUNTY LAW LIBRARIES

Thomas W. Tye

Mr. Chairman and Members of the House: First of all, the report appears on Page 21. I should advise you I am not a member of this Committee, but Mr. Meier is ill and asked that I give the report for him.

The only action necessary with reference to the report is with reference to a recommendation of the committee pertaining to the differentiation between County Law Libraries and a proposal which was made with reference to Judicial District Law Libraries.

The Committee recommends that the County Law Library system already established be continued and improved rather than to change to a new system of Judicial District Law Libraries.

I have also been asked by Mr. Meier to announce to the members of the House that he has correspondence from Judge Van Pelt indicating that a lawyer in Oklahoma has Volumes 1 to 300 of the

Northwest Reports, First Series, and that this attorney will make them available to any County Law Library in the State of Nebraska, in a Nebraska County seat town, for the transportation of the books—no other charge. If any County Library Association is willing to arrange to pay for the transportation and wants these volumes, they should contact Bill Meier in Minden immediately, and he will make the arrangements with you.

Mr. Chairman, I move the adoption of the report of the Special Committee on County Law Libraries and their recommendation contained therein.

CHAIRMAN OVERCASH: Is there a second to the motion?

RUSSELL E. LOVELL, Seventeenth District: I second it.

CHAIRMAN OVERCASH: Is there any discussion of this report? I will then put the question. Those in favor of the motion to approve the report will say "aye;" those opposed the same. The report is adopted and approved.

The report of the committee follows:

Report of the Special Committee on County Law Libraries

More than 63 counties have established County Law Libraries pursuant to the provisions of Sec. 51-220, R. R. S. Each established County Law Library is entitled to receive from the State of Nebraska, without cost to the library, the following state publications, to-wit: (1) Supreme Court Reports (Sec. 24-209, R. R. S.); (2) Session Laws (49-502, R. R. S.) and (3) Nebraska Statutes (49-617, R. R. S.).

These Law Libraries are of varying size and quality. The District Judges Association has recommended that at the opening of each term in each County, the presiding judge should make an inspection of the County Law Library and a report of his findings and recommendations should be filed with the Clerk of the Court, with directions that the Clerk file a copy with the governing board of the law library and the County Board. If this resolution is taken seriously by each of the District Judges and is carried into effect it is obvious that giant strides will be made in improving our County Law Library system in Nebraska.

During the coming year, the committee hopes to complete a new survey to determine whether additional County Law Libraries have been established since the last survey was made; whether

they are receiving the publications to which they are entitled by law; how adequately they are supported by the County Budget; and how effective the supervision of the District Judges has been.

It has been suggested that the County Law Library system should be abandoned and in its place there should be established a system of Judicial District Law Libraries (one for each Judicial District); that such District Law Libraries should be under the supervision of the State Librarian and supported by direct appropriation by the Legislature. The committee has given careful consideration to the proposal. **The committee recommends that the County Law Library system, already established, should be continued and improved, rather than to change to a new system of Judicial District Law Libraries.** This recommendation is based upon several considerations; some of which follow.

1. The diversity in geographic size of the Judicial Districts. Some Judicial Districts are composed of only one County. Some are composed of two or three and some are composed of many Counties. Some Districts have one Judge; others have several Judges who may reside in different counties.

2. Some Judicial Districts contain Colleges and Universities or other libraries from which legal resource material can be obtained, whereas others do not.

3. It is not feasible to standardize the needs of all Judicial Districts for law library resources, in view of the fact that other libraries in some Districts have available materials, which are not available in some of the other Judicial Districts.

4. Considerable progress has already been made in the establishment of reasonably suitable Law Libraries in most of the Counties. Greater progress can be made if the local bar and the District Judges will exercise their influence with the County Boards of the several Counties.

5. No particular standards can be set as to the publications which should be included in any County Law Library. It should supplement the Libraries of the Attorneys located in the County and provide the resources required by the District Court, the County Court and the Bar of the County in order to make proper decisions in the legal problems arising in the County. The larger and more populous the County the larger the library resources needs to be in order to facilitate the larger number of legal problems of more varied nature, which will need to be solved in such Counties. Fortunately the larger the County the greater the assessed value it is likely to have and therefore, the tax burden of maintaining a

larger law library will not be greater than that, the burden of maintaining a smaller library in a smaller County.

6. Lawyers should be encouraged to give to their County Law Libraries basic sets of books which are not extensively used in their own practice, which they may be maintaining in their own offices at excessive cost to themselves. Such gifts can be made to the County Law Library upon the condition that the County Board will budget the necessary funds to keep them current. The set will then be available for use when needed and will be readily available to the Courts and to other members of the bar. In this way lawyers can reduce the increasing burden of maintaining their own libraries instead of adding thereto and the library resources of the community will be expanded.

7. Judicial District Law Library resources would require considerable travel by a large proportion of the attorneys in sparsely populated Judicial Districts, whereas the County Law Library is close at hand.

8. For those unusual citations which may occasionally be needed, attorneys should be encouraged to turn to the State Law Library and the Law College Libraries. Such citations are available to any lawyer who can go to these libraries and the State Law Library will often send out on loan or furnish photocopies of such cases or texts or other authorities at very little cost.

9. County Law Libraries should be encouraged to advise the State Law Library of the extent and condition of their libraries so that the State Library can refer members of the Bar where they can find legal resource material nearest to them for reference purposes.

10. The State Law Library should undertake to maintain records of legal resource material available in County Law Libraries, College Libraries and Federal Depositories so that it can, on request advise members of the Bar where this information can be located nearest to them and should advise the District Judge and governing boards of County Law Libraries as to the best methods for coordinating their functions with that of the State Law Library.

The Committee believes that every reasonable means should be used by the State Bar Association to accomplish the following:

1. Arouse the interest of the members of County Bar Associations in the establishment, maintenance and improvement of their local County Law Library.

2. Encourage each District Judge to fulfill his statutory duty with reference to supervision of the Law Library of each County in his District.

3. Join with the District Judges in persuading the County Board of each County to budget adequate funds for the establishment and improvement of its County Law Library.

The Committee is of the opinion that the County Boards rather than the local Bar has the legal responsibility for providing the finances for the County Law Library, inasmuch as such libraries by law must be available to the public generally as well as to Judges, County Officials and Members of the Bar. If members of the Bar are to contribute funds to the County Law Library, their contributions should be in the form of contribution of law books or sets of law books. User fees for the use of the library should be nominal or on a reasonable annual dues basis, and in some proportion to the use made by the individual or firm of the library resources of the County Law Library.

The Committee will endeavor to ascertain during the coming year the names and locations of all County Law Libraries in the State, the number of volumes contained in each library, the budget of each County for its County Law Library and the "dues" charged members of the Bar for use of the library, if any. We will also attempt to ascertain how effective the District Judges are being in their supervision of the County Law Libraries. Results of this Survey will be made available with the 1970 Report.

William H. Meier, Chairman
Joseph Ach
Dixon G. Adams
John O. Anderson
John Elliott, Jr.
Mark J. Fuhrman
David E. Gregory
Jack R. Knicely
James A. Lane
Harry N. Larson
William H. Norton
W. A. Stewart, Jr.
Russell E. Lovell

HAROLD ROCK, Fourth District: Mr. Chairman, Mr. Kutak isn't here. He is out of town. He has asked me if I would ask this body leave to file a late report and to have permission of this body to continue that special committee for another year. I so move that he be authorized to file a late report and that that Committee be continued.

CHAIRMAN OVERCASH: You have heard the motion. Is there a second?

THOMAS W. TYE, Twelfth District: I second it.

CHAIRMAN OVERCASH: Is there any discussion?

SECRETARY TURNER: Will the late report be submitted for publication to the reporter or to my office?

MR. ROCK: Whichever you wish.

SECRETARY TURNER: Send it to my office and I will send it to the reporter.

CHAIRMAN OVERCASH: Is there any discussion? If not, those in favor of the motion will say "aye;" those opposed "no." The motion is carried. I don't believe there are any other items on the agenda for which there is no report.

We will go back then to the items that we passed.

. . . Recess . . .

CHAIRMAN OVERCASH: Will the House come to order. I think there are a number of members of the House who are here now who were not here when the roll was taken. We will have the Secretary check the roll of those who were absent at the beginning and see if the membership is now more complete.

. . . Roll of those previously absent . . .

CHAIRMAN OVERCASH: In the previous session there were two items we passed. So let us proceed with Item No. 10 on the agenda, Report of Committee on Legislation. I recognize Mr. Hopkins.

REPORT OF COMMITTEE ON LEGISLATION

Julian H. Hopkins

I don't think it is any surprise to anyone that this past session was the busiest session that the legislature has had and that your Committee on Legislation has had. If I were to describe it, I don't think there is any point in reading through the printed report, I'll assume you have all read that, we started out behind and if they hadn't run so long and finally recessed we never would have caught up.

It is our experience with starting out behind that leads us to make the recommendation to you that we make in the closing paragraph of our report; that is, that funds be budgeted so that we may have our program prepared before the first legislative day instead

of much of it after the twentieth legislative day. It is very difficult to try to do the research and the judgment and analysis of the effect of your program or your particular bill after the legislature is in session.

We are limited by direction of the Executive Committee to supporting those bills that are in the general interest of the administration of justice and for the welfare of the profession in the Nebraska legislature. We operate on the direction of the Executive Committee and your House of Delegates.

I do think we could do a better job if we had our program prepared in advance with the recommendations of the other committees to the Legislative Committee in advance of the session so that we could pre-draft the bills, get them through the bill drafter's office while it is easy in October and November, rather than when it is almost impossible in January. Our rush affects our ability to do a reasoned job. Therefore, it would be our recommendation that in preparing the budget for the year 1970 that funds be included to be used by the Legislative Committee at the direction of the Executive Committee to pre-draft and prepare the program of the Association.

I have two other comments on our report. We note that we supported the LB 150 on Judicial Salary Increases. In this particular bill the municipal court judges and the compensation court judges were not included. We did not oppose those bills that involved the municipal or compensation court judges. We entered an appearance, notation-wise, that the Association was generally in favor of these bills. We did not make a further appearance at the hearing because there were other questions in which we felt it was better that we state our general support always of adequate judicial salaries and support that matter.

There is one error in the last item of the exhibit to the report. We report LB 1417 as killed. It was passed. That is one that we opposed but it was still passed. We unfortunately were optimistic in the preparation of our report.

I would move, if I may, or would one of the members of the House of Delegates move the Committee recommendation that a budget be set up for the Legislative Committee for the drafting of bills submitted to it for support by the Executive Committee or by appropriate committees of the Association.

CHAIRMAN OVERCASH: Thank you, Mr. Hopkins. Is there a second to the motion of Mr. Hopkins?

LEO CLINCH, Twentieth District: I second the motion.

CHAIRMAN OVERCASH: In connection with any discussion of this motion and this recommendation and this report, I wonder if it would be agreeable with the House if we would invite Mr. Carter, who is employed by the Association and this Committee to expand on this report and answer any questions? I think this is a very important area of Bar Association responsibility. With your permission, I am going to invite Mr. Carter to come up here and supplement the report in any way he would like to do so.

EDWARD F. CARTER: Gentlemen, I want to take just a moment and then if there are some questions I will be happy to try to answer them.

I think our present relationship with the legislature is an enviable one. As a result of the Legislative Committee's work over the past couple of sessions I think the legislature is convinced that our action is directed by the public good and that this accounts for the reason why we had a pretty good one-loss record. If they are suspect of your motives it is extremely difficult to get anything affirmative done. If they believe that your motives are proper, this gives them the basis for supporting your position.

I think LB 642 is a good example of this. Shortly after the session started, the two Nebraska Commissioners on Uniform Laws asked the Bar Association to support, for a change, some of the Uniform Laws in the Nebraska legislature. A meeting was held with one of the Senators and he agreed to introduce a few of them, and the Bar indicated their willingness to support some. Well, suddenly there were eleven of them introduced, and one of them was the Uniform Disposition of Unclaimed Property Act, a bill that generally provided that if you made a deposit on your utilities, after so many years the utility company has got to cough it up and pay it to the state, they cannot keep it, or any other person holding property has to cough it up after a period of time. I would venture to say that the last four sessions of the legislature has had this bill in one form or another before it, and the opposition has always been unsurmountable. I think the only reason it was passed this time was because the legislature was satisfied that the Bar Association was not grinding their own axe but acting in what it believed to be the best interest of the public, and passed it.

I think this feeling is what kept us from having a service tax. You may recall that the legislature proposed that on attorney fees there be a service tax imposed. They did not see fit to apply it to doctors or dentists, but beauticians, lawyers, and laundries were going to get stuck with a service tax. I think the feeling that we were sincere in our belief that this was not good legislation went a

long way toward getting it killed. I think this kind of legislation will be back, and I think if not the next session, before long. If we are not there, or someone is not there to protect against it, we are going to have taxation of this type. If the money problem gets crucial enough, they will look any place they can for a dollar, without respect to who the individual is that works with the legislature.

It seems to me that our affirmative program can be expanded greatly, with much better chance of success, if we can start toward the 1971 session in November, 1969. The problem of draftmanship, the problem of acquainting legislators with the proposals, giving an explanation of what they are and why, if this can be done before January, it leaves the time available to look at the legislation that comes in, a thousand bills in twenty days, in January of 1972, to look for the legislation there that deserves either Association support or opposition. I certainly concur with the belief that if the legislative program is worthy of support at all, it ought to be a full-time program. And if it is worthy of any affirmative action at all, then it should be done in the off year when there is the time to do it right. I, for one, would certainly encourage you to support the proposal.

Now, I recognize that these matters do not come free. You can look at Pages 38 and 39 and see something in the neighborhood of \$5,000 to \$6,000 laying there. I think a little more money could double the list. If work could be done in advance, I think we could get more mileage out of each dollar spent. If these are dollars that you believe to be well spent, then I would think the program certainly warrants expansion.

If anybody has any question about any particular bill or about what we did, I would be happy to try to answer it.

THOMAS W. TYE, Twelfth District: With reference to the recommendation that you made, has this been incorporated into the proposed budget submitted to the House of Delegates for the 1969-70 year?

MR. CARTER: My function does not include preparation of the budget and I haven't the faintest idea. I do not know. I am sure somebody here could answer it but I do not know.

MR. HOPKINS: There is one thing I would like to add to Mr. Carter's statement.

As you know, there is a committee of the legislature on Proposed Constitutional Amendments that is becoming organized. Senator

Whitney has been elected Chairman of that Constitutional Review Committee. At the time the committee was being set up, Senator Adamson at a Committee hearing on this bill asked both Mr. Carter and myself whether or not this committee might be able to avail itself to the services of the Association should they be inclined to do so. I think this is one additional reason as to why we need some sort of interim support for the Association so that we may be in a position to both influence and support the operation of the Constitutional Revision Committee, should they choose to do so. I was under the impression from both Senator Adamson and the other members of the Judiciary Committee that they would feel it might be welcome for the Association to comment on the recommendations or some of the interim matters which come before the Constitutional Review Committee.

CHAIRMAN OVERCASH: Is there any further discussion of this subject?

LEO CLINCH, Twentieth District: I have one question I would like to ask. Has there ever been any discussion or proposal in your group concerning county judges being lawyers? I know at one time there was some years back and then it was dropped. Personally I think that is something in the interest of a little more efficiency in our courts and better justice up in the Sand Hills at least. If we could get some sort of different arrangement where all county judges would have to be lawyers or put them on a circuit or make them district judges, it would be helpful.

MR. CARTER: Well, I think from the standpoint of legislation, throughout the session we took a pretty firm position on the fence on the issue directly, but also I think took a step forward in the direction of solving that problem. Senator Luedtke introduced a bill directed primarily at Justices of the Peace, which would call for a constitutional amendment. As it came out of Committee, and as it was supported by the Bar Association, it would be broad enough to permit change, not only in the Justices of the Peace but in the county court system, and one of the ultimate objectives that Senator Luedtke was looking at, it wasn't an announced objective, was this very problem. So we will have on the ballot a constitutional amendment which would take some of the limitations out and let the legislature go directly to this problem. I think that is not so much a problem of the past session as it will be the *next* session. If that amendment passes then I think a good number of the legislators will look directly to the Bar Association and say, "What should we have?" and then I think our firm position has to be off the fence.

MR. HOPKINS: May I add to Mr. Carter's comment? One of the problems with the County Judges has been probate jurisdiction.

Assuming that Senator Luedtke's constitutional amendment passes, then I think it would be possible for the Bar Association to consider whether or not it would want to support the Uniform Probate Act, which is being worked on by the Commissioner of State Laws, the basic effect of which would be to make the Probate Court a division of your District Court. So we would no longer have the problem of, are we construing wills or are we determining title to real estate, because the basic probate jurisdiction would be a division of the District Court, if you assume the enactment of the Uniform Probate Code. This is another matter which will probably be coming before the legislature if Senator Luedtke's constitutional amendment passes which permits the legislature to adjust the jurisdiction of the court.

CHAIRMAN OVERCASH: Are there any other questions, any other discussion? Mr. President!

CHARLES F. ADAMS: I would like to add one comment to the question Mr. Clinch brought up. Judge Panec of Fairbury is President of the County Judges Association. He has been very much interested, as his Association has been, in this LB 476 concerning which Mr. Carter and Mr. Hopkins have reported to you. The Association is going to be asked whether or not we can financially sponsor a campaign for the adoption of this constitutional amendment, such as we were asked to financially sponsor, and did to a limited extent, the previous constitutional amendment on the Merit Plan for Selection of Judges, and the Constitutional Amendment on Removal of Unfit Judges. So it's a very live and active topic, Leo, of the Association.

FRANK J. MATOON, Nineteenth District: Bert, I have a question about the function of the Committee on Legislation. I can appreciate the fact that the committee should study for a proposed program in advance, and that sort of thing, to present to the legislature in various fields which are of interest to us. The thing that concerns me is, after the legislature is in session the House of Delegates is not meeting, the Executive Council is not immediately available, do we have any real machinery set up, an authority for the Committee on Legislation to act on its own in the interest of individual lawyers, subjects that *are* of interest to the Bar which are not promoted by the Bar itself but which kind of slide up behind you?

I am thinking of one subject that is very near and dear to my heart, and that was the tax on legal service. I heard about this in the rumor stage, and that sort of thing, and I was very much alarmed by it. I did not know whether the Bar even knew about it

or whether our committee knew about it. I find out now that they did because they mentioned that they had a state-wide effort here to kill the bill. But is the committee empowered to act in that vacuum area? This is what I would like to know.

CHAIRMAN OVERCASH: I was Chairman of this committee two sessions and I remember the rules under which we operated—they may have been changed—but I think Mr. Hopkins or Mr. Carter would bring you up to date on the way these matters are cleared.

MR. HOPKINS: At the present time the Legislative Committee accepts those bills that have been recommended to it by the House of Delegates or the Executive Council. In the event, as you are talking about, Frank, something comes up and we need to consult them, we go to the President of the Association and the Executive Council. If the President feels that there needs to be a change of position or an additional position taken, basically our program comes out, "We will support these bills," "We will oppose these bills." That is determined at the Executive Council meeting. If something would happen after that, there are not that many things that are that immediate, you can go to the President, and the President can by telephone get a consensus of the Executive Council. We had that, I think, come up once during the last session, where the President felt that he wanted a telephone committee meeting of the Council. But by-and-large we are authorized to operate in any areas, and when we limit ourselves to those matters of judicial administration, ordinarily our positions and attitudes can be laid out in advance. To the question you asked, if something emergent did happen, my instructions are to go to the President who will, in turn, consult with the Executive Council as to what our position should be. As I say, this did come up once by telephone last year.

MR. MATOON: The Fire Department is at work then.

MR. HOPKINS: Yes. I'll tell you very frankly what I want. I want insulation. I don't want everybody in Nebraska who is a lawyer to think that he can pick up the telephone and call Ed or myself and say, "Go down and lobby my bill." It is a matter of judicial interest. I do not think that you want that, necessarily, either, so we have this system if questions do come up they go to the President and Executive Council and then they tell the Legislative Committee what we do.

MR. CARTER: I don't want to prolong this but I would like to add a word, if I might. I'll tell you the way I interpreted it and the way I have lived under it the last two sessions: On affirmative

legislation we look to the Legislative Committee. They look to this group for the bills for the affirmative program. On the negatives, generally I look to my telephone. I call Charlie and say, "Do I go or don't I?" If there was time enough for a response in this manner, that is where it came from. In those situations where somebody would walk up to me on the floor and say, "We want to amend the bill to do this. Will your group go along with it?" I wing it. If it turned out something you did not like then that is my responsibility, but we've tried to do it, recognizing the guidelines that have been laid down, and recognizing generally the money we had to spend. But when the problems are hot, we try to handle them. Some day, I suppose, you run the risk of somebody doing something you do not like. But in the meantime we try to meet the problems as they arise.

CHAIRMAN OVERCASH: Does anybody else have any matters to offer on this? Mr. Cohen?

HARRY B. COHEN: What was the question?

CHAIRMAN OVERCASH: The question was whether or not we have a provision in the budget that this Committee could go ahead and operate in accordance with the recommendation and not wait until the legislature meets?

MR. COHEN: Well, I have a provision in the budget of \$5,200 for Committee Expense, Sections and all Committees' expense. I'm pretty certain that that is included in that.

CHAIRMAN OVERCASH: In other words, if the Association desires this committee to be active, there are some funds available?

MR. COHEN: There is \$5,200 available for all Sections and all Committees.

HARRY B. OTIS, Fourth District: How much would be available for this particular operation of the \$5,200?

MR. COHEN: We don't know. That's something for the Executive Council to determine. Most committees spend nothing and some committees spend a lot of money. But I think the Legislation Committee spends most of the money, more than anybody else.

CHAIRMAN OVERCASH: Does anybody else have any other observation? Gentlemen, I think this is a subject that you ought to take your hair down and talk about. I was Chairman of this committee two sessions. We had no paid help. We had to go over 800 or 900 bills. In every session the number of bills is increasing and you may just as well find out, if you don't know it now, that we are going to have very important problems in this legislature. This

committee and its staff are going to have to be on the job if we are going to serve the public interest and our profession. Every session has got more bills.

In this last session, it was my information, and I was not on the Committee then, that there was a lot of sentiment to tax lawyers' services and not tax many other professional categories. There was a real problem in that area. We were helped by some legal opinions from the Attorney General, that they had to take them all or none. I think that this Association should realize that it is going to have to get organized *right*.

In 1965 when I was Chairman of this committee I suggested that we have to have a grass roots organization in each senatorial district to back up this committee. It is one thing to go to the committee hearings and to the legislature and to say, "I represent the State Association and I am for this or I am against that," but the thing that really counts with some of these Senators is, "What do the people back home think about it?" Therefore, in considering this whole problem, I think as members of the House you want to realize that it is going to be important in the period ahead that we not only have an effective state committee, but that we have some organizational support at the grass roots level. If we don't we are going to have some real problems.

HOWARD H. MOLDENHAUER, Fourth District: Mr. Chairman, in that same connection, I would like to suggest, if at all possible, that we could be made aware of the problems which we might anticipate before the election. If we could get the position of some of these candidates *before* they are elected I think we could be far more effective.

CHAIRMAN OVERCASH: Does anyone else have any observations, any discussion?

GEORGE E. SVOBODA, Sixth District: Bert, if you are going to have a grass roots committee or grass roots support maybe the Legislative Committee, or some other kind of committee, should have some representative in each legislative district so he could pick up the phone, Carter or whoever it to do it, and say "Your assignment is to talk to your Senator and explain this bill and then also explain it back home, at least to the lawyers." Is there something set up of this nature?

CHAIRMAN OVERCASH: Well, I don't know whether there is now, but if you will read the annual report for 1965, I believe, or 1966 when I was chairman of the committee we did that in every senatorial district. We had certain individuals who would agree to

work with the state committee and contact their Senator in order to accomplish that result. I think that is essential.

LEO CLINCH, Twentieth District: I think that's absolutely necessary, but I didn't know there was anything that had been set up that way.

CHAIRMAN OVERCASH: Well, it was set up at one time. I don't know about now. Ed, what is the picture? Do you get any local support or not?

MR. CARTER: Well, yes, we get local support. Every time we've asked for it we've gotten it. I think the service tax bill was a good illustration. This bill came along. It went to committee purporting to be a tax on advertising, which was a subject we weren't interested in, so we didn't go to the committee hearing. The committee struck out all the reference to advertising and put us in instead, after the hearing, so now we've got a bill on the floor that is going to tax us and we've had no opportunity to be heard on it. We griped about it a little bit to some of the boys. But standing there complaining isn't enough, and so what we did, working with some other groups, was that we methodically went through the list of the legislators and we picked out the people who were for us and we ignored them; we picked out the group that we thought were dead set against us, and we ignored them. Then I got on the telephone and made about twenty-five calls to people in various districts saying, "Can you go talk to your Senator?" We picked the ones that we thought were the swing votes.

When I started out I thought it would be great if in every legislative district there was one man that I could call and say, "Go do a job on this," whatever it is. It doesn't always work that way, first of all because the guy you call may not agree with what you are doing. Now, we have had some issues where lawyers have said, "I think you are wrong". We worked hard on the Professional Corporations Act, and there are many people who think this a big mistake. Well, now, if you've got a set group of people you turn to, you are going to get beat by your own mistakes. So I have liked it a little better being a little bit loose. I have never been turned down when I've asked for help from someone.

Now, if we can get organized in the off year we can change it a little bit. We can develop our program, we can draft our bills, we can prepare our explanations, then we can send it out to somebody in each district and say, "Here is our affirmative program, look it over, then go to your Senator and get a commitment from him." With an affirmative presentation you can do this. During the session, I don't think we can do it. You have to strike where you

need to strike and sometimes you need two or three contacts. I called maybe four people to go fight Terry Carpenter on the service tax. I don't think any of them got bloodied but nobody succeeded in setting on him, either. But you've kind of got to call the shots as you see them when the issue is hot.

I think we can use a fixed organization in the off year with an affirmative program to go to Senators and say, "Here is what we affirmatively want, read it, let us explain it to you. Do we have your support?" If it is properly done, I don't see any reason why our affirmative program can't be wired when January 1st gets here. Then that just leaves us with the other 890 bills to worry about, and we will take them as we catch them.

Maybe that didn't answer your question but that is the way I think it ought to function.

MR. CLINCH: That clears it up a lot more. I get the impression that you are on top of things.

MR. CARTER: Well, I am trying to create that impression, whether I am or not.

CHAIRMAN OVERCASH: Thank you very much, Ed, and Julian. Is there further discussion on this subject? Are you ready to vote on the matter of this report?

The question is whether or not you approve the recommendation of the Committee on Legislation, that it be directed to prepare a legislative program in advance of the 1971 session and have the resources to do it. Those in favor of the recommendation will vote "aye," those against it, "no." The motion and the report are approved and carried.

The report of the committee follows:

REPORT OF THE COMMITTEE ON LEGISLATION

At the 1969 session of the Nebraska Legislature, this association appeared in support of 33 bills, 32 of which passed, and against 12 bills, 11 of which were killed or amended to acceptable form.

Bills of particular importance include LB 330, the Professional Corporations Act which was adopted. The bill was drafted by a bar committee and sponsored by the association. It represents the largest single effort of the association.

LB 191 if passed would have taxed attorney fees at sales tax rates. The bill was killed on the floor but the efforts of many

lawyers throughout the state were needed to get the job done. The successful campaign against this bill was truly a statewide effort.

This session 9 Uniform laws were proposed and supported by the association, 8 of them were passed.

Our working relationship with the legislature is now very good. We could benefit greatly by expanding the program into the off legislative year for research, drafting and preliminary contact with senators on our proposals. Illustrative of the kind of work that could be done is the area of Judges Retirement. Actuarial assistance will be available to us for study and research through the legislative council of the legislature if we wish to utilize it.

Your committee recommends that funds be budgeted for the balance of 1969 and 1970 to pay for analysis, drafting and preparation of our 1971 legislative program to the end that all bills may be drafted and all senators contacted on them prior to January 1, 1971.

NEBRASKA BAR ASSOCIATION

1969 Legislative Program

Sponsored or supported

No.	Subject	Result
150	Judges' increases	Passed
208	Raise Limits Small Estates Act	Passed
283	Non-Profit Corporation Bill	Passed
284	Profit Corporation Bill	Passed
330	Professional Corporation Act	Passed
375	Eliminating verification of civil pleadings	Passed
376	Residency for adoptive military personnel	Passed
377	Excluding unintentional torts from the Deadman Statute	Passed
476	Constitutional amendment re courts	Passed
518	Determination of heirship for personal property	Passed
519	Part time use of retired judges	Passed
520	Determination of heirship for equitable interests	Passed
637	Uniform certification of questions of law	Withdrawn at our request
638	Uniform Anatomical Gift Act	Killed
639	Uniform Recognition of Acknowledgments Act	Passed

640	Uniform Child Custody Jurisdiction Act	Withdrawn at our request
641	Uniform Deceptive Trade Practices Act	Passed
642	Uniform Disposition of Unclaimed Property Act	Passed
643	Uniform Rendition of Accused Persons Act	Passed
644	Uniform Rendition of Prisoners as Witnesses Act	Passed
645	Uniform Amendments to Enforcement of Support Act	Withdrawn at our request
646	Uniform Federal Tax Lien Registration Act	Passed
647	Uniform Amendments to Gift to Minors Act	Passed
701	Punishment for murder fixed by court without jury	Passed
702	Discovery process in criminal cases	Passed
703	Inspection warrants for building inspectors	Passed
788	Increase in Municipal court civil jurisdiction	Passed
937	Uniform Choice of Forum Act	Passed
950	Establish Judicial District Public Defender	Passed
1027	Indexing Security Documents by Register of Deeds	Passed
1039	Guardianship Bond modification	Passed
1070	Judges' Retirement Act	Passed
1307	Transfer of minor prisoners	Passed

Opposed

No.	Subject	Result
43	Restrict recording of title instruments	Killed
92	Restrict filing deed until taxes paid	Killed
191	Tax on Attorney fees	Killed
332	Permit practice before Railway Commission by non-lawyers	Killed
410	Change manner of descent of property	Killed
585	Disqualification of judges by criminal defendant	Killed
625	Restrict filing of deed until taxes paid	Killed
839	Establishing qualifications of County Attorney	Killed
1000	Revising schedule of executor's fees	Killed
1157	Court employees under State agency	Killed
1216	Create review division for sentences	Passed
1417	Expand Discovery in criminal case	Killed

Committee on Legislation
 Julian H. Hopkins, Chairman
 H. D. Addison
 William B. Brandt
 John M. Brower
 James W. R. Brown
 Edward F. Carter, Jr.
 Patrick L. Cooney
 William Grossman
 Virgil J. Haggart, Jr.
 John J. Higgins
 Richard H. Hoch
 Jess C. Nielsen
 William J. Panec
 William J. Ross
 Donald C. Sass
 Floyd A. Sterns
 Otto H. Wellensiek
 Malcolm D. Young
 Martin M. Bohac

CHAIRMAN OVERCASH: We will now proceed to Item No. 8 on the agenda. Maybe we can dispose of this report and the recommendation ourselves. The report is the Report of the Judiciary Committee, Page 46. Those who have the printed report, if you will turn to that page, as I understand the report it recommends that amendment to the statute regarding the furnishing of information to the Nominating Commissions in connection with the selection of judges. I assume you have read the report, at least are generally familiar with it. There are severe restrictions at this time on communications that may be made with reference to the qualifications of candidates. The committee feels that these restrictions are too heavy and do not permit sufficient communication of relevant information to this Nominating Commission.

Is there any question about this recommendation? Is there any discussion of this recommendation?

HARRY B. COHEN: What is the purport of the amendment? Just to allow people to give information to the Nominating Commission otherwise than in writing?

CHAIRMAN OVERCASH: The amendment is on Page 47, Harry, the last sentence: "Presenting facts and opinions relevant to the judicial qualifications of a candidate, whether in writing or orally, in response to such independent investigation and inquiry by the Commission or a member of a Commission, shall not constitute a violation of Section 24-811."

That is the amendment that is proposed, under the theory that at this time, without that amendment, there are some limitations and restrictions in that regard.

MR. COHEN: Mr. Chairman, it would seem to me that the present rule to provide—up at the top of Page 46—“A complaint had been received,” and so on, that “it appears to prohibit the submission of information to the Nominating Commission after the public hearing has been held, except ‘in writing.’” You *can* give information in writing, and, for myself, I don’t think you ought to open it up for pressuring the Commission. I think the amendment would open that very greatly, and I don’t think it is necessary. I think we should protect them from pressure being brought to bear on members of the Nominating Commission. We ought to protect them. As long as they can respond in writing, which is now possible, I think that should be sufficient.

GEORGE E. SVOBODA, Sixth District: Mr. Chairman, if I may, I was on this committee and attended one of the meetings, I couldn’t attend all of them, but I did cite a specific example where I was involved. A client of mine, on the Commission, came and asked me, “What do you think of this person that is nominated?” What do you do? Tell him? Say nothing? Put something in writing? The way the law is presently you jeopardize perhaps your practice or your standing by responding to the inquiry. It’s my understanding that the sentence in bold type at the end of the law permits you to respond to the inquiry, without any problems, respond to an inquiry by the Commission or a member of the Commission. I just wanted to cite that specific example that happened in my own case. I don’t remember what I said. I won’t tell you.

MR. COHEN: Can’t you respond now in writing?

MR. SVOBODA: There seems to be some doubt about it when an individual Commission member comes to you, and its says orally, in writing or orally, it was the belief of the Committee as a whole that there was not sufficient latitude in the law to permit an oral response to this inquiry, and that’s the reason for the amendment to the law.

MR. COHEN: It is my personal opinion that the Commission ought to be aided and assisted to every extent possible to make a determination independent, because if you adopt this amendment, it is oral or in writing, you subject him to a helluva lot of pressure, and I think that is wrong.

CHAIRMAN OVERCASH: Howard, do you have some observations?

HOWARD MOLDENHAUER, Fourth District: I thought it was quite clear and well presented. This only enables you to respond to an inquiry by the Commission itself. You could not initiate the conversation. I think it is very reasonable to be able at least to answer a question by some of the Commission, as long as you do not assert yourself or initiate it. I thought it was quite clear.

LEO CLINCH, Twentieth District: Wouldn't this open it up to a vicious thing, though? If a member of the Commission came to me and asked me what I knew about this particular individual who is a candidate for a judge, and maybe I didn't like him and I told him that I thought he morally was corrupt. Now certainly I would not put anything like that in writing, but I gave a bad report to the Commissioner. He can't pin me down on it. He probably will never quote me by name, yet I could destroy that man, perhaps, by giving an opinion of mine which might or might not be true. I wonder if we're not getting too far afield.

CHAIRMAN OVERCASH: I wonder if it would be appropriate to ask our Secretary if he has had any experience in connection with the administration of this Commission system, and see if he has any observations about how it works.

SECRETARY TURNER: This proposal has been brought about because of the situation that Mr. Svoboda described. Several of the Commissions, after their hearings, have wanted independent views from people in the community, and they have encountered a number of instances where, in view of the present statute, the person to whom the inquiry is directed is afraid to answer. I know the Commission would welcome a little latitude in the investigations they make. It's a very important job they have.

CHAIRMAN OVERCASH: Does anyone else have any observations? Any discussion? Does anyone desire to move that this report and recommendation be adopted and approved?

THOMAS R. BURKE: I so move.

CHAIRMAN OVERCASH: Is there a second?

GEORGE E. SVOBODA: I'll second it.

CHAIRMAN OVERCASH: Is there any discussion of the motion? I'll, then, put the question: Shall the report and recommendation of the Judiciary Committee be adopted and approved? Those in favor will say "aye;" those opposed "no." I declare the motion carried and the report and recommendation approved.

The report of the committee follows:

REPORT OF THE COMMITTEE ON JUDICIARY

The Judiciary Committee met in Lincoln on Friday, June 27, 1969. Although only four members of the Committee were present for a meeting, the Committee proceeded to discuss a suggestion which had been received for a slight revision in the procedure for Judicial Nominating Commissions.

A complaint had been received by the Committee to the effect that Section 24-810, R. R. S. 1943, appears to prohibit the submission of information to the Nominating Commissions after the public hearing has been held except "in writing." While it is desirable to prohibit pressure groups from campaigning for a candidate it is self-defeating to prevent a free expression of opinions responsive to inquiries by the commission. Lawyers who are familiar with this limitation are particularly susceptible to the strong implication that they may not respond to direct inquiry by members of the Nominating Commission under this statute as it now stands. Section 24-811 which makes a violation of Section 24-810 a matter of contempt of court, has been cited by lawyers when members of Nominating Commissions sought their opinion as to nominations.

The Committee on Judiciary suggests that a sentence be added to Section 24-810 affirmatively stating that responding to inquiries by a Nominating Commission, or a member of a Nominating Commission, will not constitute a violation of Section 24-811. There is attached to this report a draft of an amendment to the section which may be appropriate to this end. **The Committee recommends that the Legislative Committee of the Association and the Judicial Council be directed to introduce and support legislation to this end.**

Auburn H. Atkins
Chauncey E. Barney
Thomas F. Colfer
Harold W. Kay
Clark O'Hanlon
Kenneth M. Olds
L. F. Otradovsky
Carlos E. Schaper
George E. Svoboda
Richard N. Van Steenberg
Joseph T. Vosoba
William Marshall
Thomas E. Whitmore
James N. Ackerman, Chairman

24-810. Judicial vacancy; judicial nominating commission; meeting; notice; hearing; investigations. In the event of a judicial vacancy the Clerk of the Supreme Court shall contact the chairman of the judicial nominating commission relating to such vacancy, and shall ascertain from him or her a time and place for the first meeting of such judicial nominating commission, at which time a public hearing will be held. He shall thereupon notify each commission member in writing of the time and place of said meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of said judicial nominating commission, and of the interest of said commission in receiving information relating to qualified candidates for said judicial vacancy. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing his views concerning candidates for the judicial vacancy. After the public hearing the nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the judicial nominating commission at any time prior to its selection of qualified candidates to fill such vacancy. The judicial nominating commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for said judicial office. **Presenting facts and opinions relevant to the judicial qualifications of a candidate, whether in writing or orally, in response to such independent investigation and inquiry by the commission or a member of a commission, shall not constitute a violation of Sec. 24-811.**

24-811. Judicial nominating commissions; unlawful to attempt to influence; violations; penalty. It shall be unlawful and a breach of ethics for any judge, public officeholder, lawyer or any other person or organization to attempt to influence any judicial nominating commission in any manner and on any basis except by presenting facts and opinions relevant to the judicial qualifications of the proposed nominees at the times and in the manner set forth in sections 24-801 to 24-812. Violation of this section shall be considered as contempt of the Supreme Court of the State of Nebraska and shall be punishable as for contempt or by appropriate discipline with respect to any member of the bar involved in any such unlawful or unethical conduct.

CHAIRMAN OVERCASH: Gentlemen, as I read the agenda, we have now completed or disposed of everything in the morning session. We have a few minutes left. Let's see if there are any items

in the afternoon agenda that we could take care of. We have two special orders of business that may take a substantial amount of time this afternoon.

The next item I would consider on the agenda would be Item 35, which is a report of the Special Committee on State Tort Claims Act, which is related to a later report by the same Chairman, Number 40, on the Section on Tort Law. I have a written report from that Chairman. I will ask Mr. Oldfather if he will present it.

REPORT OF SECTION ON TORT LAW

Charles E. Oldfather

Gentlemen, I am not on the Section on Tort Law but I have simply been asked to present for Mr. Fiedler, who is the Chairman, the report. It reads as follows:

"The Committee on Tort Law has been primarily engaged in legislative activities during the year 1969.

"Edward Carter, Jr., was a Chairman of special committee on a State Tort Claim Act, and this committee was successful in seeing the passage of said act.

"An amendment to the Dead Man's Statute was passed excepting tort actions from the restrictions of this rule of evidence. This is very progressive legislation and should rid the tort field from many previous injustices.

"New legislation and repeal of old legislation is important to members of this Association. The Executive Committee of the Tort Section recommends that the House of Delegates adopt a resolution directing the President to appoint a special committee with full authority to represent the Bar Association and with full authority to actively support the type of legislation it deems to be to the best interests of the Bar in the tort field.

"Again the Executive Committee of the Tort Section recommends that the House of Delegates adopt a resolution directing the President to appoint a special committee to further study the Keaton-O'Connell Plan and similar proposals and with full authority to present its views as the views of the Bar Association on these proposals, said committee to be designated as 'Special Committee on Automobile Accident Reparations.'

"The following members comprise the Executive Committee to the Tort Section:

A. A. Fiedler, Omaha, Chairman
 Frank B. Morrison, Jr., Omaha
 Frank L. Winner, Scottsbluff
 M. J. Bruckner, Lincoln
 Kenneth Cobb, Lincoln
 Howard E. Tracy, Grand Island

The first two have the 1969 expiration terms, the second two the 1970 expiration terms, and the third two the 1971 expiration terms.

The Committee further recommends the continuation of the Special Committee on Rules of the Road.

CHAIRMAN OVERCASH: Thank you very much. Is there anyone here present who is an officer of the Tort Section? Since I have this in writing, I asked Mr. Oldfather to present it to you. If there is no one here representing the Section, in order to dispose of the matter, I think we should act upon the recommendations. As I understand it, there are two recommendations:

First, there is a recommendation of this Section that there be a committee appointed on Tort Law to determine the position and policy of the Association.

Secondly, that there be a Committee on the Keaton-O'Connell Plan.

Now, I call attention that there is a Special Committee of this Association on the Keaton-O'Connell Plan, Number 34, that has made a report that was included in the blanket motion.

Does anyone desire to make any motion that the recommendation of this Section in either regard be approved?

C. RUSSELL MATTSON: I move they be tabled.

CHAIRMAN OVERCASH: Is there a second?

THOMAS W. TYE, Twelfth District: I'll second it.

CHAIRMAN OVERCASH: I do not think that is a matter that is debatable. Those in favor of the motion will say "aye," those opposed "no." I declare the motion to table carried and the report tabled.

We will now proceed to Item Number 37. Is Mr. Simon present?

**REPORT OF SECTION ON
REAL ESTATE, PROBATE AND TRUST LAW**

Ray R. Simon

The Section on Real Estate, Probate and Trust Law has been engaged, and I am sure many of you personally are serving in connection with this matter, in the preparation of a comprehensive Nebraska Real Property Practice Manual. This is also in conjunction with the Committee and the efforts of Mr. Strasheim, the Section on Continuing Legal Education. The Manual, as I have indicated, will be very comprehensive, covering all aspects of Real Property practice, including taxes, preliminary negotiations, zoning, the entire gamut of the Real Estate practice. I am sure members from many of the other Sections are also working on this Manual.

The Committee on Title Standards, and I expected to be called upon later this afternoon, Mr. Chairman, and therefore had indicated to Mr. Huber that I would like him to make the report, but in view of the fact that we are in a position to give it at this time I would like to obtain approval of the House to the following Title Standard, which will be designated as Title Standard Number 73. If I may, I would like to read it:

Where an abstract shows: A plat of a subdivision into lots, blocks, streets and alleys, with lots numbered in one block but unnumbered in the other blocks of the subdivision; and, the listing and assessment of the unnumbered block for taxation of lots by number in conformity to numbering of the numbered lots in such block;—it is not negligent to pass without objection conveyances appearing prior to the last certification of the abstract indentifying an unnumbered lot or lots by number conforming to the lot numbering and sequence in the block wherein the lots are in fact numbered.

Is that sufficiently confusing?

COMMENT: In at least one instance prior to statehood, a townsite was platted and subdivided into lots, blocks, streets and alleys; only the lots in Block One being numbered; with no comment in the dedication or the surveyor's certification regarding numbering of the lots in the blocks other than Block One.

Ontario Land Company v. Yordy, 212 U.S. 449, 53 L. Ed. 449, wherein certain blocks in a subdivision were designated reserved without number, holds that lands may be sufficiently described to sustain a conveyance, although not technically or officially de-

scribed, if identified by a numbering in harmony with the balance of the addition—in this case as numbered blocks in regular sequence, the maxim “that is certain which can be made certain” was applied by resort to extrinsic evidence on the ground that: “the office of a description is not to identify the land but to furnish the means of identification,” and, “it is only when it remains a matter of conjecture, after resorting to such extrinsic evidence as is admissible, that the deed will be held void for uncertainty in the description of the parcels.”

The plot indicates the blocks of the area and one of the blocks is numbered, the remaining blocks are unnumbered. However, for taxation purposes, the assessor has employed the same numbering system in the unnumbered blocks as has been employed in the numbered blocks, and this simply will authorize the acceptance of conveyances prior to the last certification by block number, even though the block in question is in fact unnumbered.

Also the Standard Title Committee requests the House of Delegates to approve an additional citation to Title Standard Number 20. The addition would simply read:

See also Sec. 42-319, R. R. S. 1943, pertaining to alimony and child support payments, and *Hidy v. Hidy*, 184 Neb. 527, 169 N. W. 2d 285 (1969).

The Title Standard in question relates to the lien of alimony and child support.

Mr. Chairman, I move the adoption of the proposals of the Title Standard Committee.

CHAIRMAN OVERCASH: You have heard the motion and recommendation. Is there a second?

HARRY B. COHEN: I second it.

CHAIRMAN OVERCASH: Is there any discussion? Are you familiar with the question?

CHAIRMAN OVERCASH: Are you ready to vote? Those in favor of the report and recommendations of the Title Standard Committee say “aye,” those opposed “no.” I declare the Title Standard approved.

Is Charles Wright here? I might at this time, in order to eliminate certain business items, make my report.

Later on this afternoon the Section of Insurance, Banking, Corporate and Commercial Law, No. 41, should make a report. I will make it at this time.

**REPORT OF SECTION ON INSURANCE,
BANKING, CORPORATE AND COMMERCIAL LAW**

Bert L. Overcash

The principal activity of this Section this year has been the formulation and development of a seminar for the program at this meeting of the Association. Last year the Section completed a comprehensive organization of itself, and various subcommittees were appointed for the purpose of performing specialized tasks.

The Corporate Division of this Section of the Nebraska State Bar Association was instrumental in the drafting of various amendments to the Non-Profit Corporation Act and the Business Corporation Act. Members drafted revisions which appeared in LB 283 and LB 284. These amendments related to the indemnification of directors, expanding the area in which business corporations may reimburse persons for expenses incurred in prosecution or defense of actions involving corporations. They also clarify payment of organization expenses, procedures involving formation of the corporation itself, and corrected the publication of notice provisions.

The officers of this Section are the following:

Bert L. Overcash, Lincoln, Chairman
Virgil J. Haggart, Jr., Omaha, Vice-Chairman
John C. Mason, Lincoln, Secretary
James W. Hewitt, Lincoln
Ralph D. Nelson, Lincoln
Howard H. Moldenhauer, Omaha

That is the report of this Section. I take it that it neither asks for nor requires any action of the House of Delegates.

Is Mr. Gourlay here? Item No. 42, Report of Young Lawyers Section.

REPORT OF YOUNG LAWYERS SECTION

John C. Gourlay, Chairman

The affairs of the Young Lawyers Section during the past year were under the direction of a six-member executive council whose officers were John C. Gourlay, Chairman; Glen A. Burbridge, Vice-Chairman; Jeffre P. Cheuvront, Secretary-Treasurer.

The section sponsored two major continuing legal education programs, these being the major activities of the Section.

1. The Bridge-the-Gap institute was held at the Kellogg Center in Lincoln immediately following the State Bar examination, the purpose being to instruct new law school graduates on some of the practicalities of the practice of law. A number of outstanding Nebraska lawyers appeared on the program, which was chaired by Con Keating, a member of the Young Lawyers Section Executive Council. This was the eighth year for the Institute.

2. The Institute on 1969 Nebraska legislation was jointly sponsored by the Young Lawyers Section of the Nebraska State Bar Association and the University of Nebraska College of Law on September 19 and 20, 1969, at the Cornhusker Hotel in Lincoln. The program was chaired by Don Treadway, a member of the Executive Council of the Young Lawyers Section. Two hundred and thirty-five lawyers from a large number of Nebraska communities registered for the event. A very impressive outline of the new legislation was presented to the registrants.

The Section, in addition, co-sponsored the Regional Moot Court Competition with the Creighton and Nebraska Colleges of Law in Omaha last November.

The Section sent two delegates to the American Bar Association meeting in Dallas as representatives of the Nebraska Young Lawyers Section to the Young Lawyers Section of the American Bar Association.

At a business meeting held September 19 at Lincoln, elections were held to fill two vacancies created by the retirement of the senior members of the committee. Those elected to serve a three-year term were Fredric H. Kauffman of Lincoln and Richard Hoch of Nebraska City.

The new officers of the Section are:

Donald Treadway, Chairman, Fullerton
Jeffre P. Chevront, Vice-Chairman, Lincoln
Con M. Keating, Secretary-Treasurer, Lincoln

Other members of the Executive Council for the coming year are:

Jeffrey H. Jacobsen, Kearney
Fredric H. Kauffman, Lincoln
Richard Hoch, Nebraska City

CHAIRMAN OVERCASH: Thank you very much, Mr. Gourlay. That was a fine report. These young lawyers are the future of our Bar.

Does anyone have any questions, any discussion of this report? I take it that no action is required.

We are to reconvene here at 1:30, and as a special order of business we'll have the Advisory Committee report first, and that will include the matter of the new Canons, and then at 2:00 o'clock as a special order of business, the Reorganization Committee report. That is a very substantial report. You have copies of it. The committee will be here and I hope every member of the House will be present at one-thirty for these additional items of business.

We will recess.

... The session adjourned at eleven-fifty o'clock ...

* * *

WEDNESDAY AFTERNOON SESSION

October 29, 1969

The afternoon session was called to order at one-forty o'clock by Chairman Bert Overcash.

CHAIRMAN OVERCASH: Will the House come to order.

Under our agenda we have a special order of business as the first item, the report of the Advisory Committee. I recognize Mr. Baird.

REPORT OF ADVISORY COMMITTEE

WILLIAM J. BAIRD: Members of the House, the report of the Advisory Committee as prepared by Mr. Raymond Young, Chairman, is as follows:

CODE OF PROFESSIONAL RESPONSIBILITY

In its recent annual reports the Advisory Committee recorded its commitment, to the extent consistent with its functions and duties established by the Supreme Court Rules, to collaborating in the program of the American Bar Association in the re-examination, revision and modernization of the standards and principles of professional conduct.

Its participation and that of this Association in that program have included (1) the preparation for the ABA of an analysis of the Nebraska disciplinary procedures from the date of the Bar integration; (2) taking part in the two-day meeting in Denver of

the ABA Special Committee on the Evaluation of Disciplinary Enforcement; and (3) compilation of materials and responses to questionnaires submitted to aid in the re-evaluation of the Canons, and the improvement of ethical standards and procedures. The early report of the ABA Committee took the form of Preliminary (January 15, 1969) Draft of the Code of Professional Responsibility.

Last year President Mattson of this Association appointed a Special Committee consisting of the members of the Advisory Committee, together with Messrs. Alfred G. Ellick and Thomas M. Davies, to study and review the tentative draft of the proposed Code, which consisted of 136 pages, and to compile its comments and suggested changes. The report of the Special Committee of this Association was favorable to the adoption of the Code, with a few changes, all of which were embodied in the final draft (July 1, 1969) of the report of the Special ABA Committee on Evaluation of Ethical Standards, in the form of a book of 125 pages entitled "Code of Professional Responsibility."

(I think all the members of the House have been furnished with a copy of that.)

By unanimous vote the Code was adopted without change by the ABA House of Delegates at its annual meeting in Dallas on August 12, 1969, to become effective January 1, 1970, as of which date it will take the place of the Canons of Professional Ethics as an instrumentality of the American Bar Association, insofar as the Canons are inconsistent with the Code.

President Bernard G. Segal of the ABA has appointed a special nine-member committee, of which Earl F. Morris is Chairman and our own President Charles F. Adams is a member, to seek national implementation by the States and regional Bar Associations of the new Code of Professional Responsibility. The special committee will have its organization meeting November 7, 1969.

To what extent our Court Rules will be modified is uncertain, but it is reasonable to believe that our standards and our practice and procedures in the field of Ethics will undergo important changes. A resolution approving this Code and requesting adoption by our Supreme Court will be submitted to you at the conclusion of this report. We urge your favorable consideration and adoption of this resolution.

REVIEWS

The Advisory Committee completed the review of the 400-page record mentioned in the last Annual Report and disposed of the charges and reported to the Court.

One record of action of the Committee on Inquiry for the 17th Judicial District was reviewed, resulting in the approval of the dismissal by the local committee.

SUPREME COURT

In the Supreme Court applications for reinstatement following suspension were granted in two cases.

COMMITTEES ON INQUIRY

Districts in which no action by Committees on Inquiry has been required are: 5, 6, 7, 8, 9, 10, 15, 18.

Districts in which the Committees on Inquiry, after informal investigations, found no grounds for filing formal charges are: 1, 2 (3 cases); 13 (2 cases).

In District 3 (Lincoln) all matters pending at last report were disposed of. Charges were filed in ten matters. Five were dismissed for lack of merit after investigation; one was withdrawn. Of the four matters still pending, committee hearings have been had in two of them.

In District 4 (Omaha) of the seventeen charges which were pending at last report, ten were dismissed for lack of merit; five are held in abeyance awaiting disposition of related litigation; one was withdrawn; one has been heard and awaits completion of record. Charges in twenty matters are in various stages of investigation and action by the committee.

In District 11 (Grand Island) in one matter committee investigation is under way.

In District 12 in one case newspaper advertising awaits committee action. After hearing, one conflict of interest case was dismissed for lack of merit.

In District 14, charges of inability to obtain counsel were heard and dismissed for lack of merit.

In District 16, charges in one case held over from last year. One matter was adjusted without formal hearing; one was dismissed for lack of merit.

In District 17, adjustments were had, after informal investigations, in two cases.

In District 19, formal hearings in three matters resulted in findings for respondents. One case was held in abeyance because of pending litigation.

Charges are under investigation in Districts 20 and 21.

ADVISORY OPINIONS

Arrangements are in process for the publication in the Nebraska State Bar Journal from time to time of selected Advisory Opinions deemed by the committee to be of such general interest to the profession as to make publication desirable. In view of the contemplated re-examination of our practices and procedures as related to the new Code, it seems advisable to defer such publication pending any changes which shall be made by the Court.

The substance of the opinions rendered during the last year is as follows:

Advisory opinions are to be limited to situations in which a lawyer seeks the opinion of the committee as to the ethical propriety of a course of action in which he desires to engage.

The committee has refrained from expressing an Advisory opinion as to the correctness of the conduct of a lawyer other than the inquirer, or where the facts or the acts inquired about have transpired or have been accomplished as distinguished from being contemplated or prospective, or in any case affected by pending litigation, or where it seems likely that the matter may come before the District Committee on Inquiry (Rules, XI, 3-7) and subsequently before the Advisory Committee (XI, 8).

In the regular course opinions were expressed on several questions of conflict of interest.

Opinions were rendered in response to official requests.

"When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client." (Canon 19)

A judge who has publicly stated that he is considering running for an elective non-judicial office, and on whose behalf petitions are being circulated to obtain the necessary signatures to qualify him for filing, is an "active candidate" for a non-judicial office within the meaning of Judicial Canon 30.

An attorney may share office expense and overhead with a life insurance representative and his agent when the only apparent benefit which will accrue to the attorney is a reduction in the expense of overhead, when their businesses are not enmeshed, when the attorney has informed the insurance representative that as an attorney he cannot recommend the insurance man, and when the attorney will not share in insurance commissions.

An attorney who practices individually or with a firm may list his home telephone number as an alternate to his office number under his individual alphabetical listing; however, the home telephone number of firm partners and associates should not be listed as alternates under the firm name itself in the telephone directory.

It is the view of the committee that a city or village attorney may not properly conduct the defense of a criminal case.

Lawyers in a firm limiting their practice to patent, copyright and trademark law may announce the opening of a new office and the association with the firm of a registered patent attorney by sending to local lawyers only and by publishing in a local legal journal a brief and dignified announcement thereof. Such is the committee's interpretation of Canons 27 and 46.

Neither a Committee on Inquiry nor the Advisory Committee has any jurisdiction to pass upon the validity of a Court order or proceeding.

Respectfully submitted,

That concludes the report of the Advisory Committee. Mr. Chairman, should this be acted upon?

CHAIRMAN OVERCASH: I don't believe there's anything in the report that requires an action.

MR. BAIRD: With your permission, then, I would like to present the resolution which was referred to in our report and which reads as follows:

WHEREAS a Special Committee of the Nebraska State Bar Association to review the proposed and tentative draft of a Code of Professional Responsibility as submitted by the Special Committee on Evaluation of Ethical Standards of the American Bar Association has heretofore approved the same with minor suggestions as to revision; and

WHEREAS the House of Delegates of the American Bar Association, on August 12, 1969, adopted the July 1, 1969 Final Draft of said Code, to become effective January 1, 1970; and

WHEREAS the Executive Council of the Nebraska State Bar Association, on September 13, 1969, approved said Code and directed that the House of Delegates of this Association be requested to approve said Code and secure adoption of the same by the Supreme Court of Nebraska; now, therefore, be it

RESOLVED by the House of Delegates of the Nebraska State Bar Association that the Code of Professional Responsibility of the American Bar Association be approved and that the officers of this Association be directed to petition the Supreme Court of Nebraska to amend Article X of the Rules Creating, Controlling, and Regulating this Association to substitute said Code of Professional Responsibility in lieu of the Canons of Professional Ethics now in force under said Article X.

I don't think, and I hope that this does not require any selling before moving the adoption of this resolution. I would only say that I think it would be nice when our President Adams goes to this meeting in about ten days of the Special ABA Committee, if he can record that Nebraska is one of the first, if not the first, to have set into motion the machinery which, hopefully, will lead to the adoption in this state of the new Code of Professional Responsibility as our guide for ethical conduct and standard from now on.

Mr. Chairman, I would move the adoption of this resolution.

CHAIRMAN OVERCASH: Who seconds it?

ARCHIBALD J. WEAVER: I second the motion.

CHAIRMAN OVERCASH: You have heard the motion and second. Is there any discussion? This motion, as you know, relates to the adoption of the new Code of Professional Responsibility. I think every member of the House of Delegates was sent a copy of this new Code. Is there any discussion regarding the adoption of this resolution?

If not, those in favor of the motion will say "aye;" those opposed "no." I declare the resolution adopted.

The next item on our agenda relates to the special order of business, which is the report of the Special Committee on Reorganization. I think the members of the House were sent some time ago a copy of the report of this committee. The Chairman of this committee is Mr. Herman Ginsburg. Other members of the committee are present. With the permission of the House, I will invite Mr. Ginsburg to make a report orally, and also members of the committee to join him in the discussion of this report and the answering of any questions that anyone has with reference thereto.

REPORT OF SPECIAL COMMITTEE ON REORGANIZATION

Herman Ginsburg

Mr. Chairman, I would like to ask some of my "fellow conspirators" to get up here around me somewhere so they can help me out

when the questions start flying—Mr. Maupin, Mrs. Charles Wright, and Mr. John Gourlay. The men whom I've just referred to, together with myself, were the drafters of the document which you have had submitted to you, and I want to say before everything else that we hope that there is no particular concern on style, grammar, punctuation, and so on, because we didn't go into that problem. We know that there has to be some grammatical work done. What we are concerned about is the substance of the report, and if—and I hope you will not take me as being unduly optimistic—if our report is approved, what we had in mind was to form a committee on draft and style to work over the language used. So I am not going to attempt to justify any particular language or punctuation, or anything of that kind. We do hope we have made our meaning and intent of the substance of our recommendations clear.

The genesis of this committee goes back a number of years, I think I can safely say back to 1966. It came into being because of the desire on the part of this House that we procure an Administrative Assistant with the necessary quarters, and so on, and when we got into drafting and going into the Rules relating to that subject, the committee came up with other recommendations.

Just to refresh the memory of some of the members of this House, I think many of you have been here during all these years, in 1967 our committee reported that need existed for amendment of the rules and bylaws of our Association, primarily in certain fields: (1) in fiscal management, (2) in the functions and jurisdiction of the House of Delegates, (3) in the functions and jurisdiction of the Executive Council, and general over-all review of the organization and functioning of the Association in the field of membership services. The report was adopted and the committee was told to go ahead and go to work.

We now have presented to you the results of our labor, which I can say to you is the *unanimous* report of the committee. I might as well frankly tell you that there were times in the work of our committee—and we had a great number of meetings—when there was rather violent discord between the members of the committee. So our results represent a compromise in order to obtain unanimity. We felt that our committee was probably a pretty good microcosm of the Association as a whole, and if *we* didn't get together, the House couldn't get together. It would be an example of intransigence on one part or the other. So I can say to you that the report which has been submitted to you is the unanimous agreement of all the members of our committee.

I don't want, unless this House instructs us otherwise, to go through each item of this report of the proposed rules section by

section. What our committee thought we would do would be to call attention to and emphasize the important changes and important recommendations and then ask for questions. If anybody has any questions or anything that isn't clear, we will see what we can do about coming to some sort of a solution.

As I reported to the Chairman of the House of Delegates in my letter submitting this report, in essence the principal changes proposed in our draft of the new rules are as follows:

1. Provision for an Executive Director for the Association.
2. Provision for budgetary and fiscal control for the Association.
3. Provision for placing full charge of the affairs of the Association in the House of Delegates; and making the jurisdiction of the Executive Council subject thereto.
4. Providing for the election of the members of the House of Delegates and Executive Council in such manner as to place the control of the Association in the elected membership.
5. And, in general, modernizing various items of procedure as set forth in our Rules.

I made a short synopsis of the Rules so that I could point out to you what we thought were principal changes, changes that might be considered material.

We adopted in Article II a provision for the purposes of the Association, which some of you may think is superfluous and wonder why it is there, and may I say that the reason for this was to try to eliminate any question arising out of the United States Supreme Court decision in that case in Wisconsin—I can't think of the name now—I think it is *Donohue*, where there was a question raised about the right of an integrated Bar to go into fields other than limited to administration of justice. We make it clear in Section 1 of Article II that that is all we are concerned about, the administration of justice and the practice of our profession. That is the purpose and intent for the existence of this Association.

Some of you may be interested in the last Federal Reporter advance sheet. There was an opinion from, I believe, the Sixth District Court of Appeals in a Florida situation where this man, Norman Dacey, who wrote "How To Avoid Probate" sued the State Bar of Florida because he said they libeled him. The Court of Appeals, citing a number of other cases to sustain their position, found that the State Bar of Florida, by reason of the fact that it was established by rule of the Supreme Court of that state, is an arm of the state

government and could not be sued by Mr. Dacey, that the funds were for public use and they couldn't be used to pay Mr. Dacey for any slander damages or libel damages. We feel that our rules would fit into that situation, so that this institution will be a legal entity.

I can see a mistake right here in Section 2. We say, "The supreme power of the Association shall be vested in the membership thereof by the exercise of the power of initiative and referendum . . ." In other words, we make it clear that the membership of the Association has the final say-so, if they wish to exercise it. We then go on and say that the active management and control of the business and affairs of the Association is vested in the House of Delegates. Then, "subject to the over-all control of the House of Delegates, the Executive Council shall function as the administrative and executive organ of the Association . . ."

Perhaps I might stop at this point and call to your attention the fact that this is a radical departure from the way the present Rules exist. Under the present Rules the Executive Council controls the money; the House of Delegates has no power or authority to pass upon anything involving the expenditure of funds. The proposed Rule, if adopted, would completely change that situation. So we have established a sort of executive arm, an administrative arm of the Association, and an over-all body, the House of Delegates, which has control of the Association subject to the exercise by the membership of the right of initiative and referendum, so that we are truly a democratic organization.

With reference to the matter of membership there are a number of changes. I don't know whether you want me to go too much into detail. One thing we did that some of you may not notice the significance of, this just shows you how our committee worked—and of course I am egotistical and very proud of our committee, proud that we had the type of men on the committee that we did have—somebody brought up the statement, here is a man who has himself in the status of an inactive member for twenty years or twenty-five years while he is working in a bank or a trust company, something like that, and then when he retires and is through, he pays \$30.00 and now—Bang!—he is an active member!

We have put in a little—I was going to use the word "joker" but I do not mean it as a joker—a little requirement that any man who did that must be able to satisfy the Supreme Court that he now is qualified to go back into the active practice of law.

We have provided with reference to the judiciary that they are members of the Association just as any other lawyer is a member, but we do give them the option that while they are serving in the

judiciary they can apply for inactive status; if they don't want to, if they want to remain in active status, they can. However, they are not to serve as officers of the Association while serving in the judiciary.

We provide a little clearer method of handling law student memberships.

Then with reference to the dues we provide that the dues shall be such amount as may be fixed by the Supreme Court. I may say we had considerable question and argument in the committee on how to handle the matter of dues. The final conclusion was that we leave it pretty much as it is now, although now it just says the dues are "X" dollars. The way we had it, the dues shall be such amount as fixed by the Supreme Court, and we do provide that there can be variation in dues for lawyers who have been in practice less than five years, lawyers who are in the armed forces, inactive members, and we provide procedures for remission of dues in worthy cases, things of that kind. We spell this out in Article III of the proposed Rules.

Article IV of the proposed Rules is the Budget and Audit Article, which has already been approved by this House. All we have done is put it in its proper place. The Budget and Audit Article was approved last year and, in essence, it provides that there shall be a Budget Committee that shall prepare a budget, submit it to the Executive Council, who shall then adopt a budget and then submit it to the House of Delegates for final approval, and that there shall be no expenditures outside of the budget so adopted, with minor exceptions: In cases of emergencies I believe the President can spend \$50.00, or something like that, and the Executive Council can spend \$5,000, but in general we have tried to fix it so that there will be a budget adopted at the beginning of the year, that that budget will be well analyzed, first, by the committee, secondly by the Executive Council, and finally adopted by the House of Delegates, and once that budget is adopted, that's it! There are to be no expenditures beyond the budget so approved.

Article V of our proposed Rule is simply a copy of the Professional Incorporation Rule, which, again, as we understand it, was adopted at last year's annual meeting. We put that in, my recollection is, exactly as we found it in the Nebraska Law Review report of the action of the House last year. So we had nothing to do with that. That was something that was adopted. We just put it in its place.

Article VI relates to the election of officers and provides for an Executive Director. When we originally started out we called him

"Administrative Assistant." We now provide for an "Executive Director." We provide that the Executive Director is to be appointed, that the Secretary and Treasurer of the Association also are appointive officers, and in fact it was the thinking of our committee that the Executive Director and the Secretary and Treasurer would probably all be combined in the same person. It didn't *have* to be. It was up to the appointing power. But we thought that we should make provisions for that.

We also, we think, made provisions in Article VI for cases of inability and vacancies arising in offices. There has been a little confusion and a little difficulty there. We have had some cases where people were elected and could not serve. We now have provided a procedure whereby the vacancies are to be filled.

We have created one new office, and that is the office of Chairman-Elect of the House of Delegates. We have the Chairman of the House of Delegates and then we have also provided for the Chairman-Elect of the House of Delegates so that if the Chairman of the House of Delegates has to go on up to fill some other vacancy, there is the Chairman-Elect of the House of Delegates who can step into his position.

We have provided for the terms of all officers who take over, fill out vacancies. We've provided for the manner of nominations for office. In general those provisions are not too much different, I think, than what we already have.

Now we come to Article VII which deals with the House of Delegates, and there of course is a vital, a very vital change. As I mentioned earlier, we said in Article II, I believe it was, that the House of Delegates is the supreme power of the Association, subject to the overriding control of the membership. So we have established a House of Delegates which is to be elected by judicial districts, and we suggest on the basis of one delegate for each sixty lawyers, with the provision that every district have at least one, so that no district, regardless of the number of lawyers, would be without a delegate.

Mr. Wright of our committee had a chart made up of the results that would happen under this suggestion, and it would turn out, for example, that there would be a total of 39 members of the House of Delegates. District Three, Lincoln, would elect 6; District 4, Omaha, would elect 14; and every other district would have one. So the result would be that Lincoln and Omaha together, combined, would have 20 members in the House of Delegates—20 out of 39. We made an analysis of one to 50, one delegate for every 50, and one delegate for every 70, and it does make a little difference. But the

conclusion of our committee was that it be one delegate for every 60, or major fraction thereof, with a minimum of one delegate for each district, regardless. As I said, it works out that there are only two districts that would be entitled to more than one delegate.

We have provided that the House of Delegates limit the voting power to the elected delegates only. Some of you may be aware of the fact that as the Rules now stand, we have elected delegates to the House of Delegates and then we have ex officio members of the House of Delegates. I frankly don't know the percentage between them, but the ex officios are pretty large. The way we suggest is that we not have any ex officios, but we do say that certain people can be given the privilege of the floor by the House of Delegates, but the voting is limited to the elected delegates, and the elected delegates only.

In Article VIII we refer to the Executive Council. We provide there, somewhat similar to the House of Delegates, that there are to be six elected members of the Executive Council. I think it works out that there would be five ex officio, but, again, when it comes to voting, when it comes to nominations, when it comes to matters requiring vote, the decision is to be made by the six elected members of the Executive Council.

The Executive Council, as I mentioned earlier, functions as the administrative organ of the Association, subject to the over-all control of the House of Delegates, and functions and performs such duties as the House of Delegates may vest in it.

We provide that the House of Delegates, by a majority vote at any regular meeting, may adopt suitable bylaws, and I will call your attention to the fact that all the way through these amendments you will notice that we keep talking about "as provided by the Bylaws"—"as provided by the Bylaws." I emphasize that for this reason, since the Bylaws are to be adopted by the House of Delegates, we are making it clear, just as clear as can be, that the control of the Association is in the House of Delegates.

We provide for recommendation to the court of amendments to the Rules, again by a majority of the House of Delegates. We provide for the ethical standards relating to the practice of law to be such canons as may be adopted by the Supreme Court. The provisions with reference to disciplinary proceedings, we just say "copy them the way they already exist" and we make no suggestions about that at all.

We provide, finally, in Article XV, "The present bylaws shall continue so far as applicable under these rules until new bylaws

are adopted." Our thinking is that if and when these rules are adopted, either our committee or some committee will then prepare bylaws in accordance therewith for approval by the House. We did not feel that, until we had the final decision of the House on the proposed Rules, there would be any use whatever in our trying to present bylaws.

We provide for an effective date for the new Rules. We provide that all elected members of the Executive Council and of the House of Delegates shall complete their present existing term.

We submit to the House of Delegates, with all due humility, that this is not a perfect job. There may be many questions that you may have, and we welcome them, and my colleagues will endeavor to answer them to the best of our ability, but in order to come to you with a unanimous consensus, this was the best we could do.

With that preliminary statement, we leave the matter in your hands. After all, this House will have to decide how this is to be handled. Do you want to vote it section by section? Do you want to vote on the instrument as a whole? We have nothing to say about that. That is up to the House. We thought the best way for us to present it was just to call attention to the highlights, to ask that you give us any questions you might have, and from that point on the House of Delegates could use its own good sense and judgment as to what it wants to do.

Our committee does recommend and move the adoption of the draft Rules. I don't know, does that motion require a second?

CHAIRMAN OVERCASH: I assume that it does.

FRANK J. MATTOON, Nineteenth District: I'll second it.

CHAIRMAN OVERCASH: It has been moved and seconded that these rules of reorganization submitted by this committee be approved by the House of Delegates. It is my understanding that the other members of the committee are here and available. I think we should now proceed to a discussion of the motion.

C. RUSSELL MATTSO: Mr. Ginsburg, I have some questions that have occurred to me, if I may come forward. At this moment I am not expressing my opinions in connection with the vesting of power but I do have this question, and I haven't checked the statute—I am certain your committee has and that some or all of you can answer it—under Article III, Section (b), the provision that members of the judiciary may, while serving as such, apply for inactive membership status. My sole question, without looking at the statute, is this: For instance, if it is required that Chief Justice White be a member of the Nebraska State Bar Association to be qualified to

become Chief Justice, by becoming an inactive member does he disqualify himself from being Chief Justice? I am using this only as an example, applying to all of those members of the judiciary who are required by statute to be admitted lawyers.

MR. GINSBURG: That is a very good question, but our answer to that is that these members of the judiciary who have to be lawyers are admitted to practice by the Supreme Court of Nebraska, and having been admitted by the Supreme Court of Nebraska, they are qualified. The mere fact that they are an inactive member of our Association does not remove the qualifications. At least that was the one hundred percent interpretation of it by our committee. I feel we are right. A man can become an inactive member of our Association and he does not lose his status as having been admitted to the practice of law in the State of Nebraska.

MR. MATTSON: My next question is in connection with the provisions in the Article on Professional Corporations, starting on Page 9 but in particular on Page 10, under Section 7 (b), "that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing lawyers' professional liability insurance. . . ." Now my question is: Is the carrying of the insurance a complete defense to the acts of liability?

MR. GINSBURG: Mr. Mattson, I am going at this time to evade your question because I have no knowledge of it at all, but I just want to say this, and I hope that there will not be any controversy regarding the Rule for Professional Corporations that will be attributed to our committee, because all we did was turn to Page 642 of the proceedings of the Sixty-Ninth annual meeting wherein the proposed rule for submission to the Supreme Court was adopted. It extends clear over to Page 645. All we did was just copy it verbatim into our report because we thought we had to, because this report that appears on Pages 642 to 645 was adopted by this House.

MR. MATTSON: Well, then, I admit to being asleep last year when that was adopted, along with, I think, many others, and raise the point as to this exception: In other words, a silly example would be, if this were adopted as a rule of the Supreme Court and I were sued for one of these errors, could I come in and defend and say, "I am not liable for it because I have a public liability policy?" That is my point.

MR. GINSBURG: I am wondering if I could encroach upon Howard Moldenhauer's good nature and have him answer that question, because he was the spokesman last year for this Rule.

HOWARD H. MOLDENHAUER, Fourth District: Herman, I haven't briefed this, but it is my off-the-cuff impression right now that this is talking about the joint and several liability for all acts of all the employees of the corporation, and that if an individual lawyer were sued he couldn't absolve himself from his *own* liability because of this provision. It might protect him from liability of his partner. If his partner were sued it might protect him from that liability as far as the policy is concerned, but it wouldn't affect that partner. That is my interpretation of it.

MR. GINSBURG: Thank you, Mr. Moldenhauer.

I want to thank Russ Mattson for bringing up these points. I am not trying to escape any responsibility, but the Rule relating to Professional Corporations is not the work of our committee; it is just a copy of what was adopted a year ago.

CHARLES E. WRIGHT: I think the point Russ Mattson makes is, Does this create a new liability where none previously existed?

MR. GINSBURG: May I say this, and it fits in with what I said earlier, if our report is adopted there should be a committee on style and draft that maybe should go over these questions where there are ambiguities—not only *maybe* but definitely *should*. I have no doubt but what our language that our committee is so proud of is full of ambiguities in many respects.

HARRY B. COHEN: I have a question on this "No inactive member shall practice law in Nebraska, nor vote or hold office in this Association."

This brings to my mind the existence of a tremendous number of house counsel, especially in the City of Omaha. I am told that just Omaha alone has something like 75 to 100 members who are house counsel. I would think that they would be practicing law in Nebraska. I don't know, but I imagine there would be a lot of them who have never been admitted to the Bar in Nebraska. That is also true perhaps of larger organizations, like the railroads, the utilities, natural gas. They all have a large number of house counsel involved.

LEO EISENSTATT, Omaha: They are not inactive members now.

MR. COHEN: Some of them are, quite a number of them. But they also have to become members of this Association.

MR. EISENSTATT: Well, they should be.

MR. COHEN: And be admitted to the Bar of the State of Nebraska.

MR. GINSBURG: May I say that this comment that has just happened between Mr. Cohen and Mr. Eisenstatt is a repeat of what we had in our own committee. We had the same arguments. Some thought, Well, you have to make special cases for these house counsel. The consensus of our committee was that if what they are doing amounts to active practice of law in the State of Nebraska, then they should be qualified and be a member.

RUSSELL E. LOVELL, Seventeenth District: Mr. Ginsburg, you have a provision here that the Supreme Court of Nebraska will fix the dues. I don't know, I've discussed it with a couple of members and we just wonder, Is the Supreme Court better qualified than the Executive Council to say what our dues should be?

MR. GINSBURG: Somebody up here said "Yes!" Well, I am going to answer it—I can't help but always put my foot in my mouth—but I am going to answer "No." I would have preferred that either the House of Delegates—as a matter of fact, my recommendation was that the House of Delegates be empowered to fix the dues, but Boy! did I get voted down on that! I was told by no means would that be welcomed by the Bar and that we couldn't begin to get any consideration unless the Bar had it firmly in mind that the Supreme Court was going to be the ultimate control over the amount of the dues and not some bunch of highbinders who might have gotten control of the Association.

MR. LOVELL: The important point is that if the Supreme Court is *inactive*, they will be paying minor dues, yet they are fixing higher dues for all of us who are active lawyers.

MR. GINSBURG: Actually, we know as a matter of fact that the Supreme Court will not do that. In other words, we had this last experience where the Supreme Court said, "All right, you produce the consensus of opinion of the Bar, have a referendum of the Bar, and we will do whatever the Bar wants." So I don't think we need have any fear that the Supreme Court won't be adequate in the dues or would lean one way or the other. I think the Supreme Court is going to go by what they understand is the majority wish of the Bar.

LEO CLINCH, Twentieth District: Mr. Ginsburg, may I ask why you put in there "Members of the judiciary may, while serving as such, apply for inactive membership status?" What was the purpose of that?

MR. GINSBURG: The purpose behind it was simply to give them an opportunity to save a little money, to say, "Now, look, I'm

not engaged in the active practice of law." As a matter of fact, you know there is a big hassle going on about whether judges are even subject to the rules of discipline that affect the Bar Association.

Here is a man who is a district judge. He is not in the active practice of law. He *can't* be in the active practice of law. He has to be an admitted lawyer. So we say, "All right, you can be an inactive." Or if he wants to continue as an active member, that is perfectly all right. But we do give him that option—"Well, I can't be an active member. I *shouldn't* be an active member." I've talked with several of the judges who said they didn't think it was proper for a judge to be an active member of the Bar. Then I've talked to other judges who felt that they *wanted* to be. So we said, "All right, we'll just leave it up to you. You can be active or you can go on inactive status, as you please."

HARRY B. COHEN: I have a question on subdivision (e) on Page 4. This opens up the practice of law by associations, such as they have now in California.

MR. GINSBURG: That is a very good point, and, again, this is an attempt to anticipate, an attempt to allow for what might happen in the future: "Nothing in these Rules shall be construed to bar any active member from the practice of law pursuant to the provisions of any Rule of the Supreme Court of Nebraska authorizing the practice of law by a professional service corporation subject to the limitations provided by such Rule."

In other words, if the Supreme Court says, "We will allow professional service corporations to practice law," all right, then the member can do it. If the Supreme Court says "No," they can't.

I know Jack Wilson has a question. Jack, do you want to come forward.

JOHN J. WILSON: Mr. Chairman, Members of the House: In Section 3 of Article III—and I have discussed this with Mr. Wright—where it says "Annual membership dues shall be: Active (blank dollars); Inactive, Law Student so much . . ." I think there should be a provision added to that, that that is what they should be until changed or approved by the Supreme Court.

On this judgeship thing, I remember back a number of years ago when we had a meeting of the Federal Judiciary, the State Supreme Court, and the District Judges Association, one member of the federal court didn't think he should pay any dues, one member of the circuit court thought they should be paid the same as active dues, the Supreme Court was very inadequate in their expression,

and the District Judges Association was represented by their president and about sixty percent of them thought they should pay the same dues as active members, and forty percent of them didn't think they should.

I don't care whether or not we have a separate classification for the judiciary while they are in office, whether you make it \$5.00 or \$10.00, but I think that should all be settled. Rather than make them an inactive member, give them a classification and let them pay dues. It might help to get a raise in dues. I know that most of them don't want to pay any raise in dues. I think this Association needs more money. I, for one, am willing to pay more money to give this Association the amount of money that they need.

I am not facetious in what I say. I served on the Executive Council two terms. I served while I was President, I served while I was past President. I think I know some of the work of the Executive Council of this Association. I say that because I think the Executive Council knows more about running this Association. I am a member of the House because I am a member of the House of Delegates of the American Bar. Adopt these rules and I lose that affiliation. That is not bothering me.

I am for these Rules, with the exception of one thing. I am not fighting the directorship and I am not fighting the professional corporations and I am not fighting the way you are being organized. My main cause comes to you as to who should handle the finances of this Association. I am going to talk facts to facts, and I may step on somebody's toes. If I do, I am doing it from the bottom of my heart, as to who should run the finances of this Association.

Since the House of Delegates has been established—and I think it has been the greatest deal that ever happened—instead of reading reports and getting them adopted by fifteen or twenty members of the Assembly we have a group here that gets their reports and should have knowledge of them, and if they object to them they have the right to talk. But now I am talking about finances.

Eighty percent of the people in this room today did not file for the office of House of Delegates. I could be wrong by five or ten percent. Substantially all of you were nominated by the Executive Council. When this proposition was being discussed at the mid-winter meeting in Lincoln we held the meeting open for nearly one hour to get a quorum. Now, is *this* the group that is going to tell the State Bar Association how much money they can spend, how much they should spend, and what they are going to spend it for? Or are we going to leave it to a group, according to these rules?

of ten men, one of whom is the President, one the President-Elect, one the Chairman of the House, and one the Chairman-Elect. Out of the ten people, four of them must be Bar-minded. Not that *we* aren't Bar-minded. We've come down here, we don't know what the working deal is of the House of Delegates, we don't know what dealings are of the Bar Association. We meet twice a year; the Executive Council meets more than that and can meet on the call of the President or a certain group of the members of the Executive Council.

I have served on the House of Delegates of the American Bar Association for twelve years. The House of Delegates of the American Bar Association makes recommendations of what should be done. The Board of Governors then, through their budgeting, figures out how the money is to be spent. I think your Budget Committee is fine. I think the Executive Council should pass on it. I think the House of Delegates should have the right to recommend back to the Executive Council how the money should be spent. Maybe there is a proposition that the Bar wants that the Executive Council has overlooked.

But when we start leaving the spending of the money and the final approving of the finances of this Association, which are inadequate under the proposed budget, under our present dues they are inadequate, and under the proposal that we have a Director, which I think could be fine, we are still inadequate—what do we people here who meet twice a year, who weren't interested enough to file for the House of Delegates in the beginning, think we can tell the State Bar Association of 2,300 members how their money should be spent.

I think if this thing were changed so that the House had the right to make the recommendations back to the Executive Council, and that they have the final word on how this money should be spent, I am one hundred percent with you. But the way this is left now, the House of Delegates could change all your plans of spending, they could overrule the Budget Committee, they could overrule the Executive Council, they could overrule the four men who are responsible for running this organization. And what do we know, generally, what the needs of the Association are! But I do think this organization that is so active should take into consideration that they should make their recommendations back to the Executive Council for changes of the Budget, and the Executive Council then should change them.

I am very opposed to Article IV of these Rules. I have talked with members of this committee, and without mentioning any

names, some of them think I have something to talk about, some of them think I am dogmatic, but I say to you as lawyers of the State Bar Association, shouldn't our finances be put with a group of men who are more Bar-minded than we, who meet more than twice a year, who know the problems, who have a President, Chairman of the House of Delegates, the President coming in—shouldn't *they* tell us what our money is going to be spent for, and how they are going to spend it?

I am openly for a raise in dues. I think our \$30.00 dues are inadequate. I think they should be \$50.00 a year. Some say \$40.00. I think this Bar Association could do a lot of marvelous things if we had adequate money, which we do not have. It has been "skip here," "skip there" to be sure we come out even. Under the proposed budget, which I imagine all of you got a copy of the same as I did, we have a deficiency for 1969-70, if we follow the Budget Committee. Who is going to cut that down? Who is going to fit the pocketbook to the purse strings? Are *we* who met here today for the first time, some of you, who have not been active in the control of the finances and the future purposes of this Association? Or are we going to leave it to these four people, the Chairman of the House of Delegates, the Chairman-Elect of the House of Delegates, the President-Elect, and the President? Why shouldn't they be on the committee, with the other members to guide them in how we spend our \$30.00 a year or \$50.00 a year?

Gentlemen, this is serious. The bigger your group that is spending money, the easier it is to spend, and we have less money to spend than what everybody thinks it should be spent for. I got some opposition. I've talked this thing. I am interested in it. I have had eight years' experience on the Executive Council. I have been attending the meetings of the House of Delegates ever since it was established. I just appeal to you in honesty and good sense that Rule IV should be changed. Thank you.

MR. GINSBURG: Mr. Wilson, before you leave I want to ask you one question, because I am sure you misspoke. You said you are opposed to Article IV. Now, my understanding in talking with you is that you are not opposed to Article IV, you are opposed to that portion of Article IV which places the final control in the House of Delegates.

MR. WILSON: That's right. I say I think they should have a right to make any recommendation they want, for any purpose they think should be carried out, but I think the Executive Council should have the final say, Is there money enough? Is it more important than some other factor? Should we go ahead with it?

MR. GINSBURG: I would like, if you'll pardon me, I guess I can take advantage of my position here, I would like to talk about what Mr. Wilson has just said before anybody else does because I know more about the background. I've discussed this with Mr. Wilson, and I can say that I can see his point. He says, "Well, the House of Delegates doesn't know," and the Executive Council are the Bar-minded, the people that have worked, and they can therefore better determine. I think in a good measure it is just a question of semantics. I want to take just a moment of your time to show you what this Article IV really says, and you can see where actually in nine cases out of ten, and ninety-nine out of a hundred no problem will ever arise. Listen to this:

The Budgeting and Auditing Committee of the Association, shall first propose a budget. The Budgeting and Auditing Committee of nine members shall first propose a budget. They shall submit this to the Executive Council for each fiscal year. "The Executive Council shall, upon receipt of such proposed budget, pass upon the same, and shall thereupon prepare and submit an annual budget . . . to the House of Delegates for its consideration and approval."

Now, don't you see, this thing Mr. Wilson is talking about isn't going to happen. The House of Delegates are the ones, true, I agree, that have the day-to-day expenditures.

But I can't get away from the experience I had when I was President and President-Elect of this Association when every time something came up on the floor of this House that involved active duties that wanted to be done, we were met with the statement that the Rules say this will require an expenditure of funds and therefore is beyond the jurisdiction of the House. Anything that you want to do that is going to involve the expenditure of funds—you're through. That was our point. We want to either make a House of Delegates that means something, that is a House of Delegates, or let's abolish the House of Delegates.

What happened was that the House of Delegates became a body only for the purpose of coming in and having somebody read these committee reports to them, and that was all. The House of Delegates knew they couldn't do anything. The minute they wanted to approve some report that would involve maybe doing some lobbying before the legislature, or doing this, that, or the other thing, a printing bill, or whatever it was, you were immediately confronted with the proposition, "You can't pass on it, it is beyond your jurisdiction because it involves the expenditure of funds."

It is only after this experienced body that Jack Wilson has talked about prepares and proposes the budget, that then the House of

Delegates can approve or reject it or amend it. How often is that going to happen?

We feel that if the House of Delegates is to be the controlling body, if we are going to have a democratic institution, if we are going to get rid of this story that this institution has been run by a clique, passing on power one to the other, then we submit that our recommendation is the proper recommendation.

On the other hand, if you want to take away from the House of Delegates this supreme power, if you feel that the members of the House of Delegates aren't interested and won't be interested, if you feel we are barking up the wrong tree in trying to establish the House of Delegates as the democratically elected members to run the organization, then Mr. Wilson has a point.

HARRY B. OTIS, Fourth District: Mr. Ginsburg, I think one point Mr. Wilson made was that sometimes it is impossible to get a quorum of the House of Delegates. In my experience that hasn't been true but perhaps in the past it has. Would that throw a monkey wrench into the machinery?

MR. GINSBURG: I don't think so. In the first place, they always get a quorum eventually. Jack and I were arguing about this at lunch and I said one of the reasons they have difficulty getting a quorum is because members elected figure they have nothing to do, we can't say anything. The minute I want to get up on the floor and make a motion, I am confronted with the rule that it involves the expenditure of funds and it's beyond the jurisdiction of this House. We feel, I say "we," the members of our committee, that proposed this rule feel that if we make this House as a functioning body there *will* be a quorum.

HARRY B. COHEN: Mr. Ginsburg, I am somewhat concerned the same as Mr. Wilson but not on the money part of it so much. I have had some experience of being a member of the Executive Council and also past President of the Association, and you know in practice and experience it doesn't work out how things are put on paper. There are any number of things that come up before the Executive Council meeting that demand determination at once. The whole concept, to me, of taking away from the Executive Council of functions, policy matters, and making the Executive Council nothing but an executive branch, so to speak, to carry out executive duties—well, let's analyze this thing a little bit. What are the executive duties of the Executive Council? They have been stripped of all their powers right now. They can't make decisions as to policy matters. They can only carry out—what? The administrative duties of making payments of money for expenditures that are budgeted

by the budget; they have the duty to nominate successors for membership in the Executive Council and the elected members of the House, if not filled; and they have the duty of nominating the President-Elect, and that's all I can think of that are their administrative duties that are put in these rules.

Now, I've sat in on a lot of meetings, as have other members of the Executive Council and past Presidents, and there are a tremendous number of things that come up during the course of an administration. Especially when the legislature is in session, you have to make a determination as to whether or not we are going to back a certain bill or you have to make a determination to have a group sent in.

I remember during my administration the juvenile courts and the social workers had a juvenile bill they wanted passed. They were policy matters. We had a meeting. We canvassed and we made it a point to talk on the telephone to all the members of the Executive Council in order to make a determination as to whether or not we were going to back it. Now, they not only wanted our backing as an organization but they also wanted money. Well, money is out of the question because we don't have money.

But when it comes to the point of making a policy decision whether we are going to back something like that, is the Executive Council going to have to say "No" to everything that comes up? They are going to have to go back to the House of Delegates for these determinations. Remember, that's all the Executive Council has, executive duties, and all the Executive Council can do now is carry out the executive duties given them by these rules and delegated to them by the House of Delegates.

Now, I think this can't work, myself—this is just my own interpretation.

Secondly, under these rules as proposed I assume that the ex officio members of the Executive Council would have the power to vote except when it comes to the recommendation of nominations; otherwise they will have the power to vote.

In all my experience, and it hasn't been very long, I admit, although I've done a lot of Bar work over the years in my own little bailiwick here in Omaha, and I've done a lot of Bar work, not in the active Bar over the years in the State Bar, not so much in the operation of the Bar itself, in the matter of participating in Institutes and things of that sort, but I personally feel that the members of the Executive Council, and this is especially true of the President,

the President-Elect, the past President, and even the new members that are elected are pretty well men of pretty high stature. So far as my own self is concerned, I would leave anything to these people for decision and for determination. I wouldn't be scared of it.

If only some of you could sit in on some of those meetings and see what some of the determinations are, how they are analyzed and argued, and with only one concern that the people have who are members of the Executive Council—How does it affect the Nebraska State Bar Association, the lawyers in this state? That's their only concern. Nobody has any personal axes to grind.

I think you do an injustice to the people who are members of the Executive Council when you strip away from them all matters except carrying out executive policy. I think that is debasing to the President, debasing to the President-Elect, debasing to past Presidents. This is my feeling on the matter.

MR. GINSBURG: I would like to call on Mr. Charles Wright of our committee to respond to Mr. Cohen.

CHARLES WRIGHT: I will try to be as brief as possible, but I think one thing Mr. Ginsburg referred to at the start is that we don't have our bylaws yet, and it is our idea that the Executive Council will function to administer the affairs of the Association during such time as the House of Delegates is not in session. The bylaws can provide that the Executive Council will administer the legislative program of the Association and, in fact, administer the affairs of the Association much in exactly the same manner as they now function. This was one of the ideas that we had when we gave consideration as to whether or not we should retain the two bodies, the Executive Council and the House of Delegates. The House of Delegates has so many members and is distributed so widely geographically that it is hard to get them together more than once or twice a year. So we have to have a smaller group that can function during the interim. This will also be largely an elected group, other than the President, the President-Elect, the Chairman and Chairman-Elect of the House of Delegates, plus your six district members that will comprise your Executive Council which can meet monthly, every two months, as they do now. It is easier to get them together.

We have got to remember also that we are an integrated association. Anybody that wants to practice law in this state *has* to belong to our Association, and if we don't abide by democratic principles and keep the supreme authority in our elected over-all legislative body, which is the House of Delegates, then I don't think we are functioning properly as a democratic group.

Concerning the budget, the main responsibility will be in the Budget Committee. Actually the Executive Council, the few times it meets and the number of matters it has to take up, doesn't have enough time to prepare the Association's budget, so this special committee will prepare it and submit it to them. If they don't like it, they can re-work it any way they want. They can have it printed up and submitted to this House for approval. Once it is approved, in whatever form it is, then they have the responsibility for making the expenditures.

It is our thinking that the Executive Council will continue to function in much the same manner as they have in the past, which we felt was very satisfactory, but if they are told by the House of Delegates, "You must do this," they must do it. But subject to that, the bylaws will, we believe, delegate the administration of the day-to-day workings of these things that appear on the Executive Council's agenda at their regular meetings, that they be performed by the Executive Council while the House of Delegates is not in session. I think this is very important because somebody has to have the power to run the Association . . .

MR. COHEN: Well, will the bylaw then be similar to the present one? Will that bylaw take into consideration policy powers as well as executive powers during the interim?

MR. WRIGHT: I think it will, to the extent that the Association has the power to actively engage in matters that are proper matters for the Association to become involved in on legislation, yes. Somebody will have to deal with them. We envision that they will be working with our Committee on Legislation much in the same manner that they are now.

LEO EISENSTATT, Omaha: Mr. Wright, one comment: There is a provision for the Executive Council to spend up to \$5,000 a year non-budgeted. That is one safety-valve.

Secondly, you can't forget the provisions of the *Lathrop* case which requires a repository of power in some group which is represented.

MR. WRIGHT: I think this is very important, that you keep a representative group. I think you will have much more interest in serving on your House of Delegates if you do give them the authority to administer the Association as they want. I don't think this will be too much of a change from the actual workings of the Executive Council. I've served in both groups, and many times there are too many things that come up before the Executive Council for *them* to give them adequate consideration. We have to act rapidly on those.

MR. GINSBURG: I would like to emphasize what Mr. Wright has said. In actual practice I doubt whether there will be too much difference, except there will be this difference: If somebody on the floor of this House gets up and says, "Let's spend \$10,000 for the Annotations to the Nebraska Statutes or to the Restatement," it will be within the power of this House to pass on that and not be met with the phrase, "Well, that involves the expenditure of money and you can't pass on it." If we want to hire a Legislative Counsel, that won't be beyond the competence of this House. But in actual fact, as Mr. Wright has said, we will work together. What I started to say, or what I wanted to point out was not only does the Executive Council have the authority that will be given to it by the bylaws, but also such as shall be delegated to it by the House of Delegates. I am sure that when the legislative session is going on the House of Delegates is not going to hesitate to say, "We turn over the function of our legislative program to the Executive Council." As a matter of fact, we at one time turned over our legislative program to a Legislative Committee. So there is no problem there.

Harry mentioned, perhaps I am exaggerating, that there is a slur or some sort of a slam on these fine men who are on the Executive Council. I agree with everything that Harry said about them. They *are* fine men and they do a wonderful job, but I can't see where there is any slur on them. There is no slur on President Nixon, for example, because the two houses of Congress decide whether or not there shall be an income tax decrease or an income tax increase, or how much money the President shall have to spend. The President makes his budget, he reports it to the Congress, but then the Congress has the final say-so. That is what we are saying here. Somebody has to have the final say-so, as Leo Eisenstatt pointed out, under the rule of the *Lathrop* case, and that final say-so we think has to be a democratic organization.

CHAIRMAN OVERCASH: Are there any other questions for Mr. Ginsburg?

FRANCIS M. CASEY, Second District: May I inquire what the reaction of the judiciary is in regard to Section 2, Article VI.

MR. GINSBURG: Article VI, Section 2? Mr. Casey, I cannot quote any particular judge or that I've talked to any particular judge. I understand that there are some members of the judiciary that don't like it. I understand, on the other hand, that there are some members of the judiciary who feel that that is proper, that a judge should not be an officer in the very Association that conceivably might come before him in a litigation or something of that kind. It was the feeling of our committee that the members of the

judiciary should not be active officers in the Association while they are in the judiciary. We don't want to get back into the Haynsworth problem.

MR. CASEY: I had a judge ask me why we were disenfranchising the judges.

MR. GINSBERG: They're not disenfranchised, Mr. Casey. They can vote. They have the full right to vote, but they just can't be an officer while they are serving as a judge.

MR. CASEY: I'm just putting the question the way he put it to me.

MR. GINSBURG: Yes. Well, I've heard the same thing.

LEO CLINCH, Twentieth District: In Article VII, Section 5, Page 20 you provide, "Each elected member shall hold office for two years . . ." I am personally of the opinion that the delegate who is elected usually comes in not knowing what is going on and he is more or less ineffective his first year and doesn't become effective until his second year, so actually you're getting about one year's good use out of him. I think the term should be greater than two years.

Actually you are talking about adopting this report here, and then perhaps next year coming up with a set of bylaws that ties into this report, and half of us aren't going to even be here next year, and the other half aren't going to know what went on at this discussion.

I think if you had a longer term you would probably have a more efficient House of Delegates.

MR. GINSBURG: We have no great feeling one way or the other. As a matter of fact, what you have just said is very pertinent. Our thinking simply was that since there would be elections in odd years, there will always be a cadre of experienced members left, and, further, we have put no stumbling blocks in the way of a delegate being elected and re-elected and re-elected. We have provided that a member of the Executive Council cannot be re-elected more than twice, but a member of the House of Delegates, if he is a good man and does a good job, can be re-elected just like a member in the House of Congress of the United States. We wouldn't raise any great issue if you thought the term ought to be three years per member. That is something the committee could very easily live with. I agree with you that the first year that a delegate is serving he is gathering his way, so to speak, and probably isn't at his utmost efficiency, but I also feel that if a man has done a good job as a delegate he will be re-elected by his constituents.

CHAIRMAN OVERCASH: Who was next? Mr. Svoboda, was it you?

GEORGE E. SVOBODA, Sixth District: Yes, I have two questions. The first question is directed to the corporation matter. Has that entire Section or Article been approved, or tacitly approved at least by the Internal Revenue?

MR. GINSBURG: Mr. Moldenhauer, what is your answer to that?

HOWARD H. MOLDENHAUER, Fourth District: I believe, and I am not positive, but I believe that that entire rule is very similar or identical to the Colorado court rule, and I think it was incorporated by statute in South Dakota. Of course, back when the Revenue Service was still attacking this type of organization a case went up to the Tenth Circuit and they held for the taxpayer. The Revenue Service, of course, now have changed their position and I don't know what it will be. They've indicated they are going to take all these on an individual basis. But I believe that that same type rule was the type which was held as acceptable in Colorado.

MR. SVOBODA: Thank you. My second is a comment rather than a question. I hate to take a position, as a new member like Leo over here, and oppose Jack Wilson who has come over and talked to me to the contrary. One of the things that I found, being a member for many years, that I never seemed to have the opportunity to become involved in working for this organization, or the Bar Association. Frankly, I'm glad to see the power placed in the House of Delegates so that it is no longer just a debating society, apparently, which it has been in the past.

I, for one, would go stronger and state that we ought to elect the Executive Council from this group, not a separate organization, but Mr. Ginsburg tells me, and I've had some correspondence, that they've had extensive argument about this factor and couldn't do it.

A simple organization, like electing the Executive Council from the House of Delegates, which to a degree would always be self-perpetuating because those people who are interested keep rising to the top of the organization, would be in my judgment the ideal method. But I'm afraid that might not get done because there seems to be some desire to have the Executive Council elected on the basis of Supreme Court judicial districts. Maybe there are some checks and balances involved in it.

I would thoroughly oppose any concept of diminishing the House of Delegates' authority, which apparently is quite radical in itself, as far as the past is concerned, because if we're going to be anything

more than a debating society, as I've said, we have to have some final authority, and it should be representative. If people don't show up for this meeting twice a year, then we've got a problem, but if we have something to pass on that's effective, like the budget, I would think there would be more people interested in coming to the meeting, being here to pass upon the general policy of the Bar Association.

So I would want to be one of those new members to oppose Mr. Wilson's position, even though he has been a long-time member and I'm sure has served many years. I think this is the right way to go and I would even go further, if it were my vote.

CHAIRMAN OVERCASH: Are there other questions?

ROBERT C. MCGOWAN, Fourth District: Mr. Ginsburg, on this insurance, Page 10, it seems to me that in effect it is either a limitation or liability or an exemption of liability, in that there is a corporate policy and the degree of limitation is dependent upon the number of members of the corporation, whereas if there was no insurance policy there is no limitation of liability. That's an inconsistency that I cannot rationalize.

MR. GINSBURG: All I can say is this: I plead complete ignorance of this rule. I say that if you approve our report, and I am hopeful that you will approve our report, then we will have a committee on draft which I hope will take care of these inconsistencies and ambiguities. I am confident we will. As I said, our committee paid no attention to this itself because we just copied what had already been done, but we are perfectly willing to give this further consideration and if there are ambiguities there we will straighten it out.

Of course, I don't want to muddy the waters any more but I read in the WALL STREET JOURNAL just a day or so ago that the Treasury Department is now going to appear before Congress and try to get a bill through abolishing these corporations anyway. If I had my way about it, we wouldn't have this Article in here at all, but since it was already adopted we felt we had to do it.

RAY R. SIMON: Mr. Ginsburg, it is not quite clear in my mind, on Page 17, subsection (j), "Any officer succeeding to the office of President or President-Elect through vacancy occurring therein, shall serve until the end of the second annual meeting following succession." I have in mind a situation where a vacancy occurs in the office of President-Elect, in which instance the Chairman of the House of Delegates would become the President-Elect. If this paragraph is applicable, he would be obliged to serve in that capacity as

President-Elect, as I understand it, until the end of the second annual meeting following succession, though the President, not having been in office which was vacant, would terminate his services at the close of the next annual meeting. Am I incorrect?

MR. GINSBURG: That is a very fine question, and I would like to refer that to our expert, Mr. Maupin. Very good question.

M. M. MAUPIN, North Platte: Herman, I don't know whether I am competent to answer it or not, but the intent was that to change the present rule, which presently provides, as you know, for a break if the President-Elect succeeds to the office of President before, I think it is six months, anyway there is a certain period in the rule, then he serves only the balance of the term. That was the intent back of the rule. We would provide here that he would go on through to the end of the term, so that if the office of President becomes vacant, the President-Elect succeeds to that office, he, then, continues through the next year. He not only would finish this year but he would serve another term. The Chairman-Elect then would step into his position. Maybe you have a point there that had not occurred to us before that we are in trouble on.

MR. SIMON: This would be applicable if a vacancy occurred in the office of the presidency, but would hardly be applicable if the vacancy occurred in the office of President-Elect.

MR. GINSBURG: My own thinking is that that is an ambiguity and it should be straightened out.

CHAIRMAN OVERCASH: Are there further questions?

FRED R. IRONS: May I ask Herman, what is the underlying reason, if any, for limiting the term of the House of Delegates and Executive Council to one term.

MR. GINSBURG: We don't limit the membership of the House of Delegates to one term, Fred, just the Executive Council, because you see the six elected members of the Executive Council do all the nominating, and so forth, and we don't want them to nominate themselves and we don't want them to form a perpetual . . .

MR. IRONS: I understand that. I've been in both. Like the gentleman said about the House of Delegates, in the Executive Council you barely get your feet on the ground that first term and do become a good solid member in your second or maybe even in the third year. With only six you're going to have two new and two fairly new and only two veterans in your setup.

MR. GINSBURG: If I may say, I can't speak for all of the committee, but as Chairman of the committee I am perfectly willing to

give you my word now that I would recommend to the committee that we increase the term of the members of the House of Delegates from two years to three years, and increase the term of the Executive Council by one year.

MR. IRONS: This, I think, would accomplish that purpose.

LEO CLINCH, Twentieth District: If you would increase it to four years it would be better because if you have three, then you would have problems going the other way.

MR. GINSBURG: That's right. That's right. That was just something that happened, and the Committee is appreciative of the suggestion. I think it is well worthwhile.

CHAIRMAN OVERCASH: Are there other questions now, Mr. Ginsburg?

MR. GINSBURG: There is nothing further that I know of.

BERNARD PTAK, Ninth District: Mr. Ginsburg, may I display my ignorance here? This House has only recommended authority at this time. What good will it do if we approve of this plan now?

MR. GINSBURG: The question was, If this House has only authority to recommend this report and cannot adopt it, make it binding, what is the use of passing on it?

MEMBER: No, I think he meant the present policy.

MR. GINSBURG: I thought you were referring to this report.

MR. PTAK: Under the present organization this House has only the authority to recommend.

MR. GINSBURG: That is correct.

MR. PTAK: What would we be accomplishing if we approve it here?

MR. GINSBURG: We'll be making the recommendation to the Supreme Court, saying, "Your Honors, this is what we want." We cannot give you any assurance whatever that the Supreme Court will go along with it. We cannot give you any assurance but what the Supreme Court might say, "Take a referendum of all the members of the Bar." We have no way of knowing. But we are, so far, the policy speaking body of the House and if the House recommends this, the committee will submit it to the Supreme Court with a proper application saying, "Your Honors, this is what we recommend and we ask that you approve it."

JOHN E. DIER, Tenth District: Can we amend our recommendation, amend your report to include this increase in . . .

MR. GINSBURG: Yes. Oh, yes. As a matter of fact, if the motion pending before the floor is adopted, what we intend to do is to immediately go into another committee on style and draft, and change the language, the grammar, and so forth, and at the same time we can make these amendments here on the term and then submit it to the Supreme Court as the action of the House of Delegates.

GEORGE E. SVOBODA, Sixth District: Do we want a vote today on it or, say, by Friday?

MR. GINSBURG: That is up to the House of Delegates. Our motion is to adopt it now, but it is up to the House of Delegates.

CHAIRMAN OVERCASH: Does anyone else want to ask a question?

WARREN K. URBOM, Third District: I wish Mr. Ginsburg would elaborate somewhat upon the reasoning of the committee regarding the election of the members of the Executive Council separately from and from different Districts than the members of the House of Delegates. Mr. Svoboda has alluded to it, and perhaps I should express my concern and he can respond and elaborate on anything that he wants. My concern is that the Executive Council seems to be unrelated to the House of Delegates. It is neither elected by nor from the House of Delegates, so there is no real correlation between the two. The Executive Council might be people wholly different from the ones on the House of Delegates, and not having been elected by or from the House of Delegates means they may not have any real feel for the philosophy of the House of Delegates. If the Executive Council is to be given general administrative powers by this House, as I'm sure it ought to be, it means they ought to be fairly at one with the House of Delegates' philosophy so that when we're not in session the Executive Committee can carry on in much the same manner as we would if we were in session.

I have some concern, though, that there really is no tie-in between the two. I wonder what the reason is for not wanting the members of the Executive Council elected at least *by* this group, whether *from* it or otherwise.

MR. GINSBURG: Well, Mr. Urbom, I made the statement earlier that I am a great guy to stick my foot in my mouth, and I'm going to do it. We spent, to my recollection, at least three meetings of our committee arguing this proposition. We were terrifically

divided. Many of us wanted this very thing, that the House elect the members of the Executive Council.

I hope my dear friends who voted me down on that will forgive me if I say what I'm about to say, but there seemed to be some fear that Lincoln and Omaha might get control of the organization to the detriment of the rest of the state, and, by God, they weren't going to stand for that, so in order to protect the rest of the state they would see to it that this is the way it went. I hope I may be forgiven for putting it so bluntly.

CHARLES WRIGHT: I don't think it's a matter of extreme importance. I think perhaps it was the consensus of the committee that the Executive Council, which would be meeting more often handling day-to-day affairs, might be in a better position to supply the nominations for the people to run for office. Since they meet more often they are better able to get together to consider this.

The point I want to make is that we were utilizing the Supreme Court judicial districts for the members of the Executive Council, and District Courts for the membership of the House of Delegates. This is the way your judicial system operates, and I don't see any real particular conflict between them. They are all going to be members of the Bar, and they are all going to be members of different political parties. I don't see that there is any practical area of conflict there on electing them on this basis, but if there is a better way to give more thorough study to electing members of the Executive Council, we would like to have it. We just didn't know of any more practical way to handle it than basically the way we are doing it now.

CHAIRMAN OVERCASH: I would like to state to the members of the House that we have other business but I want to say that this is a very important matter and we want everyone to have an opportunity to be heard, and if there are any further questions for Mr. Ginsburg, let's have them.

JOHN J. WILSON: Mr. Chairman, I move that this report be tabled for one year, that the committee report any changes or corrections at the mid-year meeting, have it in form so that it can be tentatively discussed and voted on at the 1970 annual meeting.

CHAIRMAN OVERCASH: Is there a second to that motion? I declare the motion lost for lack of a second.

. . . Calls for the question . . .

C. RUSSELL MATTSON: Now, wait a minute. I would like to oppose the call for the question. All we have had are questions. We would like to have some discussion.

CHAIRMAN OVERCASH: O.K. You are right, Mr. Mattson.

Is there any further discussion of the motion of the committee?

MR. MATTSON: I would now like to discuss something beyond those silly questions I was asking a while ago.

I want you to understand that I make these remarks with full knowledge and appreciation of the hard work that this committee has done. I know that primarily because I sat in on several of their meetings last year, and I also have one young partner who has been so damn busy engaged in this committee I can't get any work out of him in the office.

But I do have some observations of my own in connection with this matter of placing so much power in the House of Delegates and I am here supporting what Jack Wilson's observations were. I served on the House of Delegates. I served two terms on the Executive Council. Those of you who are of fresh memory know that I moved into the presidency by reason of George Boland's serious situation without the advantage of another year on the Council, and in that year as President I want to call your attention, not so much to the budgetary matters, but the policy matters that come up that just cannot be thrown back to the House of Delegates for action. For this reason I am urging that serious consideration be given to this matter of leaving power in the hands of the Executive Council. They are your Board of Directors. I am just taking this off my cuff. In that year that I moved in without, as I say, the advantage of having been on the Council for a year as President-Elect, No. 1, there was an immediate question and issue regarding the retirement of George Turner and Kathy Schultz that we had to consider and work out the details, work out the contract, work out the money. This money isn't within your budget, and I think that is clearly understood. We have no way to fund those retirement matters. These are things that the Supreme Court is going to have to face up to in connection with our dues, if the contingencies occur.

Then came the matter of the Creighton Law Review. Creighton began publishing a Law Review—a policy matter, not a money matter. Should we support the Creighton Law Review? Which we did, and we did it financially. We did it again this year.

We had a request, and I have forgotten that guy's name but the fellows from up in the Northwest will remember it—Rhodes—Rhodes threw a request at us that we support him in a brief *amicus curiae* in the Tenth Circuit out in Denver. Now, do you think these are matters that can come back to the House of Delegates for discussion and control?

I am citing just a few of the things that came up which I say were handled by your Executive Council as your Board of Directors. Whether we handled them properly, I don't know. We haven't had any criticism about it. But I do want to caution that we recognize the sincerity of the Supreme Court in its establishment of the Rules under which we have been operating, that this control matter should rest with the Executive Council.

I am no longer a member of the Executive Council. I went off at noon, so I can say this freely to you, but I want you to recognize not so much the money end of these things but the almost day-to-day policy control that is necessary, and must necessarily be vested in a body that has the right to act, and act intelligently.

Now I get over again to the one-man, one-vote proposition, and as at the mid-year meeting in June I am again opposed to placing too much control in Omaha and Lincoln. Not because it is deleterious to the out-state. I think the out-state lawyers will lose *interest* if the control and the power by the one-man, one-vote is placed in Lincoln and Omaha.

Now, here we are facing a question raised in a recent brief on the one-man, one-vote as far as even our own Supreme Court is concerned. I think sitting over here is the Chief Justice, who is the only one who represents us in the judiciary under the one-man, one-vote rule, and yet here we are going to have six Justices who I don't think can qualify under the one-man, one-vote rule, passing on these rules. I don't think the problem of one-man, one-vote, I don't think the problems of the *Lathrop* case, except as expressed in the one dissent by Douglas, which is the bugaboo in the closet, would have any effect on the way we run our Bar Association.

I want to urge you to consider, as Mr. Wilson has said, many of you walked into this meeting today for the first time, not knowing what most of this is all about, and I urge that you give serious consideration to these problems, that we don't rush into something that, in the long run, the Supreme Court is going to say "no" to.

THOMAS W. TYE, Twelfth District: After Mr. Mattson's comments, I feel as though I must rise to defend the House of Delegates. I have been here four years, this is my last year in the House of Delegates and we have been talking about what authority this House should have. It has been stated by everyone here that right now the only authority we have is to recommend. I have not been on the Executive Council. I am not gray-headed. I have not spent a lot of years in the Bar Association, but I do know of two instances that I think the new members of the House of Delegates should take into consideration: No. 1 is that at a mid-year meeting, I

believe last June, or maybe the June before, a recommendation was made by Mr. Wilson to increase the dues of the Bar Association. The House of Delegates, as I recall, either tabled the motion or defeated it, and said that no mention should be made of any increase in dues nor should we go to the Supreme Court for an increase in dues until the Reorganization Committee report was in. Again, this was a recommendation of the House of Delegates, because about a month afterwards the Executive Council went to the Supreme Court and asked for a dues increase, which was defeated by referendum.

As you new members should recall, approximately four years ago at our instance a committee was formed to study the hiring of an Administrative Assistant. This was done. The report was filed, and the House of Delegates voted and directed the Executive Council to immediately hire and employ an Executive Assistant. In that report there was at least comment as to how this could be funded. Today we do not have an Executive Assistant or an Administrative Assistant.

If we are to have any authority in the House of Delegates, it has got to be some kind of authority other than just to recommend. I have nothing against the previous members of the Executive Council or the previous Presidents of the Association, but I do feel that these are two instances that we can cite that our recommendations have been completely disregarded.

The members of the Bar Association with whom I have talked have said we need a more active Bar, we need more programs. Thus we studied the problem of hiring an Administrative Assistant. This is what caused the whole problem.

I submit to you that unless we have some authority, we might as well disband this body and run it through the Executive Council. Otherwise we are nowhere.

CHAIRMAN OVERCASH: Does anyone else desire to be heard? This is an important matter to the Bar.

GEORGE E. SVOBODA, Sixth District: I don't propose to speak again at length but I have a question. Until such time as the bylaws are finally adopted, whatever policy matters or programs are laid out in the bylaws now will continue in effect until such time as some new bylaws are created by this organization and sent to the Supreme Court for review. Is this true?

MR. GINSBURG: Yes, it is true, Mr. Svoboda, with the one exception, if the present bylaws do not conflict with the rules. Insofar as there is no conflict, the present bylaws would continue, yes.

MR. SVOBODA: So there would be some written policy directives, except for what you've recommended here to the present Executive Council who may continue for maybe a year before this is finally approved by the Supreme Court.

MR. GINSBURG: It could be.

RUSSELL E. LOVELL, Seventeenth District: I happen to be a new member of the House. I will admit that the Executive Committee, apparently, put my name up against Mr. Simmons. I will tell you, very frankly, I came 420 miles and if all I have to do is come down here and listen to committee reports, I am not interested in being in the House of Delegates. But if I am given a job to do, I will do the best I can. But I think if you want the House of Delegates to be a rubber stamp, the general consensus out in western Nebraska is that we don't want to run for it. So I think what this committee has attempted to do is a very good thing.

CHAIRMAN OVERCASH: Is there anyone else who desires to be heard?

Are you ready for the question? The question is the motion of the Chairman of the Committee on Reorganization, that their report be approved and that the Rules of Reorganization as proposed by that Committee, subject to a re-draft as to style and language, be approved and submitted to the Supreme Court. Is that a correct statement, Mr. Ginsburg, of the motion?

SECRETARY TURNER: Wasn't there a term change in there?

MR. GINSBURG: Subject to an increase in the terms of the members of the House of Delegates and the Executive Council by one year each.

LEO CLINCH, Twentieth District: Two more years.

MR. GINSBURG: O.K. to extend the terms of the members of the House of Delegates by two years, and the term of the members of the Executive Council by one year.

CHAIRMAN OVERCASH: Extend them two and one. Is that correct? Do you understand the question? That is the motion. Do I hear a second?

JOHN W. DELEHANT, Fourth District: I second it.

CHAIRMAN OVERCASH: Is there any further discussion? Those in favor of the motion will signify by saying "aye;" those opposed "no." I declare the motion approved and adopted.

CHAIRMAN OVERCASH: The next item on the agenda is Item No. 38, report of Section on Taxation.

... Recess ...

CHAIRMAN OVERCASH: Can we resume business? Will the House come to order? My attention has been called to the present rules, Article IX, which requires amendments to the Rules of the Bar to be recommended by at least a three-fifths vote of the Council and by the majority of the House of Delegates. It has been suggested that the record of this vote should reflect that more than three-fifths majority voted in favor of the motion to reorganize the Bar under the new Rules. Amending my statement, it requires at least two-thirds of the House. As Chairman I declare that the vote exceeded two-thirds of the members of the House, unless some member objects to my declaration.

The report of the committee follows:

**REPORT OF THE
SPECIAL COMMITTEE ON REORGANIZATION
OF THE NEBRASKA STATE BAR ASSOCIATION**

Pursuant to the action taken at the last annual meeting of the Association, this Committee has continued its labors; and has met practically monthly since then. At the mid-year meeting, in June, this Committee made an interim report, which was, in general, approved by the House of Delegates. Pursuant to such action, the Committee proceeded to embark upon the drafting of suitable rules to carry into effect the recommendations which the Committee had previously submitted.

The actual details of the recommendations previously made by this Committee will be found in the proceedings of the Sixty-ninth annual meeting, and the minutes of the mid-year meeting. The Committee intends to have a draft of the rules implementing the recommendations made by the Committee, and further suggestions, available for submission to the House of Delegates at the Seventieth annual meeting to be held in October of 1969. The Committee anticipates having a complete draft of the rules available. These rules will simply stand as a recommended basic Constitution for the Nebraska State Bar Association; and will necessarily require implementation by the promulgation and adoption, of appropriate By-laws. However, the Committee felt that it was unnecessary for it to propose By-laws at this time and until the rules had been considered and adopted. Any suggested rules which are not approved would necessarily affect any By-laws based thereon; and therefore it is the thought of the Committee that By-laws cannot be drafted and submitted until the rules have been considered and approved.

As previously mentioned, it is the intention of this Committee that a complete draft of proposed rules will be available for consideration at the annual meeting. A sufficient number of the members of the Committee will be available at the meeting so that the questions and inquiries which the members of the House of Delegates will doubtless have, can be answered, and the various provisions explained.

It will be necessary for the House to arrange for its own procedure for consideration of the proposed rules; that is, whether the rules are to be considered as one package, or whether each rule is to be considered separately. Consideration should then be given as to the making of the proposed rules available for the membership at large; and then provisions for final action, if the rules are approved, in accordance with the provisions relating to amendments as prescribed by Article IX of the present rules of this Association. Inasmuch as the proposed rules create several changes in the organization of this Association, the Committee has assumed that the proposals should be submitted direct to the House of Delegates, subject to the provisions of Article IX regulating action thereon by the House of Delegates.

The Committee has also had the help and cooperation of Mr. Leo Eisenstatt, Chairman of the House of Delegates, Mr. Charles Adams, President, and Mr. William J. Baird, President-elect of the Association, each of whom have been of great assistance to this Committee, but none of whom are to be held responsible for any of the conclusions or actions of this Committee. The Committee thanks these gentlemen for the time and effort which they have devoted in assisting the Committee in its efforts.

If the House of Delegates is of the opinion that the proposed rules should be adopted, or amended, it would then be the recommendation of this Committee that it be continued for the purpose of making any such amendments, and proposing the necessary By-laws. In the event the House should determine that no further action on the part of this Committee is required, it should then be discharged.

Murl M. Maupin
Frank Mattoon
Charles E. Wright
Robert C. Bosley
William E. Morrow
John C. Gourlay
Joseph C. Tye, Vice Chairman
Herman Ginsburg, Chairman

CHAIRMAN OVERCASH: Then we will now hear the report, Item 38, Report of the Section on Taxation. Mr. Wright!

REPORT OF THE SECTION ON TAXATION

Charles E. Wright

I promised Bert that I would limit this to forty-five seconds.

I want to emphasize this year that we have our annual Great Plains Federal Tax Institute in Lincoln on December 1st and 2nd, and it is most important that the members of the Bar, particularly in Eastern Nebraska because we do have a program going out west, that members of the Bar recognize that this is your program on Taxation for this year and we *must* have your support.

We have spent quite a good deal of money in getting out some excellent speakers. We have the Commissioner of Internal Revenue on the program. We have Stanley Drexler from Denver who is going to discuss professional corporations. We have Louis Gilbert, the well known professional stockholder addressing our banquet. We have Max Meyer, who is well known to all Nebraskans. We've got to have better support from the lawyers.

This program is in lieu of what the Section used to present in Omaha, so I want you to take heed of it and be sure, if you possibly can and are interested in taxation, to be present and spread the word to the outlying areas.

Also, I want to report that we will have our annual traveling tax institute, which will have a one-day session in Ogallala on December 5th and a one-day session in Hastings on December 6th. That program will be staffed almost entirely by Nebraska lawyers. We have some real good bread-and-butter programs lined up, one on the marital deduction, which is being put on by John Gradwohl, in which he will present forms dealing with the various formulas involved.

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I want to urge everyone who is going to be in these areas to be sure to attend.

CHAIRMAN OVERCASH: Thank you very much, Mr. Wright.

The next item on the agenda is a report of the Section on Practice and Procedure. Mr. Elson, is he here?

WARREN K. URBOM, Fourth District: Mr. Chairman, Mr. Elson is not here but he asked me to report that there is no report.

CHAIRMAN OVERCASH: The next Item is No. 44 "any other matters." I am informed that there are several that have matters to present. Mr. Urbom, you have something?

MR. URBOM: Gentlemen, the Nebraska Law Student Association has appointed a Commencement Committee, because it has thought that there should be at the Commencement exercises of the University of Nebraska College of Law the individual hooding of the candidates for the J. D. Degree. As you recognize, the Nebraska Law School now does grant J. D. Degrees, but there is no ability, so the Administration says, to go through individual hooding exercises because of the hugeness of the commencement exercises, so long as they are all held together. The Ph.D.s *do* receive individual hooding because there aren't very many of them. But it is thought that if they try to do it with law students it would be too difficult.

Therefore the Commencement Committee has come up with the idea of requesting separate graduation exercises so that if there were separate graduation exercises there could be individual hooding of the candidates for the J. D. Degree. They have approached the administration in some regards and have further approaches to make but they thought it would be useful to their purposes if this House of Delegates would approve of the concept of having individual hooding, if the students want it, and therefore separate graduation exercises.

That's the background of this request, and I move, Mr. Chairman, that we adopt the following resolution:

RESOLVED that the House of Delegates of the Nebraska State Bar Association approves the proposal of the Commencement Committee of the Nebraska Law Student Association that a separate graduating ceremony be had for candidates for a J. D. Degree from the University of Nebraska College of Law in order to permit individual hooding of members of the graduating class.

CHAIRMAN OVERCASH: You heard the motion. Is there a second?

LEO CLINCH, Twentieth District: One question: Mr. Urbom, what about Creighton University?

MR. URBOM: I have not visited with them. This was simply presented to me by this Committee of the Nebraska Law School and I do not know what Creighton desires, or whether it is making any move to do the same sort of thing.

MR. CLINCH: I think it would be wise to insert "and Creighton University, if they desire."

MR. URBOM: We certainly have no objection to it whatever. I will be happy to amend it to put Creighton University in as well.

CHAIRMAN OVERCASH: Is there a second to adopt the resolution?

HARRY B. OTIS, Fourth District: I second it.

CHAIRMAN OVERCASH: Any discussion? If not, those in favor will vote "aye;" those opposed "no." I declare the motion and resolution adopted.

Mr. Rock, I believe, has a matter to present.

HAROLD L. ROCK, Fourth District: Mr. Chairman, I recently returned, in fact last night, from a meeting of the National Legal Aid and Defenders Association, and we discussed briefly this question with Mr. Urbom this morning. The Senate has already considered and the House is now considering the O.E.O. appropriations for legal services.

In the consideration before the Senate, Senator Murphy from California managed to tack on an amendment that gave, or gives, or would give if the matter passes the House too in its present form, the governor of each state the right of complete veto power over funds to individual offices of Economic Opportunity legal service groups. The pernicious and dangerous part, as far as lawyers are concerned, was recognized late last summer when the American Bar met in Dallas and Bernie Segal, President of the American Bar has also written to Yarborough, the Chairman of the Senate Committee, urging caution in respect to this kind of an amendment.

The governor of a state will be able to control what litigation is brought in his state for law reform by simply cutting off the funds for the program, either in line items or the whole program, for those programs that get out of line, as in California, and sue the Welfare Department, or something.

The House is considering and should consider the matter within the next two weeks, and it doesn't look too good. It passed the Senate by a vote of 40 to 35, the Murphy amendment being in there.

Under current law the governor of a state can veto the whole program but the Office of Economic Opportunity can reinstate it to avoid an arbitrary exercise of the governor's power.

There are no guidelines set down by which the governors can cut out funds. It is probably unconstitutional under the Schechter Poultry Case anyway. However, I think it would be beneficial. I know those who are deeply involved in this program at the NLADA Convention would certainly recognize it as an additional voice if this convention, meeting as it is in a timely fashion for this particu-

lar problem, would pass a resolution similar to that of the American Bar Association, with perhaps specific reference to the Murphy Amendment.

I have the House debate, pages from the Congressional record here, containing the American Bar Association Resolution, which reads as follows:

WHEREAS attacks against Legal Aid and Legal Services lawyers and other lawyers threaten the rights of clients to have independent advocates; now, therefore, be it

RESOLVED that (in this case it says the American Bar Association) but it would be the Nebraska State Bar Association, supports and continues to encourage every lawyer in the exercise of his professional responsibility to represent any client or group of clients in regard to any cause no matter how unpopular; and further

RESOLVED that the American Bar Association (this would be changed to the Nebraska Bar Association) deplores any action or statement by any government official who attempts to discourage or interfere with the operation or activities of any properly constituted organization which provides legal services to the community because the lawyers associated therewith, or any lawyer acting in good faith and within the confines of ethical conduct, zealously represent clients in matters involving claims against a government entity or individuals employed thereby.

I move the adoption of this resolution by this House of Delegates, substituting therefor the Nebraska State Bar Association, and further add the resolution that this House of Delegates further deplores the so-called Murphy Amendment presently being considered by the House of Representatives.

CHAIRMAN OVERCASH: You have heard the motion of Mr. Rock. Is there a second?

THOMAS R. BURKE: I second it.

CHAIRMAN OVERCASH: Is there any discussion of the resolution referred to? If not, those in favor of the motion and resolution will state "aye;" those opposed "no." I declare the motion and resolution adopted.

I think there is one more matter at least from the Executive Council that should be reported and I call on Mr. Wright.

CHARLES E. WRIGHT: This is perhaps a belated response to a question that Tom Tye raised, but a special committee of the Executive Council has been functioning for about three months inter-

viewing prospective applicants for the office of Executive Director. At their meeting this noon this subcommittee recommended the hiring of a specific individual by the Association, and recommended a specific salary, subject to the availability of sufficient funds to provide for the salary and the office and the necessary administrative staff that will be attendant to the office. I believe also that a special committee of the Executive Council, headed by Harry Cohen, developed a budget which indicates that we are approximately \$25,000 short of necessary funds with which to fund this office. Tom Burke has pointed out to me that there is at least a \$7,000 item in that budget of Mr. Cohen that is a duplication and that, in reality, we are about \$18,000 short of having necessary funds to fund the office.

It all points up to the necessity that we have at least a \$10.00 per member annual increase in our dues for the coming year or else develop some other source of funds if we are to hire this individual.

I have no reluctance to disclose his name, but I think it would be very premature if I did so and the information were published in the paper before we have an opportunity of notifying other applicants. I don't quite know how—I am not trying to keep any secrets from anybody but I do think it would be extremely inappropriate if this were published in the newspaper at this point.

Other than that, that is all I have to report. I do suggest to this body that something must be done to get an increase in dues, whether we again ask the Supreme Court, whether we have another referendum. Maybe if we have a referendum we should show them the budget prepared by Mr. Cohen, and with the specific facts in mind the members might then feel more inclined to approve a modest increase in dues. I think it is an absolute "must."

LEO EISENSTATT, Omaha: Mr. Wright, I am not a member but I think I have some speaking privileges.

In reviewing the budget that Harry presented, there is not only that \$7,000 item for pamphlets which I think was a one-time inventory item, but there were several items on there that, if there is a will on the part of the Executive Council to accomplish it, I think could reduce that deficit even further.

I am thinking of the cost in there of \$8,500 for the cost of an annual meeting, and there is a Tax Institute for \$1,000, and publishing the proceedings of this annual meeting for \$4,000. I am not saying that they all can be eliminated. I am just wondering if there is any way the Executive Council couldn't go forward with this and relegate to secondary matters some of the other things which may

not be of as great importance as the Administrative Assistant. I'm just asking you to carry it back because we have no power to make any decisions.

MR. WRIGHT: I would like to see it done. If this body has any recommendations or directions to the Executive Council, I would like to have them.

MR. EISENSTATT: This is my personal thought, if you want to take it back. We publish a Bar Journal in the budget of \$2,100. I wonder if that shouldn't take second precedence to the Executive Director. Publishing the proceedings of the annual meeting for \$4,000, shouldn't that be questioned? The annual meeting of \$8,500, why don't we charge our members or why don't we eliminate some of the costs. I don't know what can be done, but it would seem that some of those things should take secondary preference to the need of this Association for an Administrative Director. I am not a member so I can't make a motion.

MR. WRIGHT: Does this House want to create its own committee to suggest this to the Executive Council or to work with Mr. Cohen's committee? I would like to see us get off dead center. We have got the man. We have got a good man. Tom Burke will vouch for that. We think we can hire him at a reasonable salary, in the neighborhood of \$16,000 and I don't want that published at this time.

THOMAS W. TYE, Twelfth District: Charlie, is this House going to pass on that proposed budget at this particular meeting, or do we have any authority to do so now?

MR. WRIGHT: I don't know. I think that your budgetary matters, as they now stand in the Rules, are still primarily up to the Executive Council. I think they indicated a willingness to go along and as a matter of form they would prepare a budget. I think you are still limited to recommendations in that respect, but I think this alone is a fairly significant power if you want to use it.

CHAIRMAN OVERCASH: Thank you, Mr. Wright.

Is there any other business to come before the House?

LEO CLINCH, Twentieth District: Mr. Chairman, I think the suggestion that this House have a committee on this budget to work over the budget and to submit recommendations to the Executive Council as to how it can be handled is a good suggestion, and I would so make that motion.

CHAIRMAN OVERCASH: There is a motion that the House appoint a committee to work with the Executive Council on a

budget—I assume you mean that the Chairman appoint the committee—to work with the Executive Council on a budget. Is there a second to that motion?

MR. WRIGHT: I'll second that motion.

THOMAS R. BURKE: Would the introducer of the motion add to that, in order to implement the Executive Director program, which was heretofore recommended by the House of Delegates and which now we are seeking to implement in order to achieve that purpose.

CHAIRMAN OVERCASH: Do you accept the amendment?

MR. CLINCH: Yes.

CHAIRMAN OVERCASH: Is that amendment satisfactory to the second?

MR. WRIGHT: Yes.

CHAIRMAN OVERCASH: Is there any discussion?

VANCE E. LEININGER: Mr. Chairman, I merely want to raise a question that suggests itself to me in light of this motion, and I have no objection to the motion as such but I think we have facing us two alternatives: This program can be implemented by eliminating some of the present functions of the Association. It can also be implemented by increasing our dues structure and getting enough money to do it. Now, I merely make that suggestion. You have only one of the alternatives before you in the form of this motion.

HAROLD L. ROCK, Fourth District: Mr. Chairman, there are other methods, as you know, Vance, because we have gone through this before. We can charge for meetings, we can charge for programs, there are dozens of ways to go about it if the Supreme Court will not give us the raise. It is a question of who has the final say-so about how much you do charge for a meeting, or whether the annual meeting is going to be free, or whether institutes are going to pay for themselves or not. So I really think there is a third alternative. It has been suggested here before, I think it was suggested at the mid-year meeting and at the mid-year meeting two years ago. There are other alternatives.

CHAIRMAN OVERCASH: Are you ready for the question? The question is whether or not the Chairman of this body will appoint a committee to cooperate with the Executive Council on the budget matter to implement the arrangement for an Executive Administrator. Those in favor will signify by saying "aye," those opposed "no." I declare the motion adopted.

Now, is there any other business? If there is no further business, I want to say to the members of the House that you have made some important decisions today. I think you ought to go back home and bring the lawyers in your area into this picture, inform them what you have done, and get their assistance and cooperation.

With that, I declare the House is adjourned until there is a call for another meeting.

... The meeting adjourned at four-ten o'clock . . .

NEBRASKA STATE BAR ASSOCIATION

THURSDAY MORNING SESSION

October 30, 1969

The opening session of the Seventieth annual convention of the Nebraska State Bar Association, convening in Hotel Fontenelle, Omaha, Nebraska, was called to order at ten o'clock by President Charles F. Adams of Aurora.

PRESIDENT ADAMS: Gentlement of the Nebraska Bar, we are about to open our Seventieth annual meeting. I realize that there are some outside the door, but we do have a time schedule and I think we should therefore proceed.

I am delighted to present at this time to you, Dr. William J. Grossman, Pastor of the Central United Presbyterian Church of Omaha who will pronounce the invocation.

INVOCATION

Dr. William J. Grossman

Let us pray. O Lord, our Lord, how great Thy name in all the earth. Before the mountains were brought forth or ever Thou hast formed the earth and the world, even from everlasting to everlasting, Thou art God.

We thank Thee, our Father, for the high privilege of living in this great land, for the freedom we enjoy and so frequently take for granted. Guide our leaders in the problems that face our land, and help us to remember our foundation. Help us to be a nation "under God."

We pray for those who are in the forefront of world events, for all whose word and insight influence the course of the world, that they may not tolerate injustice or resort to violence.

We pray for those who serve the cause of justice and order, that they may not allow their authority to be perverted.

Help us all to follow the direction of Thy prophet of old, to do justly, to love mercy, and to walk humbly with Thee, our God. May Thy blessing rest upon this organization in these days of deliberation together. Guide and direct them in Thy name. Amen

PRESIDENT ADAMS: Dr. Grossman, we appreciate those words of inspiration and we trust that we may be guided by the philosophy which you have expressed to us in your prayer.

Omaha has traditionally been the host of this Association's convention for lo these many years, so I now present to you the President of the Omaha Bar, the Honorable Raymond E. McGrath, who will have a word of greeting for us. Ray!

ADDRESS OF WELCOME

Raymond E. McGrath

Mr. President and Fellow Members of the Nebraska State Bar Association: It is my pleasure, as President of the Omaha Bar Association, to welcome you and your ladies to the City of Omaha and to express to you the hope and concern of all the lawyers in Omaha that your visit with us will be both fruitful and pleasant.

Be sure to mention to your ladies that this noon there will be a luncheon and style show at the Happy Hollow Country Club at 105th near Pacific Street. We have arranged for buses to take all of the ladies to the Club, leaving here around eleven-thirty and bringing them back to the Fontenelle after the festivities at Happy Hollow Club are over. It looks like the ladies' luncheon is going to be a success. We already have about 175 reservations and we expect by the time it starts there will be around 200.

Since taking over as President of the Bar Association here in Omaha and working with my Executive Council and the other committees of the Bar Association, the members of the Association, the public, the press, the radio, the TV and community leaders, I have reached some conclusions which I would like to briefly pass along to you.

You, the men who are here at this convention, are demonstrating by your presence here your interest in the affairs of the Association and the problems of our profession. Undoubtedly most of you are more aware than I am of some of the problems that exist. It would

be most desirable if we could reach all of the members of our profession, not only those who are here but those who are not here.

On the 3rd of January, 1969, I designated Mr. Thomas R. Burke as the Chairman of a committee to make a study of the activities of the Omaha Bar Association and to make some recommendations with reference to future programs and activities.

Considerable data was compiled from other Bar Associations having similar size and in some respects a comparable geographical location. An extensive questionnaire was sent to all of the attorneys whose name appear as practicing lawyers, whether they belong to the Omaha Bar Association or not. Returns from this questionnaire continued to come in through the summer of 1969. The answers to this questionnaire were carefully analyzed, the data compiled, and a full discussion was had thereon by the committee.

We expect to have a meeting of all of the members of the Omaha Bar Association on Thursday, November 20, at which time the committee's report will be presented to our Association.

I would like to quote from only two paragraphs of the proposed report of this committee. A letter to me from Mr. Burke, the Chairman of the committee, dated October 9, 1969 reads in part as follows:

"4a. *Committee and Sections.* Under the program arrangement being followed presently, only a small portion of the Bar Association is being served. The recommendation is to expand the types of activities sponsored by the Omaha Bar Association so that a much wider interest can be obtained and a significant number of members involved in Association activities. Accordingly, the committee recommends the amendment of the Bylaws of the Omaha Bar Association through the elimination of the present Article IV and substituting in its place the amendment attached to this report. The essence of the amendment is the elimination of a substantial number of the present committees to handle the affairs of the Association, and the establishment of Sections of the Association to carry out the professional matters of interest to the members . . ."

"4e. *Bar Involvement in Social Problems.* Considerable time was devoted to the question of whether or not the Omaha Bar Association should become more actively involved in the social problems faced by the City of Omaha. Study was made of the Greenleigh Report as it pertained to the Omaha Bar Association. Reports were made to the committee by those having knowledge of the affairs of the Legal Aid Society, et cetera. The committee was aware that under Article II of the Constitution of the Omaha Bar Association, one of the objects of the Association was "To increase the useful-

ness, activity and influence of the Bar," and that it has consistently been declared to be the policy of the Bar Association by its Executive Council that within the framework of this language the Bar Association was not authorized to become involved in the social activities of the city without the consent of the membership. It is the recommendation of this committee that the role of the Omaha Bar Association in the social problems of the City of Omaha, be the subject of a special meeting of the membership of the Omaha Bar Association to be held early in the year 1970. At that meeting there should be a full discussion of the responsibilities of the lawyer and the Association, the areas of responsibility, the limitations involved, and a consensus of the members present taken to determine the future role of the Omaha Bar Association with respect to the social problems of the City of Omaha. This committee, by a substantial margin, is in favor of the Omaha Bar Association becoming more involved with the social problems in the city of Omaha . . ."

This is not the time or place to list the areas of activity and involvement of the Omaha Bar Association. I simply want to make this observation, that the involvement of the Omaha Bar Association in the affairs and problems of the City of Omaha has been increased considerably, and in the immediate future it is my prediction that this involvement will be increased a great deal more.

In connection with this problem of the involvement of the Bar Association in the affairs and problems of the city, it must be remembered that the position of a Bar Association is different from many other groups. The members of the Association are lawyers whose duty it is to serve their clients to the best of their ability. Many of the problems of the cities involve legal questions on which lawyers properly representing their clients are on opposite sides of the question involved. So a Bar Association representing all of the lawyers cannot properly take a position on many problems that have overlapping social and legal aspects.

To be specific, there is presently under discussion in Omaha the problem of Urban Renewal. Some of the members of our Association undoubtedly will be representing those who strongly advocate legislation favoring Urban Renewal. Other members of our Association will be properly representing those who challenge the legality of such a program and such legislation. Obviously the Bar Association, representing all of the lawyers, cannot properly as an Association, take a position on this and similar problems of the city.

The old idea of a Bar Association simply being a group of lawyers who get together to discuss legal problems and to hear speeches on legal subjects is fast fading away. The people of our communities

are looking to us as a professional organization of lawyers for leadership in many areas which have not previously been explored by the Bar Association. The same thing is true on a state level as well as on a local level.

My term as President of the Omaha Bar Association will soon come to a close, but I still remember very well a short poem that I received from my brother-in-law, General Alfred Gruenther, which I would like to read to you because it has so definitely helped to keep my feet on the ground when various problems have arisen during the past year in connection with the Bar Association:

Sometime, when you're feeling important,
Sometime, when your ego's in bloom,
Sometime when you take it for granted,
You're the best qualified in the room,
Sometime when you feel that your going,
Would leave an unfillable hole,
Just follow this simple instruction,
And see how it humbles your soul.
Take a bucket and fill it with water,
Put your hand in it, up to the wrist,
Pull it out, and the hole that's remaining,
Is a measure of how you'll be missed.
You may splash all you please when you enter,
You can stir up the water galore,
But stop, and you'll find in a minute,
That it looks quite the same as before.
The moral in this quaint example
Is, do just the best that you can,
Be proud of yourself, but remember,
There is no indispensable man.

So I am honored as President of the Omaha Bar Association to welcome you fellow lawyers to Omaha, and if there is any way that we can make your stay here more effective or more enjoyable, please let us know.

Have a good time here in Omaha. Thank you very, very much.

PRESIDENT ADAMS: Thank you, Ray, and we do appreciate all the wonderful help we are receiving from the members of the Omaha Bar and their ladies.

To respond to that address of welcome I turn to one of the principal suburbs of Aurora, a little community called Grand Island. I am delighted to present my friend Howard Tracy, who will respond to the address of welcome. Howard!

RESPONSE

Howard E. Tracy

President Ray, President Charles, Distinguished Judges, Fellow Lawyers, Guests: When I came in the door this morning one of the district judges from somewhere south of the Platte River said, "And just how are things in the Peyton Place on the Platte?" So now we are glad it is just a suburb of Aurora.

In contemplating my assignment of responding to the address of welcome, I had to be struck by the importance of this meeting in Omaha. You realize that lawyers, being very important people, come here and are impressed with the city culture and take it back to the hinterlands of the state, so that one of the functions of this meeting is to spread the culture of the city out to the country.

For example, not too long ago Grand Island passed a "Liquor-by-the-Drink" law and so did Lincoln. I was in Lincoln just last week-end and saw people engaging in such activities as standing up and drinking beer, and otherwise acting in a way that when I was in school not very long ago would have surely drawn a reprimand from the police.

So this meeting does, in fact, give us some fun and we are glad, Ray, to come to the city and do it your way. But more than that, this particular meeting gives us a chance to sit down with lawyers from across the state whom we seldom see and to cuss and discuss and exchange ideas in a way that we cannot otherwise do. When I was in Lincoln last week I sat down and had some baked eggs with some friends and we talked the philosophy of the law, and it was wonderful but not the kind of an experience that we can have here learning the way that lawyers ought to act.

Thank you, Ray, for inviting us. We want to be sure to thank you particularly for the wonderful care that you and your wives give to us and our wives. Thank you very much.

PRESIDENT ADAMS: Comes now the part of the program which as printed says "Address of the President." I will be willing to excuse anybody, including the President of the American Bar Association—I think that is a very timely exit.

BERNARD G. SEGAL, Philadelphia, Pennsylvania: Mr. President, I go to an appointment which *you* made for me.

PRESIDENT ADAMS: Bernie Segal has a press conference, and we hope we can keep the image of the lawyer in proper perspective as far as the news media are concerned.

ADDRESS OF THE PRESIDENT

Charles F. Adams

Ladies and Gentlemen of the Nebraska Bar: At the outset let me make it plain that this address is not prompted by any desire on my part to make a speech at this particular time or place. On the contrary, I appear solely in response to the mandate set forth in Article V, Section 1 (a) of the Rules Creating, Controlling and Regulating the Nebraska State Bar Association which contains the requirement that the President "shall also deliver an address at the regular meeting of the Association next succeeding his election." I find nothing in that mandate that requires me to point with pride nor view with alarm, so I shall do neither. Our accomplishments and anticipated perils were rather fully reviewed at the meeting of the House of Delegates yesterday and these will appear in the printed proceedings.

Rather, I think, it might be worthwhile to spend a little time about what the state of affairs of our Association might or should be at its One Hundredth Annual Meeting in 1999. Our program for 1969 reminds us that this is the Seventieth Annual Meeting, so in thirty short years we shall be observing our Centennial as an Association.

I have therefore selected a few topics that occur to me as being of more than passing interest and in areas where we might anticipate the most significant changes in the next thirty years.

CONTINUING LEGAL EDUCATION

Most of us will agree that today the law is becoming so increasingly complex as to make it absolutely necessary for lawyers continually to re-educate themselves in the fields where they feel the greatest need for such additional and continuing education. Your Association has endeavored to meet this need, although in a very limited way. Other associations of lawyers, including the Practicing Law Institute, have undertaken more ambitious programs.

In any event, the ultimate conclusion is that the age of specialization will be upon us thirty years from now and undoubtedly much sooner than that. Regardless of our individual opinions as to specialization and, particularly, the matter of certifying specialists, we must admit that it is a physical and mental impossibility for a lawyer today to be skillful and proficient in all phases of the law about which he may be consulted.

I suppose it is possible to announce yourself as a specialist, and I was struck by the extreme modesty of the young man who put this ad in the last ABA JOURNAL. He is 28 years old. He modestly says that in his three years' experience he has become a specialist in trial, work, concentration in labor, contracts, Uniform Commercial Code, real estate, insurance, taxation, estate planning, and general corporate practice.

It might also be helpful to remind you of the distinction between a specialist and a general practitioner. The specialist, I am told, is one who knows more and more about less and less until finally he knows everything about nothing. On the contrary, we general practitioners like to think that we know less and less about more and more until finally we know nothing about everything.

The larger law firms have learned to organize along the line of specialties, and the smaller law firms and individual practitioners are and will continue to associate themselves with other lawyers possessing the requisite skills and experience to handle the particular matter in hand.

It might be proper to point out that much of the criticism of the delay in the courts can be attributed to the lack of specialization in the area of trial technique. In other words, there are too few lawyers today who have any desire to make themselves proficient in the trial of contested cases. Our English brethren still maintain the distinction between the barrister and the solicitor and apparently this problem is not acute with them. However, within the next thirty years we must lend the assistance of the organized Bar to a program of training lawyers, preferably younger lawyers, as trial lawyers. When we have developed a sufficient number of lawyers who are ready, willing, and able to undertake the trial of contested cases, the backlog of cases awaiting trial in our several courts should be materially reduced. Not only that, but the clients will be better served by having competent trial lawyers handling their cases.

REMOVING THE UNFIT LAWYER

Under the leadership of the organized Bar in the several states, as well as our national organizations, much has been accomplished to secure the continued service of competent judges and the removal of judges who should not be permitted to remain on the bench. Twenty-one states and Puerto Rico have enacted constitutional provisions or statutes, or both, making it possible to remove the unfit judge without resorting to the cumbersome and ineffective process of impeachment. It has seldom been necessary to actually conduct

an adversary proceeding against such a judge for the reason that he usually comes to the realization that a contest would be futile and would serve only to tarnish his judicial reputation.

The experience of California during the years 1966, 1967, and 1968 is illuminating. Slightly more than 1,000 judges are within the jurisdiction of their Commission on Judicial Qualifications. During these three years 16 judges decided to resign or retire after proceedings were started but before any publicity had been given to the charges against them. During this time no judge was actually removed or retired by Court order.

On the other hand, there has been little or no progress in the area of removing the unfit lawyer. The unfit lawyer I am talking about is not the one who is guilty of a direct violation of our present Canons of Ethics or our new Code of Professional Responsibility, but the one who has become unfit to practice by reason of senility, mental instability, or sheer incompetence. This is becoming a more serious situation as the years go by, as our medical practitioners have learned how to keep our physical bodies alive but have not learned how to insure comparable mental acuity. Our doctor friends are also concerned about this, because under present laws there is nothing to prevent a man who graduated from medical school twenty-five or fifty years ago and has spent his intervening years in some other pursuit, from hanging up his shingle and announcing to the world that he is now engaged in the practice of medicine and surgery. We pity the poor man or woman who would place his or her life in the hands of such a man.

The same thing can happen to us under our present rules. There is nothing to prevent one who has been an inactive member of the Association for years, presumably in some other field of endeavor, from simply paying the dues as an active member and immediately becoming licensed to practice his profession. The problem is how to cancel the license of the unfit lawyer and how to prevent the unfit inactive member from attaining active status. As this situation will become more acute in the foreseeable future, a solution must be found.

ECONOMICS OF THE BAR

Great strides have been made in the past few years to make lawyers conscious of the fact that their time is worth money and that by careful attention to law office procedures their incomes can be substantially enhanced. This is good, not because we are taking more money from the pocket of the public and putting it into our own pockets, but because we are thereby enabled to serve

the public much more efficiently, since we do not have personal economic problems. It is also true that many of the disciplinary problems that we encounter involve the lawyer who has not found out how to make an honest living and therefore is more subject to temptation to violate the laws and the Canons of Ethics in order to subsist.

There are two other sections of Bar economics that should show great developments in the coming thirty years. The use of legal technicians, or para-professionals, as they are sometimes called, will become commonplace in the average law office in this state and in this country. The first problem to be solved in this connection will be how and where these people can be trained to do this work for us. Presumably most of them will be women, although there certainly would be no barrier to a man developing this type of a career. The public, including lawyers, is quite accustomed to visiting a doctor's office and having a variety of procedures performed on him or for him by persons other than the doctor himself. However, these people are working under the direction of the doctor and are not considered to be engaging in the practice of medicine. So it can and will be with the law office. While our legal technicians may not come into contact with our clients to the extent that the medical technicians come into contact with the patients, yet they will be performing a very valuable service at a cost to the client that will be far less than if the lawyer himself had to devote his time to the performance of routine and repetitive services.

The other area has to do with the increasing use of office machines. Just a few short years ago about the only machines that a lawyer needed were a typewriter and a telephone. Today we wonder how we ever managed to get along without the copier and the dictating machine, to mention only a few, which daily save countless hours of time of the lawyer and his staff of assistants. We have found, and will continue to find, that it is often cheaper to buy or lease a machine than to pay wages to accomplish the same result. But this is only the beginning. Many offices are already equipped with various types of sophisticated machines such as automatic typewriters. We will find many of them in the exhibits on this same floor of the hotel.

The old-time adding machine has almost been entirely supplanted by the modern printing calculator, and before long there will probably be small desk-size computers designed particularly for the lawyer.

And in the realm of computers we are hearing much about the data retrieval machines that have stored in their memory banks the

entire statutes of a state. This we have done in Nebraska. The logical development will be to have these memory banks store additional essential information that will make the task of legal research infinitely more simply than it is today. Perhaps thirty years from now the library in the average law office will consist of only a few bound volumes with all the rest of the material in data retrieval computers in central locations to which the law office will be connected by electronic circuits.

A PERMANENT HOME FOR OUR ASSOCIATION

I would hope that before the expiration of thirty years we shall have found a permanent headquarters for the Nebraska State Bar Association. Oklahoma and Oregon are examples of what the organized Bar can do to raise funds on a voluntary basis and build a beautiful and practical headquarters building. If we are to follow this plan it will require a great deal of effort and a number of years to accumulate sufficient money with which to build an adequate structure.

Some thought has already been given to a plan similar to that adopted in Colorado. Many of us have visited the offices of the Colorado Bar Association and the Denver Bar Association in the new building of the University of Denver College of Law.

Long-Range planning of the University of Nebraska indicates that the new law college building will be erected on what is now known as the East Campus. Preliminary discussions have already been had with Dean Grether who, in turn, has assured us that he will confer with the architects of the building and ask them to design suitable space that might be rented as the headquarters for our Association and possibly for other Bar-related purposes.

LIMITATIONS ON LEADERSHIP OF THE INTEGRATED BAR

Following the decision of the Supreme Court of the United States in the case of *Lathrop v. Donohue*, 367 U.S. 820, 81 S. Ct. 1826, 6 L. Ed 2d 1191, leaders of the integrated Bars throughout the nation became increasingly concerned about what might happen to their own organizations in the event a dissident member should appeal to the courts for relief from paying dues because he disagreed with the legislative policy of his Association. Our own Association took heed of this warning and, after careful study of the several opinions in the *Lathrop* case, formulated our own legislative policy. This statement consists of six numbered paragraphs, the first of which is entitled "Scope" and reads as follows:

"The legislative program of the Nebraska State Bar Association, and its Committees and Sections, shall be limited to the sponsorship of, or opposition to, proposals submitted to the Nebraska Legislature, or the Congress of the United States, changes in the statutes relating to the practice of law, the administration of justice and administrative procedure."

Despite our very excellent and cordial relations with the members of the legislature, we have found it difficult at times to explain why our Association could not take a position for or against a number of important bills pending before them.

Quite recently the Supreme Court of New Hampshire integrated the New Hampshire State Bar Association, the opinion of the court appearing in 248 A.2d 709. This made New Hampshire the thirtieth state with this form of organization. In its petition for integration or "unification"—you know, the word "integration" has developed a connotation that is somewhat distasteful—the New Hampshire Bar Association proposed certain bylaws which provided, among other things "every resolution offered by any member for consideration 'shall be pertinent to the legal profession or to the purposes of the Association or in relation to its internal affairs.'" In commenting on this the Court said:

"Furthermore we are of the opinion that a unified Bar as proposed in the petition should confine its activities in this sphere to legislation dealing with administration of justice, the operation of the courts, the practice of law, and the legal profession."

This comment by the New Hampshire court clearly sustains the legislative policy of our Association adopted two years earlier. It also suggests that we are to function much as our Judicial Council functions. This body was created by Supreme Court Rule in 1939 "for the advancement of the administration of justice according to law . . ." (152 Neb. 41). For the Association merely to duplicate the functions of the Judicial Council would seem to be highly impractical.

It should also be pointed out that when we speak of "legislation" we do not do so in its narrow sense of man-made law as distinguished from judge-made law. We must remember that many important laws are enacted for the sole purpose of negating the effect of some particular judicial decision.

It was Benjamin Cardozo who said that the final cause of the law is the welfare of society. How, then, can we discharge this duty we owe to the public within the permissible bounds of an integrated Bar? One way would be to organize within the state a

voluntary Bar Association whose members could then adopt whatever legislative policy they chose. There are presently four states where integrated Bars and voluntary Bars exist side by side.

The American Bar Association, being a voluntary group, does carry forward an extensive program of legislative activities, and we have come to look to the ABA for such leadership.

However, in my opinion, a separate voluntary association would not be a satisfactory solution to the problem. A more practical approach might be to grant a considerable degree of autonomy to the several Sections of our Association, including the right to assess and collect dues for Section activities. These, then, would be voluntary groups, and it would be expected that no lawyer would continue to pay Section dues if he was in disagreement with the legislative policies of his Section. The weakness of this plan would be that it would have to be made very plain to the public and to the legislators that the views of the Section were not those of the Association which, in turn, might make the legislative position of the Association, as well as the Section, much less effective.

The New York State Bar Association seems to have gone a step further and authorized its several committees to take a position on pending legislation. The September, 1969 report of the Committee on Federal Legislation of the New York State Bar Association carries this caution on the cover leaf of the report:

"This report represents the views of the Committee on Federal Legislation. Neither the Executive Committee or the New York State Bar Association as a whole have taken any position on these recommendations."

There are many areas of substantive law where revisions are desperately needed to bring our statutes abreast of the times. Must we, as an organized Bar, turn our backs on every legislative effort in the realm of substance rather than procedure because of the fetters and shackles imposed by *Lathrop*? If turn our backs we must, then we can only voice our opinions and exercise our leadership as individual lawyers. While this may have some value in the legislative process, it fails utterly to answer the question so often put to us, "What will the lawyers do about it?" It is our consensus that is urgently needed in the legislative halls. This, we must find a way to provide.

APPRECIATION

Before I close I should like to express my appreciation for the privilege of serving this Association as its President during the

past year. Not many of us are given this opportunity, particularly a country town boy who has been in solo practice for thirty-eight of his forty-two years at the Bar. For this I am truly grateful, and I hope that what I have done will meet with some measure of approbation.

CONCLUSION—and I'm sure you all have been waiting for this.

Of all the obligations which lawyers owe to society, perhaps the greatest is to maintain and constantly improve our system of courts and law. In 1956 Homer Cummings, who served as Attorney General under Franklin Delano Roosevelt from 1933 to 1939, warned us of the consequences of our failure to discharge this duty in these words:

"More and more we are coming to the realization that the public will not indefinitely entrust to the legal profession those functions which the legal profession does not effectively discharge. If our laws and our legal machinery become antiquated and unserviceable, we, as lawyers, must set our own house in order or confess judgment in the face of the charges which have been made against us."

This is our challenge. This is our responsibility. What we do in the next thirty years may well determine our role in society for generations to come. Thank you.

Now the report of the Secretary-Treasurer, Mr. George H. Turner.

REPORT OF SECRETARY-TREASURER

George H. Turner

Mr. President, Members of the Association: The books of the Association have been audited by the accounting firm of Peat, Marwick, Mitchell & Company. They closed the fiscal year as of August 31, 1969. They report that the records were well kept.

They report total receipts during the year from all sources, \$70,700; total disbursements, \$65,136; or an excess of receipts over disbursements of \$5,564.

PRESIDENT ADAMS: Mr. Turner, does that require any action on the part of the assembly?

SECRETARY TURNER: It was approved by the House of Delegates.

PRESIDENT ADAMS: Approved by the House of Delegates, very well.

Next I am to bring you a brief report of the Executive Council.

REPORT OF EXECUTIVE COUNCIL

Charles F. Adams

The Executive Council held five meetings during the year on the following dates: December 8, 1968, March 1, 1969, June 28, 1969, September 13, 1969, and yesterday, October 29, 1969.

A mid-year meeting of the House of Delegates committee members, and members of the Association was held in Lincoln on June 27

The legislature having been in session during most of the year, matters of legislation required a great deal of time and attention by the Council and several of its subcommittees. The report of the Committee on Legislation which appears on Page 37 of the printed program gives details and statistics.

You have already heard from me on the matter of our legislative policy. Most of the other matters engaging the time and attention of the Council are reflected in the several committee reports. Other matters not so included may be summarized as follows:

Continual supervision of our group insurance contracts, both life and disability was maintained. The policy of the Association with reference to the Nebraska Law Review was conveyed to the faculty of the College of Law of the University of Nebraska. A brochure to accompany the ballot on the proposed dues increase was prepared and distributed. As you have been informed, the vote was rather decisive against the proposal so we are still struggling along on what your officers feel is a very inadequate budget. We have received your mandate to proceed with many projects to increase the service which your Association can provide for you, but we have been compelled to defer action on most of them because of lack of funds.

We have provided financial assistance by way of loan to the Great Plains Tax Institute and by way of grant to the Nebraska Law Student Association, the Student Association of Creighton Law School, and the Young Lawyers Section.

Nominations were made for members of the House of Delegates in the absence of nominations petitions and for associates, officers, members of the Judicial Council and the Commission on Judicial Qualifications.

The Code of Professional Responsibility as adopted by the House of Delegates of the American Bar Association was distributed to all members of the House of Delegates of this Association. I am pleased to report to you that yesterday the House of Delegates approved this Code and directed that it be recommended to our Supreme Court for adoption into our Rules.

Lastly, I should tell you that a proposed Rule of Court to implement the Professional Corporations Act has been submitted to the Supreme Court.

That, gentlemen, consists of the report of the Executive Council.

Now Mr. Charles Oldfather or Mr. Tom Carroll on Law Day.

LAW DAY

Harry B. Otis

Mr. President, Honored Judiciary, Fellow Members of the Nebraska State Bar Association: I am Harry Otis, and I am Assistant Chairman for Law Day for 1970. Charles E. Oldfather, who is the Chairman, could not be here so I am going to give a few remarks about Law Day in his behalf.

I think you are all familiar with this concept of Law Day. It has been going on as a program for the last ten years, sponsored by the American Bar Association, and has chairmen in all of the fifty states, all of whom are very active each year surrounding the date of May 1 for the promotion of Law Day, U.S.A.

In our own state last year Tedd Huston was the Chairman, and he succeeded in increasing the number of county chairmen to the number of eighty-two out of the ninety-three counties. This makes it very much of a grass-roots movement, and he is certainly to be lauded for that effort.

The function of Law Day, of course, as we know, is to imbue the public with the concept of law as the vital social force in our community. We lawyers are all familiar with this, but so often we find that our fellow laymen are not so familiar with this concept and it must be constantly taught if we are to have a vibrant, growing democracy in this beloved United States of America. We have seen in the last few years where the rule of law has, in certain areas and in certain instances, broken down, and it seems to me that this is one of the most vital functions of any Bar Association, to back up Law Day.

This year we are starting on an early recruitment for chairmen and we are going to get off the ground a little bit earlier. We have solicited the cooperation of all the news media, as in the past, and they have all been very cooperative, but as with every kind of a function that promotes the good or the welfare of mankind, they demand the attention and the use of the news media and they must compete against one another. But they have been very good, the newspapers, the television, the radio, all have cooperated in putting on programs.

We have gotten into the churches with pamphlets. From the pulpits of the Catholic, Protestant, and the Jewish synagogue we have reached a great many people. We have, in practically every part of the state, done something about Law Day, as they have in the other States of the Union.

This year Governor Tiemann has offered the cooperation of his office to allow us to work more closely with the law enforcement agencies, something that has not been done in the past to any particular extent, so that the cooperation of the Bar with the law enforcement agencies in the implementation of this program might further enhance this whole concept of the rule of law in the community.

That, in brief, is what this is all about. I wanted to report what we have done, what we expect to do, and we solicit your active cooperation in this effort this year.

PRESIDENT ADAMS: That was Harry Otis of the Omaha Bar. Thank you, Harry, for covering that for Charlie Oldfather. It is one of our very important Bar Association activities, and I am sure we can pledge to you the support of our members.

Is Jack Wilson in the room? Jack, would you give us the report of the American Bar Association? I would remind you that Jack is the Association's delegate to the House of Delegates of the ABA. Right?

REPORT OF AMERICAN BAR ASSOCIATION DELEGATE

John J. Wilson

The annual meeting of the American Bar Association was held this year in Dallas, Texas, on August 11-13.

The House of Delegates considered a number of problems facing the legal profession and the Association during its sessions and adopted resolutions offered for consideration by its various sections. The resolutions are too lengthy to recite here this morning.

There are twenty-one Sections for carrying on the work of the Association, each within the jurisdiction defined by its bylaws. Membership in the Young Lawyers Section is limited to members of the Association under the age of thirty-six years who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other twenty Sections, all of which have established dues. These Sections offer an opportunity for lawyers to learn about any particular practice of law.

The President of the Association this year is Bernard G. Segal of Philadelphia, Pennsylvania. He has been a diligent worker in the Association and is making a great President. You will have an opportunity to hear him at the luncheon this noon in this room.

George H. Turner was elected by the members of the American Bar Association in Nebraska and is the State Delegate to the House of Delegates of the Association. I represent the Nebraska State Bar Association in the House of Delegates of the Association, having been elected by the members of the Nebraska State Bar Association.

Probably the most important action taken during the meeting in Dallas was the adoption of the new Code of Professional Responsibility, the result of five years of labor by a Special Committee headed by Edward L. Wright of Little Rock, Arkansas, the new President-Elect of the Association. The 113-page Code is intended to replace the Canons of Professional Ethics adopted by the Association in 1908. The new Code will become effective January 1, 1970. The Code is briefly discussed in the October 1969 issue of the *American Bar Journal*.

The House of Delegates also voted to approve generally the recommendations of the Committee on Automobile Accident Reparations with the notation that there was a basis for disagreement with some of the recommendations.

The House of Delegates postponed action on a resolution in favor of Senate Bill 1506, the Judicial Reform Bill, which would create a commission on judicial disabilities and tenure.

One other important matter included approval of the Uniform Probate Code.

If you are not now a member of the American Bar Association, you should join the ranks of which more than 100,000 lawyers of the United States find that the American Bar Association is a need to the further practice of law. It is an organization of lawyers for lawyers.

PRESIDENT ADAMS: Thank you, Jack.

Touching again the matter of this new Code of Professional Responsibility, your Executive Council yesterday voted to authorize and pay for the distribution of a copy of this Code to every Active member of the Association. These are being printed and will be placed in the hands of our Secretary through the courtesy of Martindale-Hubbell. We will have to pay the mailing costs to each of you. To date, they have been distributed to the members of our House of Delegates, the members of the Court, and members of the Advisory Committee.

Bert Overcash, the Chairman of the House of Delegates, we are ready for your report.

REPORT OF THE HOUSE OF DELEGATES

Bert L. Overcash

Mr. President, Members of the Association, and Guests: The annual meeting of the House of Delegates was held yesterday. The committee reports set forth in the printed program were presented. Those not requiring specific action were approved by the House under a blanket resolution. Those requiring House approval were fully discussed and considered and action taken.

Perhaps the most important action of the House related to the report of the Special Committee on Reorganization. Their report recommended a new set of Rules Creating, Controlling and Regulating the Nebraska State Bar Association. This report had been submitted to the members of the House of Delegates substantially in advance of the meeting in order that full consideration could be given to the subject.

The principal changes involved in these recommendations are the following:

1. Provision for an Executive Director for the Association.
2. Provision for budgetary and fiscal control for the Association.
3. Provision for placing full charge of the affairs of the Association in the House of Delegates; and making the jurisdiction of the Executive Council subject thereto.
4. Providing for the election of the members of the House of Delegates and Executive Council in such manner as to place the control of the administration in the Association in the elected membership thereof.

5. In general, modernizing various items of procedure so as to facilitate changes in the operation of the Association as may be demonstrated to be necessary by time or experience.

The House of Delegates approved the adoption of these new Rules. The work of this committee deserves the support and appreciation of the entire Bar. The members of this committee, which include three past Presidents of this Association, are:

Herman Ginsburg, Chairman
Joseph C. Tye, Vice Chairman
John C. Gourlay
William E. Morrow
Robert C. Bosley
Charles E. Wright
Frank Mattoon
Murl M. Maupin

I think every member of this Association can profitably review in detail the printed reports of our several committees. Without in any way minimizing the importance of reports not mentioned, I wish to call your attention to certain activities of some committees.

The report of the Committee on Legislation shows that this Association has had a very active participation in legislation. This Committee has developed a good record before the legislature and the increasing number of bills introduced indicates that the responsibility of this committee is being enlarged. The committee needs and must have effective local support in its activities.

The Special Committee on the Availability of Legal Services detailed in active program in most areas of the state to provide necessary legal services to everyone. The work of this committee is another example of the public service activities of this Association.

The report of the Committee on Unauthorized Practice of Law reflected an attempt by the Bar Association in a very practical way to protect the public from improper activities by various agencies.

The report of the Special Committee on Administrative Agencies sets forth in detail the status of state administrative agencies as to the adoption of rules of practice and procedure.

The Committee on Procedure reported a number of substantial changes in our procedural law.

The House adopted a resolution approving and endorsing the new Code of Professional Responsibility. This was submitted and explained to the House by President-Elect William J. Baird. The

adoption of this Code will mark another important step in the improvement of the functioning of the Bar Association and its membership.

The House also adopted a resolution opposing the Murphy Amendment in Congress which would permit governors to veto O.E.O. projects within states.

The House also approved a separate commencement procedure for the University of Nebraska and Creighton University for law graduates that would involve individual capping of candidates for J.D. Degrees.

PRESIDENT ADAMS: Thank you, Bert. Very informative. I must say that the House of Delegates were a very hard working group of lawyers, and they spent almost all of yesterday at the task.

Judge Carter, would you approach the mike and let us have the report of the Judicial Council. I present the Honorable Edward F. Carter, Justice of the Supreme Court of Nebraska.

REPORT OF JUDICIAL COUNCIL

Honorable Edward F. Carter

The Judicial Council has met from time to time throughout the year as its work demanded. The attendance of members was excellent and resulted in a consideration of each matter by every member of the Council.

Two proposed bills of importance to lawyers were submitted to the legislature at its recent session for its consideration. The first was for a bill covering the admission into evidence of inculpatory statements, confessions, and confrontations. We felt such a bill was needed in view of recent decisions on the subject by the Supreme Court of the United States. The second proposed bill related to the issuance of search warrants in non-criminal cases. We felt this bill was also necessary in view of recent decisions of the Supreme Court of the United States. Both of these proposed bills were enacted into law.

A handbook for the use of members of nominating commissions was completed, printed, and circulated to all members of such commissions. We think this will be helpful to these commissions, particularly new members thereof, in impressing upon them the duties and responsibilities of members of these commissions.

We have several matters pending which are probably of little general interest to the Bar. I shall not discuss them here. We do have two matters that should be of great interest to lawyers. I shall briefly describe their nature.

The first is a proposal to amend the Post Conviction Act of this state. It is urged that the present act contains many small defects, possibly some not so small, that are deserving of attention. If you are interested, I suggest that you take it up with a member of the Judicial Council subcommittee consisting of the following: Judge H. Emerson Kokjer, Wahoo, Chairman; Arthur D. O'Leary, Omaha; Vincent J. Kirby, Norfolk; Melvin K. Kammerlohr, Lincoln; and William A. Line, Fremont.

The second is a proposal, (a) to simplify and standardize the appellate procedures in this state, (b) the advisability and mechanics for legislative authorization for the Supreme Court to prescribe rules of procedure, (c) advisability and mechanics for broadening the territorial jurisdiction (venue) of district courts, and (d) such other matters as may be advisable in considering the court system, including the consideration of a model judicial article. The subcommittee researching these matters are the following: Flavel A. Wright, Lincoln, Chairman; Lawrence S. Dunmire, Hastings; Daniel Stubbs, Alliance; Daniel D. Jewell, Norfolk; Robert C. McGowan, Omaha; Norman M. Krivosha, Lincoln; and Robert D. Mullin, Omaha.

The Council is very appreciative of the assistance given by the members of the Bar in researching and considering problems of procedure when called upon to do so. It is to the credit of the profession that we have never had a member of the Bar decline to serve on one of our subcommittees when asked to give us his assistance.

Mr. President, I move the report be accepted.

PRESIDENT ADAMS: I shall rule that the report is accepted and will be placed on file and appear in the printed proceedings. Thank you, Judge Carter.

Next we have a part of our program devoted to the insurance phase of our Association. First we would like an announcement and a report from the representative of the John Hancock Life Insurance Company. Mr. Bosse!

GROUP LIFE INSURANCE

RICHARD BOSSE: Good morning, ladies and gentlemen. First, of course, I represent John Hancock. I am the general agent for the State of Nebraska.

My report will be brief this morning for two reasons: First, I was just recently appointed the agent rep of your Association, representing a group life insurance. Second, we are presently in the process of having all the files and records in our Home Office transferred to my agency. Because of these two reasons, a detailed report is not possible. We will shortly be sending out announcement cards indicating our appointment and our agency address in Omaha so that all correspondence, either claims or questions regarding claim notices, dividends, etc., can be relayed directly to our office.

The following are highlights regarding the present status of your Group Insurance for the year 1968:

The claim experience for that year was \$70,000. You received a dividend from our company in the percentage of 22 percent, which amounted to a total figure of \$22,000. This dividend, as I understand, was refunded back to you people with a balance of \$1,100 that went back directly to the Association. The total amount of life insurance in force with your Association, regarding the group life insurance, is \$8,600,000.

We do have two open enrollment dates, and these are December 1 and June 1. We expect to have a lot of activity in both these open enrollment dates, particularly for December of this year. These enrollment dates, of course, are subject to evidence of insurability, with the exception of the young law graduates who want to participate on a first offer basis.

We in my agency are certainly pleased to have accepted this appointment and will be most sincere in our efforts to help you people provide the service that you are already paying for and you do expect to have. Thank you very much.

PRESIDENT ADAMS: Mr. Bosse will be about the room and the meeting today and tomorrow, and I am sure he will be pleased to discuss with you or answer any questions any of you may have about our life insurance program.

Mr. Harold Diers, will you approach the podium, please, sir? Mr. Diers' company is in charge of our disability, medical, and hospital type of insurance, and he has an announcement at this time. Harold!

HAROLD DIERS: Mr. President, Officers and Members of the Nebraska Bar Association, and Distinguished Guests: I wish to thank you for these few moments to report briefly on our stewardship as administrator through our agency of your approved Group Disability Program. This is the twenty-fifth year, the Silver Anniversary, of our agency's service to your organization in this capacity.

A quarter of a century has brought many improvements. May I quickly review them: When our Disability Plan was first approved by your Executive Council on August 25, 1944, when Mr. George DeLacy was President, we could offer only a maximum of \$50.00 per week benefits; today we offer \$250 a week, or \$1,083 a month. Twenty-five years ago the limits were five years on accident and one year on sickness; today all of our plans provide lifetime income if totally disabled by accident, and long term sickness coverage, either for seven years or from the inception of the sickness, continuous payment until age sixty-five, with no requirement of any house confinement.

The greatest improvement of all was made last year when our Continental Insurance Companies made your Plan guaranteed renewable not only for the individual insured member but also for the Association. Formerly there was a provision that the company could terminate the entire group on a renewal date. Today the company cannot cancel your professional group as a whole as long as you maintain the sponsorship and approval as it has been this past twenty-five years.

Your President suggested that we give you a couple of instances of this Plan in action. One of your Omaha attorneys bought a small \$75.00 a week policy a few years ago. He has been totally disabled by sickness for over four years. We have already paid him \$18,300, and we will still continue to pay him. He has paid no premiums whatsoever for several years, because our contract provides a waiver of premium if you are disabled over six months.

Consider now our top flight contract of \$250 a week or \$1,083 a month. One of our professional men bought such a policy in 1964. Two years later he became totally disabled by sickness. His total investment in the contract before the premium waiver was effective was about \$700. We have already paid him \$40,000. And to complete our liability on this claim, we will be paying him an additional \$37,300, or a total of \$77,300. It is almost unbelievable.

If an attorney, any of your members below fifty-six, buys our \$250 a week policy with a lifetime accident and seven-year sickness clause, our company's maximum liability under the sickness portion is \$91,000, and far more than that on the accident.

Honestly, gentlemen, I know of no comparable policy, either on an individual or group basis, that will match what your state-sponsored program provides.

Over the years we have added other coverages to round out the insurance program that the attorney might need. Major medical expense, which has now increased up to \$15,000 maximum, which covers every member of the family that is insured for that amount. Office overhead expense, to pay the cost of maintaining your office if you are disabled. High limit accidental death and dismemberment up to \$100,000. World-wide coverage, twenty-four hour basis, including air travel on commercial lines. The \$100,000 plan, if you were disabled, would pay an income of \$500 a month until the total amount has been paid out. Individual policies of this type would cost you forty percent more.

All of these plans are underwritten by the Continental Insurance Companies, the largest and strongest casualty and fire insurance organization in the entire industry with over \$3-billion of assets.

I am proud to state that I have represented these companies for almost forty years, and they have served you well for twenty-five years. I trust that we may continue to have that privilege. Any details of coverage can be secured from our booth. The privilege of having served your Bar Association these twenty-five years, and the very cordial relationships that have existed is something that cannot be measured in dollars and cents. It is something that belongs to the spirit.

We know that your Bar has some worthy enterprises that you support, so in commemoration of our twenty-five years of service, and as a small token of our deep appreciation, I would like to present our agency check in the amount of \$500 for your Executive Committee to use as they deem best.

I thank you sincerely.

PRESIDENT ADAMS: Thank you very much! Harold Diers, I do accept this \$500 check on behalf of the Association, to be expended under the direction of the Executive Council. Our thanks to you, sir, for this very generous contribution.

Mr. Treasurer, will you take charge of the money?

We now are going to have the privilege of honoring a few of our members who have been at the Bar for quite a number of years. I will give you all the names of our Fifty-Year members. Some of them did not find it possible to be present. If they will assemble to the right of the dais, I will ask Bill Baird, our President-Elect, to bring them up.

O. A. Drake, Kearney

Victor H. Halligan, North Platte

Herbert T. White, Omaha

Lester L. Dunn, Lincoln—it's my understanding that Lester is not at all well and is confined in the hospital.

Judge Harvey M. Johnsen, Omaha

Ira D. Beynon, Lincoln—I believe we had a letter or regret from Ira.

Judge Edward F. Carter, Gering and Lincoln

Curtis C. Kimball, Lincoln

Henry J. Bremers, Omaha

Paul F. Good, Omaha—he sent his regrets

Theodore W. Metcalfe, Omaha

Frederick J. Patz, Lincoln—he sent his regrets.

Mr. Baird, if you will bring these distinguished members of our profession to the dais, please.

The certificates these gentlemen are about to receive read as follows:

"The Nebraska State Bar Association—This is to certify that (here is inscribed the name) has been admitted to the practice of law before the Supreme Court of Nebraska for more than fifty years. This certificate is issued by authority of the Executive Council of the Nebraska State Bar Association in recognition of recipient's long and faithful service as a lawyer.

Witnessed (the signature is hereto affixed) and dated this 30th day of October, 1969."

Signed by your President and Secretary.

Herbert T. White. Herbert, with you, as with many others, we have walked the pilgrimage of life together and shared in its trials and tribulations. I am delighted to present to you your certificate. We would be pleased to have any remarks you care to make.

HERBERT T. WHITE, Omaha: Mr. President and Members of the Bar Association: I am delighted to be here and receive this certificate. Looking back, it looks like a long time. Looking ahead, it didn't look so long.

It has been a pleasure to be a member of the Association of lawyers here in Nebraska. I had a very fine old gentleman, whom some of you older fellows will remember, Judge Ben Baker, who passed away at the ripe old age of ninety-five, and he had a favorite saying that I think applies to me and probably to most of us who are before you, and that is, "It has been a great life, a great world, and I don't think very many of us will get out alive."

Thank you.

PRESIDENT ADAMS: Judge Harvey M. Johnsen. Your certificate, sir, and with it the appreciation of your fellow members of the Nebraska Bar. We would be pleased to have a word from you, sir.

JUDGE HARVEY M. JOHNSEN, Omaha: My appreciation and thanks to you. I will try be back for the next fiftieth.

PRESIDENT ADAMS: Judge Edward F. Carter, my boss on the Judicial Council, again I say it is a pleasure to present this to a friend of many years, and we should be pleased to have a response from you, Judge Carter.

JUDGE EDWARD F. CARTER, Lincoln: I appreciate receiving this certificate. However, I will settle for twenty-five years more.

PRESIDENT ADAMS: Curtis C. Kimball. He doesn't remember me but I moved to Lincoln in 1918, sir, and I think you have spent a good part of those years in the affairs of our fine Capital city, and it is a delight to present to you your certificate. We would be pleased to have a response.

CURTIS C. KIMBALL, Lincoln: Mr. President and Members: I am proud to be a member and to be here this morning. It is hard for me to believe that it has been fifty years, but it has. I am also thankful to the good Lord who has permitted me to physically and mentally be here this morning. Thank you very much.

PRESIDENT ADAMS: Theodore W. "Ted" Metcalfe. I am glad we met the other night at the Restaurant on Top of the World, and I received from you assurance that you would try to be here this morning. Something in my memory tells me that in addition to being a lawyer you were the first Admiral in the Nebraska Navy. Am I right about that?

THEODORE W. METCALFE, Omaha: I'm afraid so.

PRESIDENT ADAMS: Would you respond, sir? We would be pleased to hear from you.

MR. METCALFE: I am equally proud of having been one of the founders, with Judge Carter, of Cornhusker Boys' State. I want to say what a wonderful job he has done in carrying on this great institution.

For fifty years I have kept very quiet, for Ted Metcalfe, so quiet that a lot of you probably didn't even know that I belonged to this Bar. I belonged to the Woodman Bar the other night, but I am sure many of you didn't realize that I had practiced law. I was in Bill Ritchie's law office in 1919-20. Then I got married and had to earn a living, so I quit practicing law.

Thank you very much, Mr. President.

PRESIDENT ADAMS: Bill Baird, will you be kind enough to escort these gentlemen from the dais, and thank you for your presence here.

... The audience arose and applauded ...

George Turner, as Secretary of our Association, we will now have from you the announcement of the new officers of the Association.

ANNOUNCEMENT OF NEW OFFICERS

George H. Turner

Under the Rules governing this organization the Executive Council met in June, nominated candidates for the two offices to be filled, and announcement was sent to each member of the Bar. The Rules provide that opposing nominations may be made, but none were. Consequently, the newly elected officers are:

Thomas M. Davies, Lincoln, President-Elect;

Harry B. Cohen, Omaha, Member-at-Large of the Executive Council.

PRESIDENT ADAMS: Thank you, Mr. Turner.

Tom Davies, are you in the room? We would be very pleased to welcome you to the ranks of the officers of our Association. Tom Davies of Lincoln!

The remaining certificates of our Fifty-Year members will be delivered to them by mail.

Jack Wilson, you are to present a report of the Nebraska State Bar Foundation.

REPORT OF NEBRASKA STATE BAR FOUNDATION

John J. Wilson

Mr. President, six years ago at the annual meeting the Nebraska State Bar Foundation was formed as a non-profit corporation to be known as Nebraska State Bar Foundation. This corporation was formed to promote educational, literary, scientific, and charitable purposes, is to receive gifts and contributions, and is to be used exclusively for education, literary, scientific or charitable purposes.

It is qualified as an exempt organization under the Internal Revenue Code of 1954. No part of the income or assets of this corporation shall inure to the benefit of any member, officer or director or private individual, and none of the activities, funds, property or income of the Foundation may be used in carrying on any propaganda or political activity, directly or indirectly, or intended to influence legislation, either directly or indirectly, and neither the Foundation nor its officers or directors may, as such officers or directors of the Foundation, contribute to or otherwise support or assist any political party or candidate for an elected public office.

The members of the Foundation are the past Presidents of the Association. The affairs of the corporation are managed by a Board of Directors consisting of ten past Presidents, the President, and the President-Elect.

The corporation has four classes of members of active and inactive members of the Nebraska State Bar Association, and in addition Honorary members. It is through the contributions of these special classes that we receive our funds.

The first we call the Fellows of the Nebraska Association where each eligible person agrees to contribute to the Foundation \$100 a year for ten years, or until the person contributes \$1,000. Upon signing up and agreeing to contribute, he becomes a Fellow of the Nebraska State Bar Foundation.

We have three other classifications. It is tailor-made to fit every member's purse so that they may contribute to help in this worthy cause.

The sponsors of the Nebraska State Bar Association agree to contribute \$50.00 a year; sustaining members, \$25.00 a year; subscribing members, \$10.00 a year. This money can be used, accumulated and contributed to a Fellow of the Bar by agreeing to pay the balance of \$1,000.

All contributions referred to shall be available for use at the discretion of the Foundation. It also provides that in case of illness, or other reasons, any time you fail to contribute by December 31 of that active year, your contributions shall cease and you shall cease to be a special member.

It took money before any program could be outlined. Last year we had approximately \$30,000, and it was discussed at the annual meeting as to what use this money should be put. Many things were discussed. What was agreed upon was that we would annotate the Restatement of Law. A committee was selected to work with the Dean of Creighton University and the Dean of the University of Nebraska, by contributing \$2,500 to each school; a professor to be selected by the Dean to write the annotations. Professor Fleming, who later left the University of Nebraska, and Louis Huskins were selected by Dean Grether to write the Annotations to Volume II of the Restatement of Law, Torts 2d. After Fleming left, Huskins continued the work, and all members of the Foundation who had contributed received, I think, their copy of the Annotations to Torts 2d, Volume II, the first of this week.

Dean Doyle at Creighton selected William A. Donaher to annotate Restatement of Law, Trusts 2d. That work is in the process and should be completed around the first of the year, of which each member of the Foundation will receive a copy.

Yesterday at the meeting of the Board of Directors and of the Foundation proper we agreed to continue this work until all volumes and subjects of the Restatement of Law are annotated. This is a great task. It is not a self-supporting proposition. Between the editorial work and the printing, it could not be done unless a Foundation of this nature took on the work. Any member of the Foundation who has contributed will get a free copy as they are printed. It will be sold to any other person at \$10.00 per issue, so any of you who have the Restatements or want the Annotations to Restatement, they can be purchased by writing to George Turner, who is the Treasurer of the Foundation at the State House, and your copy will be available.

As I say, the first two I mentioned are the initial issues but we will continue these until we have completed the work.

This is a group or corporation that can carry on this type research, this type of work, and give the Bar Association something that they have all wanted.

There will be a stand set up after lunch and Laury Williams and myself will be there, and other past Presidents, and if you are not

now a subscribing member to the Foundation we would like to have you stop at the desk and discuss this with us. I know in the past many of you we have contacted have failed to subscribe because there was no purpose as to what the funds were to be used for. This is a start of what the Foundation will do, and as more money is subscribed, other projects of this nature will be undertaken. Today we have 215 members of the State Bar Association who are subscribing funds to help carry on this work. That number should be increased many times over 215. We have 54 members who are Fellows, seven of whom have paid in full. This is a tax deductible contribution, worthwhile, and something that every member of the State Bar should get behind. It is tailor-made to fit your pocketbook. We would like to have as many Fellows as possible. You get a plaque to hang on your wall that you are a Fellow of the Nebraska State Bar Foundation. There are other certificates to be issued for the other classes to hang on your wall. It is a very dignified plaque, and we hope that those of you who have not subscribed will subscribe and will get your other people to subscribe, members at home. This is something that we can help the Bar Association of Nebraska, every lawyer, and the contribution is nil when it comes to figuring out the benefits that everybody is going to get.

PRESIDENT ADAMS: I would remind you that in this room about forty-five minutes from now we will have the Association Luncheon. We will be pleased to hear from Bernie Segal, the President of the American Bar Association.

Along the line of tickets, tonight at the banquet, also in this room, we urge you as soon as is convenient for you that you please get your tickets for that affair. I can promise you an evening of inspiration and delightful entertainment from our friend, Bob Murphey of Nacogdoches, Texas. Those of you who have heard him will want to hear him again; if you haven't, I am sure you will be very much delighted at how he can entertain you and your lady.

We come now to a sadder note of our morning's proceedings. We will receive the report of the Committee on Memorials, Farley Young. As Farley approaches the dais, may I ask him also to give us a report on the Chairman of this committee, Barlow Nye, who was unable to be present to do this for us.

REPORT OF COMMITTEE ON MEMORIALS

A. Farley Young

Mr. President and Members of the Association: Barlow has asked me to give the report of the committee. Barlow has been very

ill for the last two months. The last report I had, he is getting along all right now and will soon be home.

Your Committee on Memorials, consisting of Mr. Robert H. Beatty, Mr. Julius D. Cronin, Mr. Frederick, Mr. Deutsch, Mr. Marvin G. Schmid, Farley Young, and Barlow Nye as Chairman, submits the following:

Each year we endeavor to pay our respects to those members who have gone to their just reward. Although the time seems brief since we last paid tribute to our former associates, many of our fine friends have been called to a higher jurisdiction.

We have lost friends and associates but they have gained life everlasting. They have given of themselves for others and for the betterment of society and for us, their friends. We sorrow because we are selfish at their leaving, but they have gained their reward by helping mankind to combat the adversities of life.

We have known and respected these men. Their loyalty well served their clients, and the interests of their community and the state were advanced by their faithfulness and their high ideals.

Impressive as these memories of our former associates may be to us, they are not to be compared with the bereavement and loss to their families. To those we extend our sincere sympathy.

We will stand in solemn reverence as we read the roll of our former friends and associates:

A. G. Abbott, Grand Island
Theodore A. Andersen, Aurora, Colorado
C. S. Beck, North Platte
Clark W. Carnaby, Omaha
Robert L. Chesire, Omaha
C. L. Clark, Lincoln
Bryce Crawford, Jr., Omaha
Clare B. Davey, Omaha
Harold M. Eaton, Ralston
Samuel S. Faires, Lincoln
Robert A. Fitch, San Diego, California
Glen H. Foe, Greybull, Wyoming
James F. Groth, Lincoln
John E. Groth, Lincoln
Henry A. Gunderson, Fremont
Virgil J. Haggart, Omaha
Homer G. Hamilton, Lincoln
Robert V. Hoagland, Ainsworth
Yale C. Holland, Omaha

Richard A. Huebner, Grand Island
Lloyd H. Jordan, Gordon
Frank J. Kellegher, Omaha
Stuart H. Kelley, Sarasota, Florida
Philip R. Kneiff, Omaha
Stanley F. Kuncel, Omaha
Winthrop B. Lane, Omaha
Stanley A. Matzke, Seward
Fred W. Messmore, Lincoln
Clarence M. Miller, Oshkosh
R. W. Newman, Hastings
W. W. Norton, Osceola
James J. O'Dowd, Omaha
Reed O'Hanlon, Sr., Blair
Henry F. Pedersen, Omaha
E. E. Refshauge, Lincoln
Charles C. Rose, Wausau, Wisconsin
Alva E. Royce, Tarpon Springs, Florida
Roger E. Schulte, Falls Church, Virginia
Albert P. Schwarz, Lincoln
Gabriel A. Shaddy, Omaha
George A. Skultety, Fairbury
William K. Stiverson, Washington, D.C.
T. R. P. Stocker, Lincoln
Ralph E. Svoboda, Omaha
Max G. Towle, Lincoln
Wayne L. Townsend, Dittmer, Missouri
Walter A. Vasey, Beatrice
Douglas D. Whitcomb, Winnebago
Walter W. White, Lincoln
Harvey M. Wilson, Kearney
Sam C. Zimmerman, Lincoln

Mr. President, I make a motion that this Memorial be placed on the records of the Association.

I thank you.

PRESIDENT ADAMS: The report shall be so received and we shall always remember that our departed friends pass in memory before us in a ceaseless procession, and so it will continue to the end of time.

. . . The session adjourned at eleven forty-five o'clock . . .

ANNUAL ASSOCIATION LUNCHEON

October 30, 1969

The annual Association Luncheon was presided over by President Adams.

PRESIDENT ADAMS: Gentlemen of the Bar, we have another full program this afternoon, and with your indulgence I would like to begin, even though some of you may not have completed your dessert. Please forgive me if I am pushing things a little bit, but I want to give time to Bernie Segal and his message which he will have for us this afternoon.

I think it is always proper to make mention of the fact that there are two classes of people in the audience—those who paid for their lunch and those who did not. Those who did not are up here, and maybe you would like to know who they are. I will present them in two groups and then the President of the ABA.

We'll start over here with Bert Overcash. Bert, will you stand, and I will tell them that you are Chairman of the House of Delegates; next is Don Burington, Mason City, President of the Iowa Bar; Clarence Davis next to him, former member of the Board of Governors of ABA; Deming Smith, President of the South Dakota Bar, a former Iowa boy; C. Russell Mattson, whom I had the privilege of following as President of your Association; and from Colorado, a Denver suburb, Richard Simon.

Will you greet our guests from out of state and the others.

We will start the other way now. There is a fellow down at the other end by the name of George Turner. On your feet, please, George. He is not only the Secretary but our state delegate to the House of Delegates of the American Bar Association; Edgar Boedeker of Clayton, a suburb of St. Louis, President of the Missouri Bar; Judge Maurice A. Wildgen of Larned, the President of the Kansas Bar; William J. Baird, your President-Elect of our Bar Association; and John J. Wilson, the Association's delegate to the House of Delegates of the American Bar Association.

I would like to tell you some of the things that I know about Bernie Segal, but if I did you would be here until perhaps two-thirty, so I am going to mention only a few of the highlights of a very distinguished career.

Bernie Segal was admitted to the Pennsylvania Bar in 1932, Legal Assistant to the American Law Institute in 1932-1933; American Reporter on Contracts of International Law. He was Chairman

of the Judicial Nominating Commission of the Commonwealth of Pennsylvania and still is, since 1964; a Life Trustee of the Executive Board of Trustees of the University of Pennsylvania, and a Trustee of the Law Board of the Law School; a former President of the American College of Trial Lawyers, 1964-1965; a life member of the American Bar Foundation.

He was formerly Treasurer, succeeded by our own Laury Williams, and is now Vice-President of the American Law Institute. He was Chairman of the Board of the American Judicature Society. He is a member of the Order of the Coif, and, I think of particular interest to the federal judiciary, he was appointed by President Eisenhower, under the mandate of the act of Congress, as Chairman of the Commission on Judicial and Congressional Salaries.

Now, if you wonder what he does in the meantime, perhaps he will be able to explain that to us.

Will you greet the President of the American Bar Association, the Honorable Bernard Segal!

THE HIGHER CALLING OF THE BAR

Honorable Bernard G. Segal

Thank you, Charles, for that gracious and over-generous introduction. It listened very well as I sat in my seat, but now that I am on my feet, after that eulogy, it hardly seems respectable to remain vertical.

My wife and I have just circled the globe, initially so that I might deliver the address at the banquet of the World Conference on World Peace Through Law and the World Assembly of Judges at Bangkok and Thailand. On the way, and in furtherance of the program of the American Bar Association in the international field, which is quite considerable, I agreed to stop in various countries for official and Bar appearances.

We had a variety of experiences, ranging from a meaningful and memorable visit with Pope Paul VI at Castel Gandolfo, his summer residence in Italy, to a rather unique and picturesque visit with, I guess I should say, "The King and I," with the King and Queen of Thailand at their perfectly wonderful palace.

But everywhere I found our hosts avid for speeches. India was the worst. They have a kind of racket there. They write to you in advance, and it all sounds very intriguing and inviting. They invite

you to be the recipient of a reception. It isn't until you get there that you find that their policy is "give a reception and get a speech."

My wife reminded me of an old story that was a favorite of ours years ago. Perhaps some of you have heard it.

There was a time in the history of the United States when the most famous afterdinner speaker was the then Chief Justice and, of course, the only man who has been President of the United States and Chief Justice, William Howard Taft. The most famous Toastmaster at the same time was Chauncey Depew.

As often happened, Depew would be the Toastmaster and the afterdinner speaker would be Taft. But one week this happened five nights in a row—Monday, Tuesday, Wednesday, Thursday—so by the time Friday night came around, in presenting Taft Depew introduced him, as one does, and then said, "This is the fifth night in a row, believe it or not, that following a dinner the speaker was our Chief Justice. In fact," he said, "it's getting so all you have to do is drop a dinner down the slot and up comes a speech from our great Chief Justice—Chief Justice Taft!"

Taft got up quick as a flash and said, "How much more fortunate is Mr. Depew than I. All he has to do is drop a speech down the slot and up comes my dinner."

My wife and I appreciate very much indeed your permitting us to share your annual meeting with you. She is off to a lovely luncheon and fashion show with the ladies, and I have the honor, by your invitation, to address you at this luncheon.

Your Bar has made many contributions over the years to the American Bar Association. You have given us two of our Presidents and four members of the Board of Governors, including one who is here today, your distinguished Clarence Davis, as your President has said.

Your long-term State Delegate, and my cherished friend, George Turner, is without doubt one of the most useful members we have in the entire ABA. Lewis Schule and Jack Wilson join with George in giving the Bar of Nebraska and the lawyers of your state really excellent representation in the House of Delegates.

You may be surprised to know that the House of Delegates consists, in the majority, not of people selected by the ABA or are there by virtue of office or past office in the ABA, but representatives of the state and local Bar Associations and affiliated professional groups of lawyers. So when the House of Delegates speaks, it really speaks for the total Bar of the country.

You have in your state another good friend, Justice Harry Spencer, whom I have had the privilege of appointing Vice-Chairman of the Resolutions Committee, one of our most important committees, and of course next year he will be Chairman.

Your Judge Harvey Johnsen has been a wonderfully useful member of the Judicial Conference of the United States, and over the years I have had a great deal of work with him.

Laury Williams, I think they bounced me out as Treasurer because they figured I knew nothing about finance, and in any event they wanted to give me a job where they would be rid of me so they made me Vice-President, and Laury took my place. It is typical of him that he returns, as I understand it, each year to the place of his original success.

Prior to coming here I read on the plane and I was really greatly impressed by the reports of your committees, submitted to your House of Delegates. I was impressed by the variety of subjects they cover, the hard work they reflect, the relevance they have, and the contributions they make. Without that kind of dedicated and effective service at the state levels and at the local levels as well, the ABA influence at national levels would be much less, and much less meaningful.

Our confederation in the United States of 1,700 professional organizations of lawyers form a loose confederation with the purposes of improving the practice of law, first, the economics—and that isn't selfish, because unless lawyers are adequately compensated one can hardly expect the kind of service we are giving our clients in the United States, and I can tell you from being around the world that it is the finest that is given anywhere—and then, of course, to improve the kind of services we are rendering.

The ABA and your State Bar engages in continuing legal education as well as economics of the Bar, and I may say there that the great studies going on at the national level involve the individual lawyer practicing in his own firm, the 2-3-4 partner firm, the 10-20-50-100 lawyer firm. We think that it is the job of the organized Bar to look out for our own.

But in addition to that we give, all of us, you and we, a great amount of our time to the administration of justice, which is our particular province, and then to the larger constituency of the Bar, larger than our clients—the community at large.

In our joint Association, for this triple purpose your Association has innovated on its own, and it also has with fine discrimination

and creditable vigor, implemented the ABA programs in which it has believed.

I particularly commend your efforts, just because a good part of my life has been devoted to that field, to what you have done to bring about the merit selection of judges in your state, what you have done to bring about the creation—this puts you among the ten most enlightened states in the country—of a commission to have in its charge handling the complaints of the public about judges. I believe Thomas Jefferson was right when he said, "There should be no one in the government not subject to the surveillance of some group or some branch of the government." We are all proud of our judges, but there isn't one of us who doesn't know that there are times when even judges need surveillance, and your state has courageously, with the work of your Bar, embodied that.

The one field where I think your state, if I may say so, with full deference, still needs a good deal of work to be done, is in the field of judicial salaries. It just doesn't make sense to me to have your United States District Judge sitting in Nebraska receiving a salary which I can tell you, having been chairman of the first commission which spent a year and a month studying the question, receiving a salary which still hasn't reached its top but is, of course, more adequate than when we started. When we started, the salary was \$15,000; today it is \$40,000. But just think of your United States District Judge sitting in Nebraska receiving eighty percent more salary than a Justice of your Supreme Court. And even after January 1, 1971, if there is no further increase in judicial salaries, and by that time another commission will be within a year of reconsidering judicial salaries, even after the increases that have been adopted, your Federal Judge will still be receiving sixty percent more than your Supreme Court Justices. So I would urge that you devote the same zeal and dedication to that problem in the years ahead as you have to the whole question of judicial reform in the years that have passed.

Finally, I should like to make public acknowledgement here of the debt the judges and the lawyers of the country owe Senator Hruska. He has been a great source of comfort and strength to the organized Bar in its efforts to improve both the method and the operation of judicial selection. Over the years he has been one of the men on the Judiciary Committee whom we could get to most quickly and with whom we could find the most sympathetic ear. I have not had the same contact with Senator Curtis, whose operations have been in other fields, but just this morning Laury Williams was telling me how vastly useful he has been to certain other sections of the American Bar. So you have two Senators in this

state who have been available to the organized Bar, who have recognized as lawyers that when lawyers come to them with public matters, it is with unselfish motives and without consideration of the welfare of their own clients.

My friends, this is a turbulent and troubled time at which I have taken over the Presidency of the American Bar Association. In no period in the nation's history has there been so severe a testing of the legal profession, never such great disillusionment as to the efficacy of law, either in preserving order or in assuring equal justice.

In such circumstances, the clear obligation of the legal profession is to provide leadership in a re-examination and re-evaluation of the substance of our law, of the institutions which support it, and of the agencies which interpret and enforce it, and in effecting the necessary and far-reaching changes which the present critical situation requires.

Insofar as the American Bar Association is concerned, I can assure you that we are responding with a far-reaching set of commitments.

The most urgent issues facing our nation exist in our cities, and they have created an urban crisis without parallel in American history. The ABA is deeply involved in efforts to correct many of the most critical of these conditions.

The Association's Special Committee on Housing and Urban Development, aided by Foundation grants of almost \$1,000,000 this year alone, is launching extensive and imaginative pilot projects in six major cities in various parts of the country to attack the grim, hard-core housing problems which so greatly oppress the poor and so ruthlessly discriminate against the Negro and members of other disadvantaged minorities.

And our Special Committee on Legal Aid and Indigent Defendants, the counterpart of which you have in your State Bar, is playing a highly significant role in the deep inroads which are being made in the appalling lack of legal representation of the poor, of the more than thirty million of our citizens in the ghetto and slum areas of America.

In my opinion, and I can express this because I had nothing to do with it at the time, the ABA's action in embracing the OEO Legal Services Program is one of the shining hours in the whole history of the ABA. For one thing, it had the important effect of maintaining professional control of the program by lawyers, rather than otherwise would have been the case having legal services, in terms

of many millions of dollars, controlled and directed by laymen. For another, it has given the program greatly needed encouragement and support, without which it could not possibly have reached its present level.

The present Administration's commitment to budget \$58,000,000 for legal services to the poor, an increase of \$16,000,000 over last year, and the action of the Senate last week in approving this sum for 1970, and in increasing it for 1971 to the full \$90,000,000, which, in behalf of the ABA, the National Legal Aid and Defender Association, the National Bar Association, I testified in the Congress was the absolute floor for the immediate present, is very heartening, particularly in a time when budget cuts are the order of the day.

Indeed, we have made more progress in the past five years in the field of legal services for the poor than during the first eighty-seven years of ABA history. Yet we have scarcely scratched the surface. There is still a vast unfilled need for legal services to the poor, a need that is less than one-fifth served over the United States.

Now I call your attention to a matter of utmost seriousness for you and for me and for the Bar of America. I refer to the action of the Senate last week in approving an amendment introduced by Senator Murphy of California to the bill extending the life of OEO, the very bill which contains the appropriations to which I've referred. This would give the Governor of each state an absolute veto over the funding of any OEO legal services program. The purpose is clear, and Senator Murphy was frank in admitting it. It isn't for the Governor to veto a whole program, he would not really dare do that, it's to permit the Governor by the threat of the veto to determine just what kind of cases the lawyers of his state will be permitted to handle for the poor and what kind will be prohibited to them. A primary intention is to enable a Governor to prohibit any representation at all in the critical areas of social significance. The amendment would have a crippling effect on the professional relationship between the legal aid lawyer and his poverty client.

I am glad to report to you that at a meeting in Chicago just a week ago Friday, the ABA Board of Governors unanimously, whether they came from North, South, East, or West, adopted a resolution firmly opposing the Murphy Amendment and firmly opposing the veto by the Governors of the states as constituting oppressive interference with the independence of lawyers and as depriving the "poor guy," to use Senator Murphy's term, of representation to which he is entitled, representation readily available to all of his more affluent brethren.

After Senator Murphy left to deliver a speech in California, the Senate amended the bill again to give the President of the United

States, under restricted circumstances, the right to override a Governor's veto. But I take no comfort whatever from that action, because immediately when the argument was made that it was not cricket, when a Senator left to give a speech, to override his amendment, every United States Senator who was going to be on the conference committee, but one, pledged himself to withdraw the amendment giving the President the veto right, if a single Senator, Senator Murphy, should object to it. When Senator Murphy returned, he promptly announced on the Senate floor, and this is in the Congressional Record, that he did indeed disapprove, and would stand by his amendment.

A fundamental question that cries for answer by all of us is: Is it the duty of a democratic society to provide legal services to every citizen who needs it but has no funds to pay? Is he entitled any less to legal service than he is to medical service? Can an effort to provide equal rights under law be really meaningful when substantial numbers of our people are without legal representation to enforce those rights, or even to have explained to them what their rights are, or mean? Where justice continues to be denied to whole segments of our society, where they suffer the sanctions of the law but have no access to its remedies, is it not inevitable that people will be alienated from society and that order will be replaced by instability and unrest?

These questions, I believe, permit of only one answer. In a democratic society the community as a whole, but the legal profession in particular, fails in one of its most sacred obligations if it does not work unceasingly for the substantial enlargement of the legal services available to persons who cannot afford to pay for them, or if the Bar fails vigorously to oppose the type of regression which the Murphy Amendment represents.

The ABA is also deeply involved in other areas of making legal services available to the public. I need not tell you that the unavailability of legal services is not a problem of the poor alone. We know that millions of persons in the lower and middle income ranges do not consult lawyers because they are fearful of the cost, they are afraid of what legal services might do to their carefully planned budgets which barely let them get by as it is. Often they actually cannot afford to pay fees at present levels.

The ABA is busily engaged in filling or trying to fill the gaps which now exist. We are seeking to find methods of delivering legal services to more people at costs within their means without impairing the comparatively modest incomes of most lawyers.

As you know, lawyer's fees have not kept pace with the fees of

other profession—medical, engineering, dental—you name it and they're ahead of us. But to accomplish this job, and it's an immense task, we need more involvement by the total Bar of the country. Lawyers everywhere need to support our efforts, as indeed your Bar happens to be doing, to extend Lawyer Referral services to more places—you have doubled the number of people you are servicing under Lawyer Referral—and to enlarge and intensify it where it now exists.

We must continue to explore, as we all are on a large scale, the use of lay assistants, sometimes called by terms many lawyers don't like, legal para-professionals or sub-professionals, as are our brothers in the medical profession, dental profession, engineering profession, to use these lay assistants to perform under the supervision of lawyers many routine tasks which lawyers themselves are performing today. We must approach the development of group legal services realistically, without infringing on basic ethical principles and without impairing the independence of the lawyer's representation.

Your President spoke to you today, I learned, at this table about specialization, and therefore I shall not enlarge on that except to say that we simply must step up our support of plans at local levels, pilot plans that are about to be tried in various forms of the treatment of this whole problem of specialization. In some states, if we don't do it, the legislatures are going to do it for us.

We must carry forward our still pending pilot programs, one in Shreveport, Louisiana, to give us a small town's reaction, with the labor union there, another in Los Angeles to give us the big city's results, with the school teachers professional organization there in the field of prepaid legal cost insurance, programs somewhat along the lines of medical insurance plans, which by the way are one of the reasons for the greater prosperity in these times of the medical profession than our own, why we need to move along in that field. We are actively carrying forward ourselves or sponsoring through state and local Bar Associations, programs and large research in every one of these fields. Our Special Committee on Availability of Legal Services, with which your committee has contact, is actively at work.

So much, then, for legal services.

Another serious gap in our profession is the paucity of lawyers who come from the ghetto and poverty areas. In this morning's interview I was asked by one of the television people my view about the growing black populations in the cities of the North and what that portended for the future. By 1990 seven of the ten largest cities

in America will be a majority black. Who is going to provide the leadership to the inevitable day when at least some of our municipal officials will be black? My own view is that the Bar is the best place to look initially to a depressed people to provide the leadership. They have the training, they have the background, they have the tradition. They have the tradition of law and order and justice.

But where are they going to come from? Two years ago there were not as many as one hundred Negro law students in all of the United States, but we got to work and we formed CLEO, as it is called. I've been privileged to be on the Council. It's the Council on Legal Education Opportunity. We tried to enlist the culturally disadvantaged young people in college, Negroes, Indians—there are practically no Indian lawyers—Puerto Ricans, Mexican Americans, and of course the white disadvantaged in the slum areas.

We decided we would give them eight weeks in summer institutes before entering Law School. First we had to motivate them, then we had to give them the course to make up for the deficiencies in their slum and ghetto education, then we had to get them scholarships from Law Schools, and then we had to get them money from the Foundation for subsistence. We got one hundred of those students in 1968, and we had 450 of those students this past summer. I don't have the statistics as to the other groups, but as to Negroes alone these enrollments are a 500 percent increase in the students over 1967.

So we are hoping to get this corps of lawyers from the ghetto and slum areas so that at least a fair number of them can go back and represent their own people where they have the greatest amount of confidence and rapport, and so they may also become the leaders in this country for their people with the kind of training we all believe that the law gives an individual for leadership.

Next I come to the subject of crime. For most Americans crime is the nation's most serious domestic problem. There is serious question, I think, whether a nation can be considered "free" if the men and women of the nation are not free to walk the streets at night, as is the situation in most of the urban communities in America. They won't permit me to walk out of the American Bar Center when it is dark. They insist on getting a University of Chicago campus car even to take me to a car in the parking lot. Our guard was shot to death sitting in front of the American Bar Center one night a few months ago.

So no problem in our society today is more vexing or more complex than the administration of criminal justice under these conditions.

The most massive project undertaken by the ABA in its modern history is the formulation of Minimum Standards for Criminal Justice, managed by an ABA Special Committee. The head of that committee, until the end of the Dallas meeting, was our distinguished Chief Justice, Warren E. Burger. Besides covering many other aspects of criminal justice, this undertaking encompasses the whole process of law enforcement, starting with the police, running through the prosecution and defense, coming up through the judge through the sentencing.

And now within the next two weeks I hope to initiate a new and immensely important project, a comprehensive examination into our entire correctional system which is admittedly woefully inadequate and has been far too long neglected. We shall study and make recommendations on every aspect of the disposition of the defendant after he has been found guilty. The appalling statistics on recidivism demonstrate that today most of our prisons are not schools of correction but are schools of crime. The first offender, whether he is an eighteen-year old youngster or a fifty-year old chance offender, leaves most of our jails a professional criminal by virtue of what he learned there.

Financed by grants of well over half a million dollars to start, the ABA Special Committee on Crime Prevention and Control is taking the lead in the effort to effectuate the widely heralded recommendations of the President's Crime Commission. By working with local authorities, and hopefully through state and local Bar associations, that committee is actively seeking, and making the first attempt in America to secure the prompt and effective implementation in the urban communities of America so that that great crime report of the Commission headed by the Attorney General of the United States won't have the same fate as the George W. Wickersham great report on crime in 1933, which still sits in the dust of the files of the Library of Congress.

I turn now to quite a different subject. In Dallas the ABA House of Delegates took a giant step toward the fulfillment of a primary obligation of the organized Bar when it approved the Code of Professional Responsibility to replace the Canons of Professional Ethics adopted by the American Bar Association in 1908.

Every one of you will want to read this Code. It is a very different kind of document from the existing Canons. For the first time there are three separate but inter-related parts: The Canons, the Ethical Considerations, and the Disciplinary Rules. The nine Canons, which replace the present forty-seven, state the basic obligations of lawyers in axiomatic terms and establish the standards

of professional conduct expected of all lawyers. With each Canon, under the heading Ethical Considerations, are statements of the principles on which the Canon is based, the objectives to which it is hoped each member of the legal profession will aspire. With each Canon also are Disciplinary Rules, which are mandatory in character and prescribe the minimum levels of conduct below which a lawyer cannot fall without subjecting himself to disciplinary action.

Obviously, not everyone, or perhaps anyone, will agree on every provision which the Code contains or on the omission of other provisions. But taken as a whole the Code is a superb document and merits the support of the legal profession.

Now must begin the process of adoption of the Code in the states to make it the viable standard under which the profession will conduct its professional activities. I have appointed a nine-man special committee of recognized leaders of the organized Bar across the nation and I have selected as one of those nine your own outstanding President, Charles Adams. And it's not because I'm going to be here today. I'll be in some forty-seven states before I am through with having been President-Elect and President, and there are not forty-seven members on the committee. I picked Mr. Adams because I felt he could be one of the very best representatives of the size of State of Nebraska and those above and below it within a range that I could find in the country. That committee will be under the chairmanship of past ABA President Earl F. Morris, to work with state and local Bar associations in a nation-wide campaign to stimulate adoption of the Code.

I compliment and express the ABA's appreciation to your officers and your House of Delegates for the House's prompt action yesterday in approving adoption of the Code in Nebraska.

The ABA Canons of Judicial Ethics, adopted also almost half a century ago on the recommendation of an ABA committee headed by Chief Justice Taft as chairman, are no less in need of reformulation than were the Canons of Professional Ethics. The very confusion that we've seen in the country in the past twelve months demonstrates that, although I had this project in mind long before the Fortas incident focused the attention of the nation on the matter of judicial ethics, and now again the Haynsworth case. We have delayed far too long embarking on this project, but it was a matter of priority with my predecessors and I come along at a time when we can undertake it. Accordingly, one of my first acts as President was to appoint a Special Committee on Standards of Judicial Conduct, the head of it being the Chief Justice who won the ABA medal last year for "conspicuous service in the cause of American juris-

prudence," and that is Chief Justice Roger Traynor of the Supreme Court of California. I asked Mr. Justice Potter Stewart to go on the committee. He readily agreed. We have five judges of federal and state appellate and trial courts; we have three lawyers, with past President of the ABA, Whitney North Seymour as Vice-Chairman, and two other distinguished members of our Association and an outstanding professor constituting the nine.

In the last analysis, it is only by having clearly defined, generally accepted, and courageously enforced standards of conduct for all branches of the legal profession that we can hope to inspire that public confidence in the integrity and impartiality of the administration of justice which is so essential to the preservation of our system of ordered liberty under the rule of law.

Another project of immense proportions which we are about to embark on is a comprehensive, over-all study and evaluation of the business and operations of all of our courts, with a view to developing standards touching every phase of their activities. The last time a similar effort was made was more than thirty years ago after Chief Justice Taft singled out the courts as delivering the poorest performance among all the agencies of government. And so today, with our courts once again in a state of crisis, we are proceeding with the very large project I have described.

This is a long-term project, but as in the case of the Standards of Criminal Justice, it is devisible into significant and self-sufficient parts, and these will be released as completed. In my opinion, this undertaking will make an incalculable contribution to the effective administration of justice in the courts of the country.

While the tyranny of time prevents my even listing the many other ongoing projects of the American Bar Association, I should like to discuss with you for four or five minutes the two general obligations of the Bar which I believe to be of consuming importance.

Today, the basic institutions of our country are under heavy and unceasing attack. Doubts have been expressed whether they can meet the modern needs of our people at all. The great columnist of the *New York Times*, upon retirement after fifty-five years, wrote a book in which he said he believed that the institutions of our democratic society cannot preserve our society as we now know it. I do not believe that. What I believe we need is not an elimination of our basic institutions or a substitution for them, but rather a willingness to reshape them so they can cope with the tasks the modern world presses upon us.

There is a simple principle we must remember: Institutions which do not bend, break. If our institutions are to serve the needs of our troubled times, they must be flexible so that they may be made responsive to the needs of all groups in our society.

We must shape our institutions to today's urgent needs. The change must be large enough to shake out discord among the groups which comprise our nation. It must be flexible enough to last beyond the turbulent present and carry us deep into what we hope will be a more tranquil future.

I suggest that it is the particular province of lawyers to take the lead in these tasks. These are difficult ventures, but if we recall that it was lawyers who drafted the Constitution of the United States, wrote our Bill of Rights, framed the vast system of our Administrative Agencies, and designed such instrumentalities of international significance and acceptance as the Communications Satellite Corporation, we should be confident that the tasks are not beyond our capacity of the profession. Our heritage and history, our education and training amply fit us for this present assignment, immediate and increasingly difficult though it is.

Before closing, the second item I should like to advert to is the lawyer's obligation to speak out against attempts to undermine the essential and enduring values of dissent and protest upon which our nation was founded. The waves of protest which have wracked campus and community have brought cries to harness dissent and to punish those who challenge old ways. Surely it is the lawyer's duty to counter this irrationality produced by frustration, to set the tone for reasoned debate, to remind others of our dependence on dissent and of our heritage of restlessness.

This does not mean that we can abandon order or permit violence. Order is essential to our national progress. Freedom from fear is the basic right of every citizen. Violence cannot be condoned in a civilized society, on campus or in the street. It must be dealt with directly and firmly. But in quelling disorder and punishing violence we must not forget that one of our great distinctions has been that we are the nation of due process under law.

Lawyers need to explain these things. We need to point out the just demands of every group in our community. We need to establish dialogue at the universities, in the schools. We need to help our public officials work out the vast problems of priorities. What a mighty force a united legal profession can be for the solution of these problems that confront our society.

That is why I recently appointed with such enthusiasm the Commission on Campus Government and Student Dissent, consisting of

our last past President, William T. Gossett, as Chairman, and fourteen lawyers, university presidents, university professors, and behavioral scientists, together with representatives of our Young Lawyers Section and of our Law Student Division. The Commission will draft suggested legal standards and procedural guidelines to accommodate student dissent and facilitate student participation in campus government and at the same time to preserve orderly educational processes. The Commission will work closely with the American Council of Education and will then have, under the sponsorship of the President of the United States, a great White House Conference before we reach our conclusions so that everyone may have his say. I have high hopes for the beneficial effects which will flow from this joint effort, led, however, by the lawyers of the country.

My friends, at last our profession is on the move. The American Bar Association is exerting vigorous leadership and assuming a broader role as your national spokesman, as the national spokesman for the Bar, in formulating or actively supporting highly significant programs of critical concern to our society.

But there is so much more that cries for involvement and action. Surely we cannot be content as a nation until we have eliminated the ugliness and the cruelty of the ghetto and the slum, the discrimination and inequality of opportunity, the violence and rioting, until we have restored a sense of community among the people of our land. All of these call for the leadership of the Bar, the art and the craft of the lawyer.

To meet these challenges is the call of our time upon the profession we cherish. It is the lawyer's opportunity for leadership, the higher calling of the Bar. We have made a start, but the long road is still ahead. It is ours to travel if, in the memorable words of Justice Holmes, we wish "to live greatly in the law."

Thank you.

PRESIDENT ADAMS: May I say to you, Bernie Segal, that you have honored us with your presence. That is a beautiful explanation of many, but not nearly all of the activities of the American Bar Association which are being carried on under your leadership, sir.

Now I would like to remind you that our seminar will begin as soon as this room can be cleared and the chairs arranged. It is under the direction of your Chairman of the House of Delegates, Bert Overcash, who will be wearing his hat as Chairman of the Section on Insurance, Banking, Corporate and Commercial Law. Bert and his committee, we think, have put together a splendid program for

your interest, for your information, and for your inspiration this afternoon, tomorrow morning, and tomorrow afternoon.

... Announcements ...

**INSTITUTE ON INSURANCE, BANKING, CORPORATE AND
COMMERCIAL LAW
THURSDAY AFTERNOON SESSION**

October 30, 1969

The first session of the Institute by the Section on Insurance, Banking, Corporate and Commercial Law was called to order at two-fifteen o'clock by Chairman Bert Overcash of Lincoln.

CHAIRMAN OVERCASH: Members of the Bar, I wonder if we could come to order. We are a little behind schedule this afternoon.

No doubt most of you read the *BAR JOURNAL* and saw the review of the program put on by the Section on Banking, Corporate and Commercial Law, and Insurance. We have a number of different items this afternoon and all day tomorrow.

I think first I should identify for you and introduce the officers of this Section. The Vice-Chairman, who will be on the program, is Virgil Haggart, Jr. The head of the Section on Insurance is Jim Hewitt. I don't think he is here this afternoon. The Secretary of this Section is John Mason. Ralph Nelson of Lincoln is head of the Municipal Law Section. And Howard Moldenhauer is head of the Section on Corporation Law.

We have a number of subjects, as we pointed out in the *JOURNAL* that we think will provide you some information, information that as a lawyer you should have. This is not going to be a school for specialists but we have, in consultation with members of the Bar, endeavored to arrange a program that we think will be of some interest and benefit to the general practicing lawyer.

The first item on our program is a discussion of the Uniform Commercial Code by Bob Guenzel of Lincoln. He is going to discuss some proposed amendments. This has been a very difficult and troublesome law, a very complicated law. Bob Guenzel has been in a number of seminars throughout the state. He is well informed on it, and I am very happy to bring to you this afternoon for our first item, Bob Guenzel on these portions of the Uniform Commercial Code.

THE ARTICLE 9 COMMITTEE'S WORK TO DATE

Robert Guenzel

I am not certain how well informed I am on any of these things in relation to the Uniform Commercial Code. There seems to have been a very well-kept secret, and then a not-so-well-kept secret. The not-so-well-kept secret is that there have developed some problems and conflicts within the framework of the Uniform Commercial Code, particularly in Article 9. The well-kept secret appears to be that the Uniform Code Committee appointed a special subcommittee to study this about two and one-half years ago, and despite repeated attempts through that two and one-half year period to find out what they were doing, it was only last January, after the subcommittee had made a report a year ago last summer and then had been criticized for some six months, and revised was there a revision or even a publication of the areas upon which they were working.

I am sure that if any of you have been involved in Article 9, and I do not see how you could have had anything to do with the lending or borrowing of money or the purchasing of items on credit without somewhere being involved in it, you have run into some questions and problems. Please be advised at this point that the special subcommittee isn't about to solve all of these at this time. They have specifically limited their activities and their proposed amendments to, really, one particular area and a small area, and that is the problem of fixtures in real estate and the conflict that these fixtures have, or the security interest in fixtures has, with potential real estate interests, mortgage interests, in the real estate itself. There are other problems that the committee has had drawn to its attention. These problems are under study. It is still a big secret whether they are under study by some special subcommittee that is really doing something or whether they are being studied, as some of us study things for a long period of time. There are positive proposals, however, with relation to fixtures.

The problem that has arisen is actually a dual problem in this area. The first problem is that it is possible under Article 9 as it now stands for the vendor of the fixtures, or a lender of money on fixtures, to create a security interest in those fixtures so that when the fixtures are affixed to the real estate, such lender of funds will have a priority as to those fixtures, even though in fact the original real estate mortgage, which is on file prior to the installation of the fixtures or prior to the creation of the security interest in the fixtures in time, and which was in fact given in contemplation of

a payment for the entire construction costs of the building including the fixtures, the real estate lender then may find himself out of luck as regards these fixtures in which a security interest was created prior to the time or simultaneous with the time that they were affixed to the real estate.

The second problem that exists is perhaps even a little more difficult. In this it is possible that you would have the owner of the building, who has created a real estate mortgage in the building, or is about to create such, and who then purchases fixtures as a part of a remodeling project or a construction project so that the contractor actually purchases the fixtures, you may then have the vendor of the fixtures, or the lender of money on the fixtures, creating a security interest as against the contractor. The fixtures are installed in the building, the security interest still attaches, and the lender, or the prospective lender, of money on a mortgage has no way within the present filing system of determining that there exists, prior to the time that he lends his money, a valid security interest in those fixtures. The result in both of these cases is that the holder of the security interest in the fixtures will come ahead of the holder of the mortgage in the real estate. He will have a priority under the Uniform Commercial Code.

This problem has been so serious, from the point of view of real estate interests, that in at least one state the section which provides for the security interest in fixtures was simply excluded from the Uniform Commercial Code when it was passed. And in many, many other states you have diverse amendments attached to this particular section, which is Section 313 of Article 9, so that you will find in many jurisdictions that 313 does not conform to the provisions of the Uniform Commercial Code as you might have them. This is not true in Nebraska where we adopted the standard form and where the criticisms that I have just stated are perfectly valid criticisms, where the dangers are perfectly valid dangers, although to my knowledge there has been no litigation in this area.

As a corollary of these two problems, you have a problem of recording, in that it is impossible within the framework of the recording requirements of the Uniform Commercial Code as it presently stands to find, within the framework of a particular item of real estate, the security interest that might exist in fixtures that are located in the structure.

On top of this, and as a part of the broad picture of the problem of fixtures, you have the continuing problem of determining what is and what is not a fixture. When is a fixture a part of the real estate and when is it not?

The solution that the special committee has come out with is a solution which primarily results in a total change of Section 313 of Article 9. By going over the change I think you can see the problems with which we are all faced, because I don't believe that this change will come about within any short period of time. It is not anticipated that the Commissioners will take any final action on this proposal until next September. It is possible then that these proposed revisions might be available for the Nebraska legislature in 1971. It is also possible that when the Commissioners start working on this final proposal next September it will then be delayed an additional period. It does appear to me that the changes are relatively reasonable and relatively simple.

The first thing that has been done is to substantially enlarge the length of this section by adding some new definitions. You now have the Uniform Commercial Code going farther than it previously did in attempting to define what is and what is not a fixture.

The first thing they do is to define things that are *not* fixtures because they remain chattel. If an item retains its character as chattel and does not become a part of the real estate, it is *not* a fixture, and it is *not* covered by anything that is involved in 313. The rules governing security interests in chattel apply. Items of this type would be machinery, and defined within the amended 313 "replacement appliances." Now, where that leaves you with the original appliances in the structure, in an apartment house, for example, is an interesting question, but at least replacement appliances are specifically set forth in the act as example of items that will retain their chattel character and they will never become fixtures.

A second set of items that are not fixtures, are not fixtures because they *are* a part of the real estate. The definition for this is really found substantially in the existing Section 313, and this would apply to lumber, bricks, items of this type, which have a chattel character originally but when they are placed in the structure they become an integral part of the real estate and they cannot be separated from the real estate for purposes of filing or purposes of removal. These are *not*, likewise, fixtures. So you have on this side the chattels that remain chattels and do not become a part of the real estate; you have on this side items that become such a fundamental part of the real estate that they lose all separate identity and character separate from the real estate.

Then you have left, in the center, fixtures, a new category. really, by rather more precise definition. If they do become a part of the real estate under normally accepted practices, but they can

retain their chattel character for financing purposes, then they are a fixture. If you like that definition, more power to you! But at least it belongs somewhere in the center here. They are items where the character of the thing is not lost, and yet they become relatively permanently affixed to the real estate, but not affixed in such a fashion as to become an integral part of the real estate structure itself.

As the law now stands there is a rather hazy area involving these items, except the second part, the part over here, the part that becomes an integral part of the real estate. In those instances the law under amended 313 remains the same as 313 as it now stands. No security interest can be created in those items. Once the bricks become a part of the building, once the lumber becomes a part of the structure, you lose the ability to create a security interest in that item. The security interest that may have been created in that item prior to the time it goes into the building loses its priority, even though it may have had one, it loses its priority to the real estate mortgage, and the real estate mortgage on the property will take priority over any security interest that purports to obtain in items of this nature.

In the first example, the items that are chattel and retain their chattel character entirely and do not become part of the real estate, no interest can be created by the real estate mortgage. Those items must be covered by a security interest in chattel, and the real estate mortgage cannot cover or purport to cover such items. So then you are left with what are defined as fixtures, and you have then the problems of priorities with relation to these fixtures.

Now, if the security interest in a fixture, as defined by the amended 313, is a purchase money security interest with the debtor who has given that, and this is the thing that takes care of the problem of the non-real estate title owner having created a security interest, the contractor having created the security interest, you have a second qualification as to the security interest in fixtures, that it must be created by the individual with an interest of record in the real estate, *and* if you perfect by filing within ten days of the time that the goods become a fixture, in other words that they are in fact attached to the real estate, then the holder of the security interest in the real estate has a priority over the mortgage holder. If those things are *not* done, if it is not perfected by filing in ten days, if the creator of the security interest does not have a record interest in the property, then the holder of the real estate mortgage has a priority over the holder of the security interest. Not a very complicated solution but one which at the present time is really a little bit up in the air, so that you have had litigation in

other jurisdictions in this area. When that litigation has occurred, the holder of the real estate mortgage has generally been left out in the cold, and the holder of the security interest in the fixtures has been held to have priority.

Now that priority is limited. The way this is accomplished in 313, that is a summation of the effect of 313 as amended, the way this is accomplished is to add a whole bunch of new definitions to the act. You have a whole bunch of new terms that are, in fact, defined within the framework of the Uniform Commercial Code and never have been before. You have a "real estate interest." These words become words of art, they have a meaning, and that meaning is that that is an interest in goods held solely as a result of an interest in the real estate. It has not been created in any way by any creation of a security interest in the goods. It is the thing that you get as a result of having an interest in the real estate.

You have a "construction mortgage," and this likewise becomes a word of art. This is a mortgage that is given for the construction or improvement of real estate.

You have a new filing definition. You have a new type of filing called a "fixture filing." A fixture filing is a filing to secure an interest in fixtures, as previously defined, and it must be made in the office where a mortgage covering that real estate would have been filed, whether there is or is not such a mortgage is irrelevant. But a fixture filing is a filing against an item defined as fixtures within the framework of the Uniform Commercial Code, and that filing is not made in the Office of the County Clerk but is made in the office where a mortgage would be recorded in your particular county.

From this you then go forward to the requirement for some changes in the financing statement. If you are going to have a new "fixture filing" you must have a new form for a fixture filing, and the form for the fixture filing is the same as the previous financing statement form, except it must contain a description of the real estate sufficient so that the item can be indexed within the indexing system that exists in the state.

Now, much is made of this in the Comments on this from the people who have re-drafted this section. To me, I cannot see any great problem within the framework of the requirements in Nebraska. It is highly unlikely that any of us are going to prepare a mortgage and file it based upon a street address, or something of this sort, even if you could persuade your local filing agency to accept it. But apparently this is what is occurring in other areas, and it is intended that your financing statement, if it now covers

fixtures, if it is to serve as a "fixture filing," must contain a description of the property sufficient so that it will be filed within the framework of the mortgage filing within your particular jurisdiction.

As a corollary of this, turning around the other way, you will have a situation where you may be representing a lender of money on a mortgage. Now, up to this date, a mortgage, or up to whenever this is adopted, if it ever is, at the present time a mortgage is not a financing statement and you cannot create a security interest with a mortgage, and you should note that since Nebraska has a Trust Deeds Act, that trust deeds are included within the meaning of the word "mortgage" in the framework of the Uniform Commercial Code, a mortgage can be used as a financing statement covering fixtures. If the mortgage describes the goods that are to become fixtures and describes the real estate to which the fixtures are to be attached and complies with the other financing statement requirements, than your mortgage, and the filing of the mortgage, and the filing of the mortgage alone, can serve as both a mortgage and as a fixture filing within the framework of this amendment.

You should note here, as an aside, which is probably, if this is passed, of more importance than some of these things here to us, that within the framework of the Uniform Commercial Code fixtures that are attached to real estate fall in the same category as growing crops, so that if these amendments go through you may have growing crops as well as fixtures covered by a mortgage filing, if the growing crops are described. It seems to me that this might well pose a problem for us in Nebraska. The individuals who are engaged in drafting, and were originally engaged in drafting the Uniform Commercial Code, are not individuals who are acquainted with agricultural financing. This has been admitted a number of times, and I am sure many of you have read the publications with relation to this. The provision with relation to the purchase of farm crops covered by security interest in growing crops is one that was placed within the framework of the Uniform Commercial Code in order to get the legislation passed in the State of New York. The agricultural financing interest in the State of New York, as I am sure many of you know, simply told the Uniform Commercial Code Committee that they would oppose and prevent the passage of the Uniform Commercial Code in New York unless the committee excepted farm crops from the general provision of the passage of title to an innocent purchaser.

Here we now have another confusing, it seems to me, of growing crops with what is in fact a totally different problem, but nevertheless within the framework of the proposed amendment as it

now stands, growing crops fall within the same category as fixtures, and you may find yourself in a situation where you represent a bank loaning a farmer money. You had better go check the mortgage against the guy's farm and be sure that the mortgage is not a fixture filing sufficient to cover the growing crops, if you have a risk situation.

It is possible, going on with the principal problem, for the person creating a security interest in fixtures to ignore everything I have talked about. He can follow the same procedures that are followed today under the proposed amendment. The only exposure he takes thereby is the potential that the holder of the mortgage may have a priority as regards the fixtures, and if he wishes to take this chance, or if the holder of the real estate mortgage or the entity advancing the money to finance the fixtures are the same entity, maybe he doesn't need to worry so much.

None of these things solve one of the remaining problems in relation to fixtures, and apparently the committee is going to make no attempt to do this, and that is the problem of having established your priority, what is your remedy? The only remedy given within the framework of the Uniform Commercial Code, even to the holder of a priority interest in fixtures, is the removal of the fixtures. And if he removes the fixtures, he must repair any damage done by the removal of the fixtures.

This item has been litigated recently, and there is an article in a recent issue of the ARKANSAS LAW REVIEW with relation to this, on a situation under the existing Code provision where the only remedy, likewise, is the removal of the fixtures, and where the holder of the security interest in the fixtures was not allowed to remove it. This was a situation where the question of the priority was litigated, and ultimately it was determined that the holder of the security interest in the fixtures did have priority but meanwhile there had been a judicial sale of the property, and rather than allow the holder of the security interest in the fixtures to go back, it is not clear whether he *wanted* to go back and take out the fixtures, but the court arrived at the equitable solution under those circumstances that the proper procedure was simply a pro rata distribution of the funds received on the sale between the holder of the real estate mortgage and the holder of the priority security interest in the fixtures. This is the probable result of litigation where you have a dispute between the holder of a security interest in the fixture who does not choose to remove the fixture and thus undergo the expense of repairing the damage of the removal of the fixture, and the holder of the real estate mortgage whose

interest is determined *not* to be prior to that of the holder of the fixture.

In conclusion, I would state again only that the committee is making very clear that there are many other problems within the framework of Article 9, farm crops is one of the matters that has been specifically mentioned as being under study, that this first proposed revision of Article 9 is limited to an attempt to solve the problem of fixtures, and I think it does, in fact, present a reasonable and rather understandable solution of the fixture problem, providing the definitions within the framework of the Uniform Commercial Code are accepted. It does present an example of the Uniform Commercial Code going beyond what was originally intended as the objective of the Uniform Commercial Code, it seems to me, and getting into the area where the Code is, itself, attempting to make definitions of matters that fall in the area of definitions that have been set forth in the common law, and you may well find some conflicts between these definitions in the Code and the definitions that exist in a particular jurisdiction.

RICHARD L. HUBER, Grand Island: Would you want to comment on this LB 1027? We thought that took care of the matter since that passed with the emergency clause requiring the Registrar of Deeds to index these documents the same as mortgages.

MR. GUENZEL: As I think I originally stated, and if I didn't I should have, I don't think that many of the problems that have been experienced with fixtures in other jurisdictions are problems that really pertain to an agricultural area, as Nebraska, because in Nebraska I think most of us have been very careful in creating our interests in growing crops to specifically describe the real estate therein in the same form that we would use any mortgage, and that as a result the requirement of the indexing will solve this problem for us. But I think as a matter of practice, I don't know, the cases I have run into pretty generally are matters where the descriptions have been proper, and with this requirement for indexing I think we are protected, at least in the interim here, providing the individuals creating the interest in fixtures do the same thing. But you must remember that it would not be necessary in the creation of a security interest in a fixture that the real estate description now be contained in that security interest, if the security interest were being created between the contractor purchasing the equipment and the vendor of the equipment, where the owner were someone other than the contractor, the owner of the real estate.

THEODORE J. FRAIZER, Lincoln: Since we are not a central filing state, some of these problems have been avoided.

MR. GUENZEL: I think that is true, and particularly in the areas where it might be a problem you have a place where all of the filing is done in one office, regardless of whether it is the filing of a security interest or a real estate mortgage. The place where the problem would arise would be in those areas where you have a Registrar of Deeds as well as a county clerk.

MR. FRAZIER: What, specifically, would be the items of fixtures?

MR. GUENZEL: Are there any other questions?

Items of fixtures would be those items that (1) do not retain their chattel character, and the examples given within the framework of the amendment are items such as a carved mantle that is placed in a house. That might not be, the replacement appliances that I mentioned, those would *not* be fixtures. Machinery might not be a fixture. Those stand on one side. Then on the other side, these things are not fixtures that become an integral part of the physical structure of the house, but everything in between is a fixture.

CHAIRMAN OVERCASH: We have another item coming up now that is a matter of rather far-reaching significance that I don't think the members of this Bar have sufficient information about.

During the lunch this noon I was sitting next to the President of the Iowa Bar and he asked me, "How many seminars have you had in Nebraska on the Truth in Lending Act and the regulations under it?"

I said, "We haven't had any."

We do have that matter up today, and I think most of us need a little education in that field. We have, as Vice-Chairman of this Section, Jim Haggart, who has had considerable experience with this new law and this new regulation and the ramifications of it. I am very happy to present him to you at this time.

ALPHABET SOUP: REGULATION Z AND UCCC— TRUTH IN LENDING ACT

Virgil J. Haggart, Jr.

It is a little discouraging when you start out forty-five minutes behind time, and I don't know just how to adjust to that. I had intended to begin by regaling you with a legislative history of this

matter of consumer credit protection. I think perhaps in the interest of trying to catch up the schedule a little bit, I will omit that part and suffice it to say that there was a great deal of congressional inquiry which preceded the enactment of the Federal Consumer Credit Protection Act in 1968.

The first legislation was introduced in 1961 by Senator Douglas, and consistent efforts were made from that time through until 1968 to adopt some consumer credit protection legislation at the federal level.

The legislative history indicates that the typical consumer, the man on the street, has no real comprehension at all of what he is paying for the loan of the money he borrows. He probably doesn't even understand interest rates, perhaps not simple interest rates, and certainly not the more complicated "add on" and "discount" interest rates. Obviously the whole purpose of the federal activity in the field of consumer credit up to this point, at least, has been to enable a consumer, a man on the street who is not sophisticated in the ways of high finance, to accurately understand and appraise the true cost of the money which he borrows, or the charges which he pays for deferred payment.

I hate to delete that because I thought it was awfully cute, this legislative history, and it gave me a chance to editorialize a little bit, but I think we had better pass it by and get right down to the nuts-and-bolts of the situation which is, broadly speaking, the Federal Consumer Credit Protection Act, Public Law 90-321, which was adopted in May of 1968.

It is an act that is divided into five titles, the most important of which is probably Title I, which is known as the Truth in Lending Act.

The Truth in Lending Act became effective on July 1 of this year. Regulation Z, which we hear about, is the regulation promulgated by the Board of Governors of the Federal Reserve System to implement Title I of the Act. Because we will talk in some detail at a later point about Regulation Z, I need not at this point discuss most of the provisions of Title I because they are substantially lifted from there and incorporated verbatim in Regulation Z. I will mention a few, which for one reason or another, do not appear in Regulation Z.

In the first place, Section 111 of Title I of the Act says:

"(a) This title does not annul, alter, or affect, or exempt any creditor from complying with the laws of any State relating to the disclosure of information in connection with credit transactions,

except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency."

It further states:

"(b) This title does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this title extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply."

Let's stop right there for a moment and consider that language because it makes one very important point and it raises one very shaggy problem.

The point which it makes is that the Truth in Lending Act and Regulation Z thereunder do not—I repeat, do not—regulate interest rates in any manner. This matter, at least for the present, continues to be a matter of state law. The thrust of the federal act and the regulation is to require disclosure of the true cost of borrowed money, including not only the basic interest rate but also other expenses incurred by the borrower in connection with a loan. More about that in a moment.

The shaggy problem arises from the quoted statutory provision that the Truth in Lending Act does not affect state disclosure laws, except to the extent that state laws are "inconsistent" with the federal legislation. We would all acknowledge this as a magnificent exercise in self-restraint by our lawgivers in Washington, but we would also hope that somewhere or other we could find some guidelines giving us a clue as to when state disclosure requirements were "inconsistent" and when they were not. Unfortunately, no such guidance is available, either in the Truth in Lending Act itself or in Regulation Z, and I am not aware of any judicial decisions to date which have shed any light on that question. Indeed, the Nebraska statutes dealing with installment loans, small loans, and consumer loans by banks do contain provisions requiring that certain disclosures concerning the cost of credit be made to the borrower. At the present time I am unable to tell you whether these Nebraska disclosure requirements are inconsistent with the Truth in Lending Act or not.

Section 112 of the Truth in Lending Act provides for a fine of not more than \$5,000 or imprisonment for not more than one year,

or both, for anyone who willfully and knowingly gives false or inaccurate information or fails to provide information which he is required to disclose by the Act or by Regulation Z, or uses any rate table so as to consistently understate the true annual percentage rate on any borrowing.

In addition to these criminal sanctions, civil penalties are provided for by Section 130 of the Act. This section provides that any person who fails to make the required disclosures shall be liable to the person to whom they should have been made for twice the amount of the finance charge involved in the transaction (but not less than \$100 nor more than \$1,000 in any circumstance, plus the costs of the action and a reasonable attorney's fee. These penalties are severe enough with respect to a single transaction, but one shudders to think what the consequences might be if a successful class action could be brought involving a whole series of substantially identical transactions, as in a credit card or revolving credit operation. I trust that each of you will have the courtesy and the forbearance to hear me out before bolting from this room to commence framing your petition!

There are some further provisions of Section 130 which tend to soften this blow, however, if within fifteen days after discovering his error in disclosure and prior to the commencement of any action or the receipt of written notice from the borrower that he has made a mistake, if the creditor notifies his borrower of the error and makes the necessary adjustments, he is home free. In addition, a creditor may be absolved if he can show by a preponderance of the evidence that his violation was not intentional and resulted from a bona fide error "notwithstanding the maintenance of procedures reasonably adapted to avoid any such error."

On the other hand, Section 130 strips away one of the traditional defenses in the credit industry, by providing that any action which could be brought under the section against the original creditor in a transaction shall also be maintained against a subsequent assignee, where the assignee or its subsidiaries were in a continuing business relationship with the original creditor, unless it can be shown that the assignment was involuntary or unless the assignee can show, by a preponderance of the evidence, that it did not have reasonable grounds to believe that the original creditor was not making proper disclosures and that the assignee maintained procedures which would enable him to detect this. Hence, in the case of secured real estate transactions only, the time honored defense of bona fide purchase for value is no longer available to an assignee. Under the provisions of Section 131, however, original creditors can protect their assignees from these dire consequences by obtaining a

written acknowledgement of receipt of a disclosure statement from his borrower, which will be conclusive proof of the original creditor's compliance with disclosure requirements unless the violation is apparent on the face of the statement. Such a receipt will not protect the original creditor, however.

Title II of the Truth in Lending Act deals with Extortionate Credit Transactions, which are defined as "any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person." In other words, a little strong-arm activity. I will indulge in the presumption that none of you in this room has clients who could conceivably ever be guilty of such conduct. So indulging in that presumption, I will pass on to a discussion of Title III, which is of substantive importance because it deals with "Restrictions on Garnishment."

This Title, Title III, becomes effective on July 1, 1970, whereas Title I, dealing with Truth in Lending, became effective July 1, 1969. Title III does contain some substantive provisions which will cause material change in Nebraska garnishment practices and procedures.

In the first place, Section 303 provides that the maximum part of a debtor's earnings in any work week which may be subjected to garnishment is twenty-five percent of his "disposable earnings" for that week, or the excess over thirty times the federal minimum hourly wage, whichever is less. For this purpose, "disposable earnings" are defined as earnings remaining after deduction of any amounts required by law to be withheld. In turn, "earnings" are defined as compensation paid for personal services, whether denominated as wages, salary, commission, bonus or otherwise, including periodic payments under a pension or retirement program.

The foregoing limitations on the amount which can be reached by garnishment do not apply, however, in the case of an order of any court for the support of any person, nor any order of any court under Chapter XIII of the Bankruptcy Act, nor, one is not too surprised to discover, to any debt due for any State or Federal tax. So Uncle is going to be able to hang right in there!

In the second place, Section 304 provides that no employer may discharge any employee by reason of the fact that his earnings have been subject to garnishment "for any one indebtedness." Whether the statutory language "for any one indebtedness" means that the first garnishment arising from each separate debt of an

employee is on the employer, so to speak, or means that the employer is free to act upon receipt of an employee's second garnishment, whether from the same or a different debt, is not at all clear from the statute. But the employer can ill afford to make a mistake in this respect. A statutory penalty for wrongful discharge of an employee is not more than a \$1,000 fine or not more than one year in prison, or both.

I judge from reading the legislative history of the Act that the intent—and I would hasten to add that it is a very poorly expressed intent—was that the employer is probably free to act to discharge an employee after he receives an employee's second garnishment, whether that second garnishment is on account of the same debt or a different debt. I hope that none of you will rely too heavily on that judgment until you have satisfied yourself by reading the legislative history as well.

Section 307 provides that Title III does not annul, alter, or affect, or exempt any person from complying with any state law which either prohibits garnishments entirely or limits garnishments even more restrictively than the federal law, or prohibits the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness. I think maybe that language sort of reinforces the conclusion that after the second garnishment, no matter from what source, the employer is free to act. The intent of this Section 307 is obviously to leave in effect state law where the state law is even more restrictive on limitations on garnishment than the federal law.

I take it that we will have to determine in Nebraska on a case-by-case basis whether the new federal restrictions will operate to reduce the amount available to a creditor in a garnishment situation. Presumably the answer will depend in some instances on whether the debtor is the head of a family, so as to be in a position to avail himself of the Nebraska statutory exemption as such, which I understand was reduced from 90 percent to 85 percent in the last session of the legislature. Perhaps the answer might depend on other exemptions under state law. Whether the definitions of "earnings" and "disposable earnings" established by the federal law are harmonious with the definition of "wages" under Nebraska law, I would not venture to say. It would seem to me, however, that a lawyer who deals regularly with garnishments, on behalf either of creditors or debtors, would be well advised to do some advance studying in this area in an effort to bring order out of this apparent chaos before the federal legislation becomes effective next July 1.

Title IV of the Act, we are still talking about the Federal Consumer Protection Act, establishes a bipartisan National Commission on Consumer Finance—it's nice to know we have another Commission, isn't it?—whose duty it is to report to Congress not later than January 1, 1971, its recommendations concerning the adequacy of existing consumer credit arrangements to provide credit at reasonable rates; the adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair credit practices and to insure the informed use of consumer credit; the desirability of federal chartering of consumer finance companies, or other federal regulatory measures. The likelihood of further federal intervention in the consumer credit field, especially if the states fail to embrace the Uniform Consumer Credit Code, is apparent not only from the Congressional committee reports but also from Title IV of the Act itself.

Title V of the Act is technical in nature, dealing with severability, effective dates, etc., and we need not occupy any of our time with it here.

Thus having briefly surveyed the underlying Federal Consumer Credit Protection Act, let's take a look at Regulation Z, which is the regulation that was promulgated in February of this year by the Board of Governors of the Federal Reserve System to implement the provisions of Title I, and Title I is known as the "Truth in Lending" Act.

It was a scramble to try to find out what Regulation Z was all about between the time that it was promulgated in final form in February of this year and the time it became effective on July 1. My personal reaction is that I have been disappointed in the availability of authoritative information concerning Regulation Z, that was true then and it is still true now. The federal agencies charged with the administration and enforcement of Regulation Z have been very slow to get off the ground, at least as far as my experience in the case. The single exception to that has been the Federal Reserve System which I think has discharged its responsibilities and geared itself up to discharge its responsibilities more rapidly than the rest. We will talk a little bit later about the effectiveness of the enforcement and administration system which is established by the statute.

As I stated before, the whole objective of the Truth in Lending Act and of Regulation Z is consumer credit protection. If we underline the word "consumer" it will help us to understand the rationale of the scope of coverage of Regulation Z; that is, it will help us to understand why certain credit transactions are included within the coverage of the regulation while others are excluded.

As a general proposition, it is correct to state that Regulation Z covers the extension of credit to a person primarily for personal, family, household, or agricultural purposes. Let me repeat that: Regulation Z generally covers extensions of credit to persons, primarily for personal, family, household or agricultural purposes. Moreover, a finance charge must be imposed in connection with the transaction, or the obligation must be repayable in more than four installments even if no finance charge is imposed.

By deduction, then, we can arrive at most of the transactions which are excluded from the coverage of Regulation Z. If the credit is not extended to a person, the transaction is not covered. Therefore extensions of credit to corporations, trusts, estates, partnerships, co-ops and associations are excluded.

Likewise excluded, of course, are extensions of credit which are not primarily for personal, family, household, or agricultural purposes, even though the credit be extended to a natural person. Thus all extensions of credit for business and commercial purposes are excluded. But note the danger here to the prospective lender.

John Doe walks into the bank and says, "I need \$5,000," and he has a good statement and he has a lot of collateral. The loan is made, and oftentimes the loan officer won't know for what purpose Mr. Doe is going to use that money. The test is what he actually does use it for. So lenders can be in a precarious position if they are not fully advised as to the purpose, and reliably advised as to the purpose for which the funds are going to be used.

Another caution, note that an extension of credit to an individual for agricultural purposes is covered, even though agriculture is that individual's business. Incongruous as that seems, I think it is the only safe construction under the regulation as it is presently written and interpreted.

In addition, there is a dollar amount exemption in non-real estate transactions where the amount financed exceeds \$25,000, or where the advance, though less than \$25,000, is part of an express commitment to extend more than \$25,000 worth of credit. For this purpose a real estate transaction is an extension of credit in which a security interest in real property is or will be acquired. Such real property transactions, whatever the amount, are covered by Regulation Z.

I might pause here, and comment on the indiscriminate use of the word "security interest" throughout Regulation Z. I had understood from the Uniform Commercial Code that "security interest"

was a nomenclature that applied only to interest in *personal* property, but in Regulation Z they constantly refer to interest in *real* property as security interest when they are talking about a mortgage lien or, I presume, the interest of a contract vendor or a mechanic's lien, or something like that, but they call them "security interests." It is kind of incongruous if you are used to looking at the UCC.

Now back to this \$25,000 test, it is helpful when the lender is unsure whether the loan is for a personal, family, agricultural purpose or for a business purpose if it is over \$25,000, and if it isn't real estate it doesn't matter. It is not covered.

Certain other classes of transactions are excluded from Regulation Z coverage. They are:

1. True, conventional leases. But bailments or leases which are in fact disguised sale arrangements in the nature of conditional sales contracts or something of that kind remain covered. It has got to be a bona fide lease.

2. Margin loan accounts maintained by stockbrokers and commodity dealers who are registered with the Securities and Exchange Commission are excluded, because the SEC already possesses authority to require disclosures under the Securities Act of 1933.

3. Public utility services for which charges are imposed for delayed payment, or discounts granted for early payment, are excluded. I think I can see there the results of some effective lobbying on behalf of the utilities interest, because it would be an awful nuisance to put all these disclosures on a little tiny stub of a utility bill that went out every month.

Finally, purchase money first mortgages for the purchase of a dwelling are exempted only from the requirements that the total finance charge over the life of the mortgage and the deferred payment price be disclosed. First mortgages acquired in connection with the construction of a borrower's residence are further exempted from the three-day right of rescission, which we will discuss in a few minutes. Please note the subtle distinction here between use of the term "dwelling" and "residence" wherein there turns a distinction in the disclosure requirement.

The Truth in Lending Act and Regulation Z seek to attain their objective by assuring adequate disclosure—adequate disclosure—of *all* of the costs of obtaining consumer credit, so that the consumer can understand what the real cost of his borrowings are and will

be, and so that he will be enabled to make an intelligent choice between alternative credit plans.

I have already pointed out, neither the regulations nor the Truth in Lending Act purports to regulate interest rates or to regulate any of the other costs of obtaining credit, nor do either one of them purport to prescribe any particular means of calculating interest. If a creditor is accustomed to calculating interest on an "add-on" basis, he may continue to do so. If he is accustomed to adding other charges to the basic interest rate in connection with a credit transaction, he may continue to do so. But Regulation Z *does* require that creditors make a full disclosure of the true total cost of obtaining the credit, including all of the added charges, and to express that total cost in terms of an annual percentage rate.

To attain this objective, Regulation Z introduces two major new concepts into consumer credit terminology, and I think it is essential that you understand both of them if you are to understand the thrust of Regulation Z.

The first of these concepts is the *finance charge*. The finance charge includes much more than the basic interest charge. In addition to that, it includes the following:

Time price differential;

Amounts due under a discount or other system of additional charges;

Service or carrying charges;

Loan fees and finders' fees;

Points or other similar charges;

Investigators' and appraisers' fees and credit report costs;

Costs of any guarantee or insurance to protect the creditor against the customer's default or other credit loss;

Any charge imposed by a creditor on another creditor for purchasing or accepting an obligation of a customer, if the customer is required to pay any part of the charge in cash as an addition to the obligation or as a deduction from the proceeds of the obligation.

Now I would point out that if certain requirements are met, the cost of insurance is not required to be included in the finance charge. The cost of credit life, accident, health or loss of income insurance may be excluded if the customer is clearly and conspicuously informed that it is not required by the creditor and is informed of the cost thereof, but nevertheless executes a specific, dated, separately signed, affirmative written statement that he

desires to have such insurance. If he does all those things, then you can exclude it from the finance charge. Likewise, the cost of property or liability insurance may be excluded if the customer is given a specific written statement indicating the cost of the insurance, if obtained through the creditor, and further indicating his right to choose another agent or other person through whom the insurance is to be obtained.

On the other hand, the following costs are excluded from the finance charge:

1. Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of a security interest related to the transaction, or for perfecting, releasing, or satisfying any such interest.

2. The premium payable for any insurance in lieu of perfecting a security interest that would otherwise be required by the creditor, so long as the premium does not exceed the fees and charges just mentioned.

3. Taxes not included in the cash price.

4. License, certificate of title and registration fees imposed by law.

But is all of these excludible costs are not itemized and disclosed separately, they must be included in the finance charge.

There is another category of items that are excluded:

1. A late payment, delinquency, default, reinstatement or other similar charge, if imposed for actual unanticipated late payment, delinquency, default, or similar occurrence.

2. Bona fide and reasonable closing costs in a real estate transaction, including title examination, abstracting and title insurance fees; charges for preparing and notarizing deeds and other documents; escrow payments for future payment of taxes, insurance, etc.; appraisal fees; and charges for credit reports.

The second important concept introduced by Regulation Z is the annual percentage rate." The purpose of the annual percentage rate is to relate the total finance charge in a credit transaction—interest plus all of the other costs just discussed—to the amount of credit extended, and to express that relationship as a percentage per annum.

Let me say that again. It is awfully hard to cull out of Regulation Z in definition form, but I'm kind of proud of this. I conjured this up myself and I kind of like it: The purpose of the annual per-

centage rate is to relate the total finance charge in a credit transaction to the amount of credit extended, and to express that relationship as a percentage per annum.

The simplest example of the annual percentage rate concept is found in a credit transaction where there is a single extension of credit to be repaid in a single payment, and the only element in the finance charge is interest, say at the rate of $1\frac{1}{2}$ per cent per month. In this example, the annual percentage rate would be 18 per cent.

A slightly more difficult example would be this one: Assume a loan of \$100, to be repaid in a lump sum at the end of one month with interest at the rate of $1\frac{1}{2}$ per cent per month. In addition, the creditor charges the borrower \$1.50 for a credit report. The total finance charge for this loan then is \$3.00—\$1.50 for interest and \$1.50 for the credit report. To determine the annual percentage rate, the finance charge must be converted to an annual basis by multiplying it by 12. This produces a finance charge on an annual basis of \$36.00, and consequently the annual percentage rate is 36 percent. This would come as quite a surprise to an unsophisticated borrower, and of course it is precisely this kind of a person that the Truth in Lending Act was designed to protect.

The method of computing the annual percentage rate depends on whether the transaction is an "Open End Credit" or a "Closed End Credit" within the meaning of the Act. Open End Credits are typified by revolving credit card plans, where the unpaid balance may be increased from time to time by additional purchases, while concurrently being reduced by periodic payments. An installment sales contract is a typical example of a Closed End Credit, in which the initial balance is reduced by periodic payments until the debt is finally paid in full.

Beyond this, patient listeners, I will not attempt to go into explaining the various methods of computing annual percentage rates. I am frank to say that I don't understand some of these methods myself. I have good reason to believe that nobody in the United States of America, including the sublimely learned members of the Board of Governors of the Federal Reserve System, understands *all* of the methods completely. And, if you will pardon me, I suspect that none of you would understand them all either, even if I were able to explain them! So if one of your clients presses you for an explanation of these methods, I would suggest that you hasten to refer him to one of our fellow practitioners of the law, the certified public accountants. I'm sure they won't be able to explain them to him, either!

In the example I just talked about where we came up with an

annual percentage rate of 36 percent, you might jump to the conclusion that that would be a usurious loan. Not necessarily so. If the state law permitted an interest rate of 18 percent per annum on a loan of this character and did not construe the charge for the credit report as "interest" under state definition, the loan would be perfectly legal under state law and entirely in compliance with the Federal Truth in Lending Act. Such a situation could exist under several of the existing Nebraska statutes governing consumer loans. The point is this: There is no correlation between the annual percentage rate under the federal legislation and interest and usury under state law.

As Regulation Z lies at the heart of consumer credit protection, so does disclosure lie at the heart of Regulation Z. Let's start with a discussion of the who, when, and how of disclosure, and then turn our attention to the question of what must be disclosed.

Every creditor who is covered by Truth in Lending—banks, saving and loan associations, department stores, credit card issuers, automobile dealers, credit unions, hospitals, consumer finance companies, and others, including craftsmen and building contractors who extend credit or arrange for the extension of credit—all of these people are required to make the disclosures as set out by Regulation Z. Where more than one creditor is involved in a particular transaction, each one must be clearly identified and must make the disclosures within his knowledge and the purview of his relationship with the customer.

The disclosures are made to the customer to whom the credit is extended. If there is more than one customer, a creditor need furnish a disclosure statement to only one of them. Disclosures need not be made to endorsers, guarantors, co-makers or similar parties.

Generally speaking, the disclosures must be made before credit is extended—prior to the consummation of a closed-end transaction, and prior to the first extension of credit in an open end transaction. When the credit transaction is consummated through the mail or over the telephone, the disclosures must be furnished before the first payment is due.

Regulation Z specifies in detail the form in which the disclosures are to be made. They must always be in writing. Type sizes and styles are specified. The order in which the disclosures are to be made and the terminology to be employed are set forth. The location of the disclosures on the credit instrument is prescribed, and in some instances the furnishing of disclosures on a separate sheet is permitted. In cases where the disclosure requirements

under state law are inconsistent with Regulation Z (which in practical effect means not identical to the disclosure requirements of Regulation Z), separate disclosures are required to satisfy the federal requirements, and must be identified as such. Such separate disclosures seem clearly to be required under existing Nebraska consumer credit statutes.

Turning now to the question of what disclosures must be made, we find that the answer depends on whether the transaction is a closed end consumer credit sale or loan, or an open end transaction.

In the case of a closed end credit *sale*, the creditor must disclose the following:

1. The *amount financed*, which is arrived at by calculating the cash price, the down payment, the unpaid cash price, other charges, the unpaid balance, and prepayments or deposits.

2. The *finance charge*, arrived at as above explained.

3. The annual percentage rate, except if the finance charge does not exceed \$5.00 and applies to an amount financed that does not exceed \$50.00.

4. The *time sale price* and the *time sale balance*.

5. *Repayment procedures, rebates, delinquency charges, and security interests.*

In closed end consumer *loans*, the disclosure requirements are substantially the same as for closed end credit sales, except that disclosure of the time loan balance is required in lieu of disclosure of the time price differential and the time sales balance.

In open end transactions the disclosures required are considerably more complex, due to the more complicated nature of the transaction. Suffice it to say for these purposes that disclosures are required before the first transaction and at the time each periodic statement is rendered, and that the disclosures required are intended to convey much the same information as is made available to consumers in closed end transactions.

We should note in passing that Regulation Z also sets up requirements for the content of advertising of consumer credit plans. Type styles and sizes are once again specified, and as a general proposition, the regulation requires that if any of the essential terms of the credit plan are advertised, the remaining terms must likewise be disclosed.

Finally—and at this point we can both breathe a sigh of relief—we come to an entirely new and unique provision of the Truth in

Lending Act—the right of rescission in certain real estate transactions.

In general, the act confers upon a consumer the right to rescind, without penalty, a credit transaction in which a “security interest” may be retained or acquired in any real property that is, or is expected to become, his *principal residence*.

There are exceptions to the right of rescission, which include the following:

1. As already noted, purchase money first mortgages on a dwelling in which the customer resides or expects to reside;
2. First mortgages retained in connection with the initial construction of the customer’s residence; and
3. Loans for agricultural purposes made under open end mortgages.

Regulation Z requires the person who may be in a position to obtain a so-called “security interest” in the real estate—including the prospective mechanics lienor—to serve a written notice, in prescribed form, upon the customer, advising him of his right to rescind the agreement he has entered into. If the customer fails to exercise his right to rescind by midnight of the third *business* day following consummation of the transaction or delivery of the notice, whichever is later, then his right to rescind is lost forever.

You hear people talk about the five-day grace period in connection with this right to rescind. I think the reason for that is that you don’t want to run the risk of remembering that it is three business days, so if a transaction was consummated on a Thursday you couldn’t start until the following Wednesday. I think that is probably the reason for the five-day rule. It is a safer one and doesn’t require your client or whoever it is to remember this *business* day proposition, but the regulation says that there is a three business day waiting period following the consummation of the transaction or the delivery of the notice, whichever is later.

Until the waiting period has expired, or the customer has sooner waived his right to rescission, the creditor is *prohibited* from commencing performance of his contract. I presume the theory there is if the fellow starts, the customer will feel some coercion, etc., so the creditor is *prohibited* from starting until this grace period has expired. Moreover, before commencing performance he is obliged to reasonably satisfy himself that the customer has not, in fact, exercised his right to rescind. Now, how he does that, I don’t know. I suppose he goes down to the office and looks in his mail to see if he has a notice of rescission.

There is an interesting little problem there, too. The customer, in exercising his right to rescind, is deemed to have exercised it when he places his notice of rescission in the mail. And if the creditor doesn't ever get the notice, due to the malfunction of Uncle Sam's mail service, which occasionally occurs, the creditor is in trouble. It is just his hard luck, because the transaction is deemed rescinded when the customer mails his notice of rescission within the three-day period.

As suggested, the right to rescind may be waived by the customer, but only under circumstances which are specifically set forth by Regulation Z. These include a bona fide personal emergency of the customer, and situations in which the customer determines that the delay necessitated by the waiting period would jeopardize the health, welfare or safety of natural persons, or endanger the customer's property. If the customer elects to waive his rescission right, he must do so in writing in a manner, prescribed by Regulation Z. Incidentally, this cannot be a form. He has to do it in his own handwriting and he must state the date and must sign it, state the reason, etc. So just a verbal "forget it" or a written "forget it" doesn't comply with the requirements of Regulation Z. That's not sufficient.

Please note that the right to rescind arises only when a "security interest" may attach to the real estate. Thus, if a building contractor or other person entitled to a mechanics lien effectively waives his lien rights in advance, the right to rescind does not arise. Subcontractors, materialmen, laborers, and others not in a direct contractual relationship with the customer may also possess mechanics rights. If *they* do not effectively waive them in advance, the general contractor must serve the rescission notice upon the customer, and the same delay in commencement of performance is required.

We now turn to the question of who is responsible for enforcement of Regulation Z and the Truth in Lending Act. In my view, the enforcement system established by the Act defies the imagination of even the most bureaucratically minded. As we have already noted, the Federal Reserve Board is responsible for the promulgation, interpretation, and amendment of Regulation Z. But the administration and enforcement of Regulation Z and the Truth in Lending Act is scattered all over the bureaucratic countryside, as follows:

For national banks, the Comptroller of the Currency;

For state banks that are members of the Federal Reserve System, the Federal Reserve System;

For state banks that are not members of the System, the FDIC;

For savings and loan associations, the Federal Home Loan Bank Board;

For organizations covered by the Federal Credit Union Act, the Bureau of Federal Credit Unions;

For common carriers under its jurisdiction, the Interstate Commerce Commission;

For domestic or foreign air carriers, the Civil Aeronautics Board;

For activities subject to the Packers and Stockyards Act of 1921, the Secretary of Agriculture;

For all others, the Federal Trade Commission. And the "all others" are by far the vast majority of people who are covered by the Act.

Theoretically, the authority for interpretation of Regulation Z is lodged exclusively in the Federal Reserve Board. But it is impossible to believe that the nine other agencies charged with the administration and enforcement of it can carry out their responsibilities without themselves, each of them, making their own administrative interpretations. It is too early to tell at this point, but it seems to me that the result could be chaos—administrative, interpretive, and enforcement chaos.

Now I appreciate your patience, I appreciate your attention. I feel I should scan this Uniform Consumer Credit Code because it rounds out the consumer credit picture. For one time in our lives maybe we'll learn something in anticipation of an event rather than after the event, because at this point the UCCC is not even proposed as legislation in Nebraska.

This proposed legislation is the product of the National Conference of Commissioners on Uniform State Laws, just as many other acts have been, perhaps most notably in recent years the Uniform Commercial Code. The UCCC received its final approval in August of 1968. It provides a vehicle for replacing at the state level consumer finance and small loan laws, sales finance and revolving credit laws, bank installment loan laws, and all consumer credit laws, as well as general usury laws.

It contemplates retention of the "time-price" doctrine, whatever may be the status of that doctrine in Nebraska at the present time. Although consideration was given to regulating the consumer finance industry in much the same way as a public utility, it was finally decided to permit free entry into the business, subject to licensing requirements set forth in the Act.

It's believed the UCCC would have the effect of permitting commercial banks, Morris Plan banks and credit unions to engage in areas of consumer financing from which they have been to date effectively foreclosed because of the existing restrictions on permissible interest rates. It is anticipated more "conglomerate" or "package" financing would be possible by a single lending institution if UCCC were enacted.

UCCC contains disclosure provisions consistent with those required by the Truth in Lending Act and Regulation Z, and by adopting UCCC a state would thereby bring itself into compliance with the federal requirements. This fact may prove an impetus to the enactment of UCCC by the states.

As far as interest rates are concerned, UCCC would permit the following:

On consumer installment credit sales, 36 percent on the first \$300, 21 percent on the next \$700, and 15 percent above \$1,000;

On revolving charge accounts, 2 percent per month on the first \$500; and 1½ percent per month on the remainder, with a minimum of 50-cents per month;

On installment loans, 18 percent, except that lenders licensed under the act or qualified to make loans and receive deposits under state or federal statute, would be permitted to collect interest at the same rates as just mentioned for installment sales—remember they started at 36 percent—with a tapering down above \$1,000 to the point that on a loan of \$2,500–\$2,900 the effective rate would be about 18 percent;

On revolving loans, the ceiling would be the same as for installment loans, except that if a revolving loan was made at a rate of 1½ percent per month or less, a minimum charge of 50-cents per month would be permitted.

The scope of the proposed UCCC is much the same as the scope of the Truth in Lending Act. UCCC is limited to "consumer credit" transactions, and contains substantially the same test regarding personal, family, household and agricultural purposes, and UCCC also contains the \$25,000 upper limit for non-real estate transactions.

UCCC contains a long series of prohibited consumer credit practices, ranging from the prohibition of balloon payments to the prohibition of assignment of wages as security. It also contains provisions exempting all wages from garnishment before judgment, and imposes limitations similar to the federal Consumer Credit Protection Act on garnishments after judgment. It flatly prohibits

employers to discharge employees because of garnishments, no matter how many. It also prohibits deficiency judgments on installment sales where the cash price was \$1,000 or less and the creditor repossesses or accepts possession of the collateral after default.

The proposed uniform act contemplates a consumer credit administrator to administer the code in each state, and to license lenders. The administrator would also be clothed with broad investigatory, regulation-making, and enforcement powers.

Obviously the proposed model act contains sweeping changes in substantive state law. It is so new that its future can only be termed uncertain at this time. To date only the States of Utah and Oklahoma have adopted it, the latter with extensive substantive modifications. Thus, it is also uncertain whether the sought-for objective of uniformity among the states would be realized.

If the Uniform Consumer Credit Code is proposed for adoption in Nebraska, it will certainly behoove every lawyer active in this field of consumer finance to follow its progress in the legislature very attentively.

SOURCES

"Consumer Credit Guide," Commerce Clearing House, Inc., Chicago; Richter, "The Uniform Consumer Credit Code," 24 The Business Lawyer 183 (1968); 1968 U.S. Code Congressional and Administrative News 1290-1358.

CHAIRMAN OVERCASH: Gentlemen, the next portion of our program relates to the new system of Code of Responsibility. One of the prides of the legal profession is that 'way back in 1908 we adopted a system of Canons. I think we have a unique system of self-policing. No other profession, to my knowledge, has anything comparable to the system we developed many years ago, but it was in great need of revision and modernization. The American Bar Association over a period of years has promulgated the new Canon system. You heard the President this noon. Yesterday the House of Delegates of the Nebraska Bar approved the new Code of Responsibility.

We have here today a member of the Advisory Committee of our Association who has been working in this field for many years. I have served with him on this committee. He is well informed. He is going to review with you some of the features of this new Code system.

In order to comply with our time restrictions and the fact we

are a little behind schedule today, he is going to abbreviate his presentation but he has prepared a paper and it is going to be published and available to all of you, that will give you the whole picture as he sees it.

THE CODE OF PROFESSIONAL RESPONSIBILITY

Lloyd L. Pospishil

I hope you will excuse me if I refer to my manuscript but I do not have the prodigious memory of the Indian Chief who had such a fine reputation for memory that a reporter from a metropolitan newspaper came to see him and said, "If your memory is so good, what did you have for breakfast thirty years ago this morning."

He said, "Eggs."

So about ten years later this reporter happened to be in that area and he thought he would go see his old friend the Indian Chief and bid him the time of day, so he said, "How!"

The Chief said, "Fried."

Gentlemen, the newly proposed Code of Professional Responsibility, adopted by the American Bar Association at its last annual meeting held in Dallas, Texas, may properly be considered one of the landmarks in the legal profession. Assuming that it will be adopted by the Supreme Court of Nebraska, pursuant to the recommendation of the Nebraska State Bar Association, it will henceforth be one of the foundation stones upon which the future conduct of the legal profession will rest. Undoubtedly, it would affect the professional conduct of every lawyer in Nebraska.

In order better to understand the reason, the purpose, and the objectives of this Code of Professional Responsibility, it might be well to make a few preliminary generalizations concerning our present disciplinary system and the rules by which it functions.

Heretofore, as was brought out, we have been functioning under the Canons of Professional Ethics. There also are Canons of Judicial Ethics. The new Code of Professional Responsibility, however, does not purport to make revisions of the Canons of Judicial Ethics—this is being done by another committee—only the Canons of Professional Ethics are involved here.

The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. Now, there are 47 such

Canons. The Committee on Professional Ethics and Grievances of the American Bar Association, of which our distinguished Justice Hale McCown has been a member, rendered more than 300 Formal Opinions and over 1,100 Informal Opinions, interpreting these Canons. In addition thereto, the Advisory Committee of the Nebraska State Bar Association has been rendering opinions on questions of legal ethics which have arisen from time to time in Nebraska.

Also, a number of texts have been published, principal of which is one entitled "Legal Ethics," prepared by Henry S. Drinker, who for many years served as a member and then as Chairman of the American Bar Association Committee on Professional Ethics and Grievances. In fact, he was awarded the ABA's highest honor, the ABA Medal, at its annual dinner held in New York City several years ago.

However, despite all of this study and scholarship, based upon the Canons of Professional Ethics of the American Bar Association, which also were duly adopted, in Nebraska, it became increasingly apparent that changes would become necessary because of certain deficiencies becoming more and more evident with the passage of time.

President-Elect Edward L. Wright of Little Rock, who, as Chairman of the ABA Special Committee on the Evaluation of Ethical Standards, presented the proposed Code to the ABA House of Delegates for approval and adoption, stated that changes in society and law have rendered the original Canons quite inadequate to the late Twentieth Century; that the original Canons are not only obsolete but unenforceable; that they have contributed to the gross inadequacy of professional discipline; and that the four principal deficiencies in our present system were:

1. Their lack of application to disciplinary enforcement;
2. The many areas of law not covered;
3. The out-of-date language; and
4. Their failure to constitute a format or a blueprint for inspirational action by individual lawyers and the Bar as an organized entity.

Because of these deficiencies, Mr. Lewis F. Powell, Jr., President of the American Bar Association, on August 14, 1964, five years ago, requested the House of Delegates to examine the current Canons of Professional Ethics and to make recommendations for changes. This was done. Sherman S. Welpton, Jr., formerly of Nebraska, was

a member of this Special Committee which, after substantial study and numerous meetings, concluded that the existing Canons required revision in four principal particulars, to wit:

(1) There are important areas, involving the conduct of lawyers, that are either only partially covered in, or totally omitted from, the Canons.

(2) Many Canons that are sound in substance are in need of editorial revision. Sometimes there is a difference in meaning of words. For instance, when the man walked into the cafe and asked the waitress for peaches *and* cream, she brought him peaches *with* cream, she brought peaches *with* cream. He argued with her and she said, "What's the difference?"

He said, "Well, there's woman and child, and there's woman *with* child."

(3) Most of the Canons do not lend themselves to practical sanctions for violations.

(4) Changed and changing conditions in our legal system and urbanized society require new statements of professional principles.

The thought of studying the present Canons with the view of a possible revision was not a new one, however. The American Bar Association in 1928, 1933, and 1937 appointed special committees for this purpose, but nothing resulted. In 1954 a distinguished committee of the American Bar Foundation made studies and recommended further action, but nothing came of it until the present committee was appointed in 1964. In fact, Chief Justice Harlan Fiske Stone, in a memorable address delivered in 1934, stated:

"Before the Bar can function at all as a guardian of the public interests committed to its care, there must be appraisal and comprehension of the new conditions, and the changed relationship of the lawyer to his clients, to his professional brethren and to the public. The appraisal must pass beyond the petty details of form and manners which have been so largely the subject of our Code of Ethics, to more fundamental consideration of the way in which our professional activities affect the welfare of society as a whole. Our canons of ethics for the most part are generalizations designed for an earlier era."

The Special Committee therefore concluded unanimously that the need for a change in the statements of professional responsibilities of lawyers could not be met merely by amending the present Canons, and that, accordingly, a new Code of Professional Responsibility could be the only answer.

Furthermore, it was felt that the present Canons are not an effective teaching instrument, and they fail to give guidance to young lawyers beyond the language of the Canons, themselves; that there is no organized inter-relationship of the Canons; and that they frequently overlap. Also, it was felt that they were not cast in language designed for disciplinary enforcement, and many of them abound with quaint expressions of the past.

You probably have heard of the story of the horse that was owned by a minister, and the only thing that horse could understand was ministerial language. So when the horse was to go forward it was "Good Lord," and when he was to stop it was "Amen."

So he was going over the hills, "Good Lord, Good Lord, Good Lord," and he came to a precipice and he couldn't think of the word "amen." He was saying "Whoa! Whoa!" and finally he thought of "Amen" and the horse stopped right there. He rubbed his brow and said "Good Lord!" Quaint expressions of the past!

But because the present Canons contain many provisions which are eminently sound in substance, everything good found in them and in the formal and informal Opinions of the Committee on Professional Ethics was utilized in the preparation of the new Code. Also, some of the recent decisions of the Supreme Court of the United States necessitated intensive studies of certain Canons. Furthermore, it made certain important pronouncements in the areas of admission to the Bar and the discipline of lawyers.

So that we may better understand the practical application of all of this on us, as lawyers in Nebraska, it might be well to review some facts regarding the origin, nature, and function of our own disciplinary system in Nebraska. Mr. Raymond G. Young, Chairman of the Advisory Committee and a former President of this Association, has compiled an excellent brochure entitled "Disciplinary Procedures In Nebraska," which he revised in 1967. A summary of the material contained therein was forwarded to the President of this Association on July 13, 1967, and by him forwarded to the American Bar Association for its information, guidance, and use. Such information as I now present is taken from this brochure.

In Nebraska, as you know, we have an integrated Bar, established by Supreme Court Rule, effective January 1, 1938, under the Supreme Court's inherent power. The ethical standards relating to the practice of law in Nebraska have been, and are, the Canons of Professional Ethics of the American Bar Association. It must be remembered that the matter of discipline of lawyers in Nebraska rests in the Supreme Court, and in it alone. True, we have a cooperating bench and Bar but there is no delegation of this particular

function, inherently judicial, to any agency of the Bar. Such delegation, even if attempted, would probably be void.

However, as an assistant to the Court in these matters, we do have disciplinary machinery in Nebraska, also created in 1938. A committee, advisory to the District Complaint Committees, was created by the Executive Council in March of that year. President Harvey M. Johnsen appointed the members of this committee—seven in all—one representing each Supreme Court District, and one at large. Mr. Raymond G. Young, our present Chairman, is the only living member of that original committee. Present members of the Advisory Committee, other than Mr. Young, the Chairman, are Charles F. Adams, President of the Association, appointed by the Supreme Court in 1951; “yours truly,” appointed in the same year; Lester A. Danielson, appointed in 1957; Bert L. Overcash, appointed in 1964; William J. Baird, President-Elect of this Association, appointed in 1964; and Thomas F. Colfer, appointed in 1967.

Each District Court district, likewise, has a Committee on Inquiry, consisting of three members, and alternates. Complaints are presented to and heard by those committees.

The Advisory Committee, based on the record submitted to it, and sometimes based on additional evidence presented before it, as in an appellate tribunal, determines whether or not there is probably cause to certify the matter to the Supreme Court, which alone has jurisdiction to take disciplinary action.

The Advisory Committee also has rendered numerous advisory opinions on questions presented by individuals concerning their own particular problem, prospective in nature only, concerning proper ethical conduct on given sets of facts. About 125 such opinions have been rendered by the Advisory Committee since 1938. During that period the Supreme Court entered about 40 disbarments, voluntary and otherwise, and more than a dozen temporary suspensions from practice of licensed attorneys. This machinery will continue to function as in the past if the new Code is adopted. The only difference will be that the new Code, rather than the old Canons, will constitute the basis for its operation and action.

The format of the new Code is vastly different from anything which we have heretofore seen. The Code reduces the former 47 Canons to 9, which state the basic obligations of lawyers. Each of these nine Canons, like Gaul, is divided into three parts, viz: (1) The Canon itself; (2) ethical considerations; and (3) disciplinary rules. The disciplinary rules are the enforceable standards of conduct, whereas the ethical considerations simply state the principles

upon which the disciplinary rules are based. Thus they in effect tend to interpret the intent of each of the nine basic Canons for the guidance of practitioners.

It seems that the new Code, therefore, is designed, first, as an inspirational guide to the members of the profession, and second, as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the disciplinary rules.

The Canons state, in general terms, the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. Accordingly, they embody the general concepts from which the ethical considerations and the disciplinary rules are derived.

On the other hand, the ethical considerations are, more or less, specific in nature. They constitute a body of principles upon which the lawyer can rely for guidance in specific situations. They represent the objectives toward which every member of the profession should aspire. In other words, they may be considered "aspirational" in character.

But the disciplinary rules, unlike the ethical considerations, are mandatory in character. A lawyer violating one of these rules would be subject to disciplinary action. They represent the minimum level of conduct of a lawyer.

Although the Canons, ethical considerations, and disciplinary rules cannot apply to non-lawyers, nevertheless the lawyer is expected to maintain this level of conduct among his professional employees. Thus a lawyer becomes responsible for the conduct of his employees and associates in the course of his professional representation of his client.

The Code, however, makes no attempt to prescribe either disciplinary procedures or penalties for the violation of a disciplinary rule; nor does it undertake to define standards for civil liability of lawyers for professional misconduct. All of this becomes the responsibility of the court, including the severity of the punishment, if any, inflicted in the case of a transgressor or a recidivist.

Thus the Code simply points the way to the aspirer and provides standards by which to judge the transgressor. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles will always be present to guide him. It was the hope of the special committee that, within the framework of these principles, a lawyer might, with courage and foresight, be able and ready to shape the body of the law to the ever-changing relation-

ships of society. However, it is recognized that in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide a lawyer the requisite incentive for the highest possible degree of ethical conduct, reflected in the Code of Professional Responsibility now being offered for consideration and adoption.

More than 10,000 copies of the preliminary draft of the new Code were distributed last January for the consideration of the profession, with the view to action by the ABA House of Delegates toward its adoption at the annual meeting held at Dallas last August.

In pursuance thereof, the President and Executive Council of the Nebraska State Bar Association placed the study of these recommendations of the special committee in the hands of another special committee in Nebraska, consisting of the members of the State Advisory Committee previously named, supplemented by two able members of the Bar, namely, Thomas M. Davies of Lincoln, and Alfred G. Ellick of Omaha.

On March 10, 1969, Mr. Young, as Chairman of the Nebraska State Bar Association Special Committee, prepared and forwarded the report of this special committee, concluding with the statement that "The footnotes seem to me to be a very important part of this new Code. I hope that the ABA Special Committee will reconsider its decision, announced on Page 2, to delete the footnotes from the final report." It is noted that in the final draft, issued on July 1, 1969, the footnotes were retained and are included therein.

All members of this Nebraska special committee read and made a careful study of this 136-page volume, designated as the "January 15, 1969 Preliminary Draft." They expressed the view that the Code is an excellent production and sets forth with admirable clarity and completeness the best thinking of the profession in the field of ethics. As Mr. Young further stated, "The annotations especially are a manifestation of the fine scholarship and the profound research which went into the completion of this most important work and make it of great historical value."

Our special committee therefore not only prepared an analysis of Nebraska disciplinary procedures for the benefit of the ABA Special Committee on the Evaluation of Disciplinary Enforcement, but it also compiled materials and responses to questionnaires submitted to aid in the re-evaluation of the Canons, and the improvement of ethical standards and procedures.

Our special committee also participated in the two-day meeting

in Denver of this ABA Special Committee. Noteworthy is the fact that almost all of the changes recommended by our special committee were embodied in the final draft of the new Code issued July 1, 1969.

Not only that, but Nebraska was further signally honored by the appointment of our own President, Charles F. Adams, as a member of a special nine-member committee of Bar leaders appointed by the President of the ABA to seek early adoption by the states of the new Code. As you have already heard, yesterday the House of Delegates passed a resolution approving the new Code and directing our Association to petition the Supreme Court of Nebraska to substitute the new Code for the Canons of Professional Ethics now in force.

The Code of Professional Responsibility as approved by the American Bar Association contains nine Canons, which are as follows, to wit:

Canon No. 1: "A lawyer shall assist in maintaining the integrity and competence of the legal profession."

Canon No. 2: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."

Canon No. 3: "A lawyer should assist in preventing the unauthorized practice of law."

Canon No. 4: "A lawyer should preserve the confidences and secrets of a client."

Canon No. 5: "A lawyer should exercise independent professional judgment on behalf of a client."

Canon No. 6: "A lawyer should represent a client competently."

Canon No. 7: "A lawyer should represent a client zealously within the bounds of the law."

Canon No. 8: "A lawyer should assist in improving the legal system."

Canon No. 9: "A lawyer should avoid even the appearance of professional impropriety."

As previously stated, each Canon includes certain ethical considerations and disciplinary rules, supported copiously by legal and other authorities. Time, of course, will not permit a detailed discussion of each set of ethical considerations and disciplinary rules connected with each of the Canons. An effort will be made, however, to summarize, at least to some extent, what is contained

in some of these ethical considerations and disciplinary rules supporting these nine Canons.

For instance, under Canon No. 1 there are six ethical considerations on the subject of maintaining the integrity and competence of the legal profession. Reference is made to the requirements of integrity, competence, and good moral character, as well as mental and emotional stability. High standards of professional conduct are encouraged, particularly obedience to law, since this exemplifies respect for law. To lawyers especially, respect for the law should be more than a mere platitude.

Under this Canon three principal disciplinary rules are set forth, each having several subdivisions. One emphasizes the consequences of admitting individuals to the Bar improperly. Another describes the types of misconduct which would justify disciplinary action. A third requires the disclosure of certain unprivileged knowledge of violations by lawyers to the proper authorities.

Several examples of the new disciplinary rules, variously referred to in the Code, are:

(1) Lawyers shall not compensate representatives of the press, radio, television, or other communication media for publicity in a news item.

(2) A lawyer may use an earned degree or title derived therefrom indicating his training in the law. This will permit use of the "Juris Doctorate" or J.D. degree on business cards and letterheads.

(3) Group legal service arrangements are permitted only in the case of non-profit organizations, and only to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities.

(4) The Code will allow certification of specialists in particular fields of law at the state level. This will authorize states to initiate pilot programs of specialization. Prior provisions permitting patent, trademark and admiralty lawyers to so designate their specialties are retained.

(5) Division of legal fees with lawyers who are not partners or associates in the billing firm is forbidden, unless a client consents to employment of another lawyer, after full disclosure; the division shall be in proportion to services performed and responsibility assumed, and the total fee must not exceed reasonable compensation for all legal services rendered the client.

(6) Public prosecutors are required to reveal evidence to defendants which tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

(7) Part I of the ABA Minimum Standards for Criminal Justice relating to fair trial and free press, which deal with rules governing the activities of lawyers, are incorporated in the Code.

(8) A lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

Canon No. 2, to assist in making legal counsel available, is supported by 32 ethical considerations and by 10 disciplinary rules, the latter with numerous subdivisions, which are supported by 147 notes of authorities. This Canon states that the important functions of the legal profession are: (1) To educate laymen to recognize their legal problems; (2) To facilitate the process of intelligent selection of lawyers; and (3) To assist in making legal services fully available to laymen.

Among the ethical considerations discussed under this Canon are (1) The recognition of legal problems by laymen; (2) The selection of a lawyer, generally, and the ethical problems involved in professional notices and listings; (3) The financial ability to employ counsel, generally; persons able to pay reasonable fees; and persons unable to pay reasonable fees; and (4) Duties involving the acceptance of employment and the retention of employment by lawyers, even though such employment may be unattractive and repugnant to the lawyer concerned. The disciplinary rules under this Canon specify the kinds of publicity involving the lawyer which are permissible and which are prohibited; discusses professional notices, letterheads, offices and law lists in considerable detail, as well as problems arising from recommendations of professional employment; suggesting the need of legal services; the extent to which one can publicly place a limitation on his practice; fees for legal services; the problems involved in the division of fees among lawyers; agreements which restrict the practice of a lawyer in an area by reason of partnership terms and conditions; when a lawyer may refuse to accept employment; when he may withdraw from employment; when he must mandatorily withdraw; when he may permissively withdraw; all of which have numerous subdivisions going into considerable detail concerning specific situations.

With respect to Canon No. 3, preventing the unauthorized practice of law, one of the ethical considerations states that "because

of the fiduciary character of the attorney-client relationship and the inherently complex nature of our legal system, the public can be assured of the requisite responsibility and competence, only if the practice of law is confined to those who are subject to the requirements and regulations imposed upon the members of the legal profession.

Other enumerated ethical considerations discuss other facets of this Canon, such as a non-lawyer may represent himself, for then he is exposing only himself to possible injury; or a lawyer may properly delegate tasks to clerks, secretaries, and other lay persons, but such delegation is proper only if the lawyer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Such delegation thus enables a lawyer to render legal service more economically and efficiently.

The disciplinary rules emphasize that a lawyer shall not aid a non-lawyer in the unauthorized practice of law; nor shall he share legal fees with a non-lawyer, except in certain specified situations; nor shall he form a partnership with a non-lawyer when any of the activities of the partnership shall consist of the practice of law.

Canon No. 4 states that a lawyer should preserve the confidences and secrets of his client. The general rule is that a lawyer may not divulge confidential communications, information, and secrets imparted to him by the client or acquired during their professional relations, unless he is authorized to do so by his client. This obligation continues after the termination of his employment. It is felt that to permit the attorney to reveal to others what is so disclosed would be not only a gross violation of a sacred trust upon his part, but it would utterly destroy and prevent the usefulness and benefits to be derived from professional assistance.

The disciplinary rules define what is meant by a "confidence" and what is meant by a "secret." They also spell out when a lawyer shall not reveal a confidence or secret of a client and also when he may so reveal such information. They further provide that a lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client.

For example, a lawyer might provide for the personal papers of a client to be returned to him, due to death, disability, or retirement of the lawyer; or for the papers to be delivered to another lawyer; or to be destroyed. In determining the method of disposi-

tion, the wishes and instructions of the client should be the dominant consideration.

Canon No. 5 states that a lawyer should exercise independent professional judgment on behalf of a client. This Canon is supported by 24 ethical considerations, by 43 footnotes of authorities, and by 7 disciplinary rules, among which are the following:

(1) Refusing employment when the interests of the lawyer may impair his independent professional judgment.

(2) Withdrawal as counsel when he becomes a witness.

(3) Avoiding the acquisition of an interest in the litigation.

(4) Limiting business relations with a client.

(5) Refusing to accept, or continue employment, if the interests of another client may impair his independent professional judgment.

(6) A lawyer who represents two or more clients shall not make an aggregate settlement of the claims of, or against, his clients unless each client has consented to the settlement, after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and the participation of each person in the settlement.

(7) Avoid being influenced by others than the client, such as permitting one who recommends, employs, or pays him to render legal services for another, to direct, control or regulate his professional judgment in the rendition of such legal services.

One of the ethical considerations states that the professional judgment of a lawyer should be exercised within the bounds of the law, solely for the benefit of his client, and free of compromising influences and loyalties. Neither his personal interests nor the interests of other clients nor the desires of third persons should be permitted to dilute his loyalty to his client.

By the way, there is an excellent and very recent ANNOTATION consisting of ten pages of briefs and materials in 28 A.L.R. (3rd) 389, on the subject of MALPRACTICE—LIABILITY OF ATTORNEY REPRESENTING CONFLICTING INTERESTS. This annotation also cites numerous other annotations on this same general subject in A. L. R., in Drinker, and in several Law Review Articles on this subject.

Canon No. 6, which states that a lawyer should represent a client competently, includes an ethical consideration which indicates that "because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should

strive to become, and remain, proficient in his practice and should accept employment only in matters which he is, or intends to become, competent to handle." In fact, a New York court, mentioned in the footnotes, stated that if an attorney is not competent to perform the work skillfully and properly, he should not undertake the service in the first place.

The disciplinary rules state that a lawyer shall not handle a legal matter which he knows, or ought to know, that he is not competent to handle, without associating with him a lawyer who is competent to handle it; or handle a legal matter without preparation adequate in the circumstances; or neglect a legal matter entrusted to him; nor shall a lawyer attempt to exonerate himself from, or limit his liability to his client for his personal malpractice.

In the 1967-1968 annual report of the Committee on Grievances of the Bar Association of the City of New York, of the 828 offenses by lawyers against clients, 452, or more than half of all such offenses, involved neglect on the part of the lawyer. With respect to competence it has been stated that "every practicing lawyer encounters problems involving changes and developments in the law, and is often perplexed with his own inability to keep up, not only with the changes in the law but also with changes in the lives of his clients and their legal problems." Accordingly, one of the ethical considerations under this Canon states that "while the licensing of the lawyer is evidence that he has met the standards then prevailing for admission to the Bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified." Indeed, the disciplinary rules, as previously summarized, are rather strict in this regard.

Canon No. 7 states that a lawyer should represent his client zealously within the bounds of the law. Set forth therein are 39 ethical considerations, 10 disciplinary rules, and 92 footnotes. The only way that it can be fully understood is for each of us to read it in its entirety.

The disciplinary rules thereunder cover a multitude of subjects, such as what a lawyer may not do, intentionally; what he may do; what kind of cases he may not file—for example, those of a harassing or a malicious nature; the manner of the performance of one's duty as a public prosecutor or other government lawyer; how to communicate with one having an adverse interest; the prohibition against threatening criminal prosecution solely to obtain an advantage in a civil matter; what constitutes proper trial conduct; limitations on trial publicity; proper and improper communication with, or investigation of, jurors; contacting and dealing with witnesses

and duties with respect to evidence; and prohibitions against certain contacts with judges, officials or employees of a tribunal.

A lawyer should never encourage or aid his client to violate the law and avoid punishment therefore. Representing his client zealously does not mean that he should ignore his concurrent obligation to treat with courtesy and consideration all persons involved in the legal process and to avoid the infliction of needless harm. He has a duty to argue the law most favorable to his client. However, if the adversary does not bring it out, he, nevertheless, has a duty to advise the tribunal of law, directly adverse to the position of his client, of which he has knowledge, but having done so he may challenge its soundness. He cannot suppress evidence where there is a legal obligation to reveal or produce it. He should not advise, or cause a person to secrete himself, or to leave the jurisdiction for the purpose of becoming unavailable as a witness.

The use of fraudulent, false, or perjured testimony, or evidence, is prohibited. A lawyer who knowingly participates in the introduction of such testimony or evidence is subject to discipline. So long as the lawyer knows that the testimony or evidence is not false, fraudulent or perjured, he should present any admissible evidence which his client wishes to have presented, after advising him of the possible consequences thereof.

Canon No. 8 states that a lawyer should assist in improving the legal system. This system should function in a manner that commands public respect. Lawyers should encourage needed changes and improvements. They should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so. Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.

The disciplinary rules under this Canon emphasize that a lawyer should not use his public position to obtain a special advantage in legislative matters where he knows that such action is not in the public interest; nor should he accept anything of value where it appears that the offer is made for the purpose of influencing his action as a public official. It is improper for a lawyer to make false statements concerning the qualifications of a candidate for a judicial office; nor should he make false accusations against a judge or other adjudicatory officer, elected or appointed to office.

Canon No. 9 states that a lawyer, like Caesar's wife, should avoid even the appearance of professional impropriety. Our Supreme Court in 1957 stated that an attorney should not only avoid im-

propriety but should avoid even the appearance of impropriety. He should promote public confidence in our system of law. That confidence may be eroded by irresponsible or improper conduct on the part of lawyers.

The disciplinary rules under this Canon prohibit a lawyer from accepting private employment where he had substantial responsibility while he as a public employee, or where he had previously acted in a judicial capacity. He should not state, or even imply, that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official.

The lawyer should keep the funds of a client in separate, identifiable accounts in the state where his office is located. He must notify the client of the receipt of funds or other properties belonging to him and identify and label them promptly upon their receipt and put them in a safe place. He must maintain complete records of all such funds and properties and render appropriate accounts to his client regarding them. And when requested by the client, he must deliver to him all funds and properties which the client is entitled to receive.

As most appropriately stated by the Connecticut Court, "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest."

The last ethical consideration under this Canon summarizes very well, it seems to me, the obligation of the lawyer in the final analysis:

"Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized Bar through the devoting of his time, efforts, and financial support, as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the very appearance of impropriety."

These nine Canons, if adopted, will constitute the "Ten Commandments" of the lawyers in Nebraska. It has been most difficult to analyze and summarize this Code of Professional Responsibility, now consisting of 125 printed pages, in this short period of time. You undoubtedly have, and will continue to have, many questions.

Most of the answers to your questions, I am confident, you will find in this publication, which is most meticulously indexed.

President Charles Adams asked me to remind you again that each one of you, each member of the profession in Nebraska, will receive a copy of this Code of Professional Responsibility without cost.

Lewis F. Powell, Jr., who appointed the original Special Committee, stated that the new Code, which will become effective on January 1, 1970, is designed to safeguard the public interest. He called for its enforcement with vigor and impartiality.

President Nixon, in telegraphing his greetings to the last annual meeting of the American Bar Association, stated that he was deeply aware of the great success realized toward the promulgation of the Code of Professional Responsibility and toward the increased effectiveness of our system for enforcing Bar discipline.

CHAIRMAN OVERCASH: I know that that new Code is going to be a very important part of all of our professional lives.

Before we adjourn may I caution you that tomorrow morning the program is to start at nine o'clock. We are bringing out tonight by plane, Professor Bishop of Yale University who is the leading authority in a very dynamic field of law. We have a panel of distinguished American lawyers tomorrow morning, all of whom will be discussing problems in the areas set forth in the program. So we will see you in the morning at nine o'clock.

...The session adjourned at four forty-five o'clock...

ANNUAL ASSOCIATION DINNER

THURSDAY NIGHT

October 30, 1969

The annual Association dinner for members and their ladies was presided over by President Charles Adams.

PRESIDENT ADAMS: Ladies and gentlemen, we have had a very delightful relationship with our news media, and they have asked us to vary our program just a little bit tonight in order that Nebraska in general and the world at large may have some knowledge of what we are going to do. I am going to ask if you will be kind enough to withhold sharing the further part of your dessert so that one of our radio stations may make a tape, both audio and

video, of the presentations which we are privileged to make tonight. After the presentations we will finish our dessert and go ahead with the rest of the program.

I am going to ask at this time for Mr. Ben Goble of the Lincoln Police Department to come forward. Ben, I have in my hand an award that I am privileged to present to you and I would like to read it:

“Mr. Benjamin A. Goble,
Coordinator of Police and Community Relations
Lincoln, Nebraska

Dear Mr. Goble:

The Nebraska State Bar Association's Award of Appreciation is given in recognition of services by an individual, not a member of the Bar, who has helped in an outstanding way to create better public understanding of the legal profession and the system of law and justice within which it operates.

It is my privilege, as President of the Association, to present this award to you in recognition of your many years of involvement in activity devoted to public understanding of liberty under law. The hundreds of presentations you have made before high school audiences and your development of respect for the law among young people speaks eloquently of your personal dedication to the ideals for which this award stands.”

Signed by the President of the Association

Mr. Goble, I present you this award.

BENJAMIN A. GOBLE, Lincoln: President Adams, Members of the Bar, Ladies, Guests: To stand before an audience is not new to me; to receive awards such as this is new to me, so I have two reasons for being a bit nervous. The first I have already mentioned, because I'm not used to receiving awards; the second, I do believe in honesty when I speak to my audiences, whether they be adult or high school, and I want you to know that this is the first time I have ever been in a black tie. If something doesn't get loose before I get back to Police Headquarters in Lincoln, it will be a small miracle.

I had anticipated just a few notes and then I remembered a situation of a young man from Texas—I will say this on behalf of the gentleman who will be speaking a little later to you—and he was to receive an athletic award. He rehearsed for this, rehearsed

for several weeks, knowing it was coming up, and he didn't want to make any mistakes. He arrived at the podium and at the microphone in front of a large group and he looked down at the group and said, "You folks all know I don't appreciate this, but I deserve it from the bottom of my heart."

This is the reason I didn't do much preparation for tonight. But just let me say this, if I may, not only for Ben Goble and Mrs. Goble, who is very patient with me—has to be, the number of hours I am gone and the nights and places I do have to go—but on behalf of our Department in Lincoln, Nebraska, the citizens of Lincoln, Nebraska, and I think more than that, the young people of the State of Nebraska I want to say this: I don't know if you have been as many places as I have, and I have been in boiler rooms and small attics, or at least they appear to me that way in some small schools in this state, about eighty communities to be exact, and I cannot help but be impressed, in spite of our problems nowadays, and we do have young people who are in trouble, we do have young people needing guidance, but for what it is worth to you as citizens of what I think is the finest State in the United States, I want to tell you something—we have the finest young people that I have ever seen, and I have traveled in foreign countries as well as the States in the United States, we have the finest young people there are right here in the State of Nebraska.

Thank you very much.

PRESIDENT ADAMS: The President's Award is to be given to the Honorable Roman L. Hruska, United States Senator. I will read this to you:

"Dear Senator Hruska:

The Nebraska State Bar Association's President's Award is given to a member of the Bar 'in recognition of his outstanding contribution for the furtherance of public understanding of the legal system and confidence in the profession.'

We present this award to you with pride and respect. Your distinguished career has been highlighted by many services to the appreciation and understanding of the law.

For your work on the Judiciary Committee, and especially for your leadership in the adoption of the Criminal Justice Act, we are deeply grateful.

By this Award we express to you our appreciation for your dedication to the highest ideals of our profession."

SENATOR ROMAN L. HRUSKA: Thank you, President Adams. Members and Guests of the Nebraska State Bar Association: I take a lot of pleasure, "Chick," in accepting this Award. Notwithstanding my seventeen years in the Congress, I still consider myself a lawyer and a member of the finest profession in the world, I do believe. And it is a great honor to be recognized by one's fellow members of that profession. Of course, I would say that it would be more meek to accept this, not as a personal award but as one that would be jointly received and considered as part of the reward of my sixteen colleagues on the Judiciary Committee, because there we faced a tremendous volume of legislation, and it is really perhaps the greatest volume of legislation-producer of any of the committees in the Senate and perhaps of the Congress. The scope is wide, the variety is great—patent matters, customs matters, immigration, anti-trust, criminal laws of all kinds, constitutional amendments, civil rights—you name it and we've got it! We know that it is very important that we pursue these duties carefully and diligently. We know also that there isn't much political matzos in most of the things that we work on, and yet it is important that they be pursued, and pursued well.

Now, there is one who is no longer serving on that committee, who is no longer there to share our triumphs and our defeats, and that was the man who sat to my right for thirteen years. I was next to Senator Dirksen in seniority, and of course he was a tremendous personality, one who was of great courage and certainly of great conscience and compassion, and, as a teacher, notwithstanding the many fine teachers I have had both in school and in the practice, perhaps the best I have ever known.

I know that the man to my left here has undertaken a committee assignment for the American Bar Association about the time Senator Dirksen started his career on the Judiciary Committee, and he knew him well. And I do believe our guest here, the honored President of the ABA, perhaps has spent as many hours laboring for the Judiciary Committee as perhaps some of its own members, and that is not telling tales out of school, I am sure.

But, really we have had many things come before us. The Criminal Justice Act is one of them, and it shows a history of legislation that is not too untoward. It was passed five years ago. We are now engaged in revising it and bringing it up to date and profiting by the mistakes that we see in it, either in its application or in its text, and we hope to have a revised Criminal Justice Act either this year or first thing next year.

The scope of the work I've referred to includes, among other things, an effort which is now two and one-half years of age,

and it will be another year or year and one-half before we complete it, and that is the revision and recodification of the Criminal Law, done by a Commission, and the first time in twenty-seven years that it will have been done. It is a tremendous task, and yet one which makes me grateful for the training I got here in this state and in this city as a lawyer, because in some small measure I can contribute to its progress.

I would like to make this acknowledgement, too, the tremendous part that the American Bar and the organized Bar generally of America play in the national legislative process, and again I refer to the present President and his predecessors, because each of them has gone into it with a spirit of dedication which is truly admirable and in keeping with the best traditions of the Bar.

Again, "Chick," thank you very much for this fine memento. I am very grateful for it.

PRESIDENT ADAMS: At this moment we will excuse the man from the TV station and you are free to participate with your dessert.

Now, ladies and gentlemen, I think we can get this show on the road.

Bill Fraser over there was afraid that I wasn't going to introduce anybody, but I am. I'm mindful of the guy who almost forgot to introduce his wife, and finally he carried it too far. He said, "And now the lady with whom I've spent twenty of the happiest years of my life—considering we've been married forty years, that's pretty damned good!"

So up here we have some very distinguished people, and down in front we have some very lovely ladies. They belong to one or the other of these people. As I present their husbands, I would like very much to have their lady stand. I think we will do it in about two or three groups. If I did it one at a time somebody would get more applause than another and we would have problems to solve. So I am going to start over this way and present to you, and will you please remain standing until we have about half this table up, and then if the audience would like to greet them, you may do so:

Bert L. Overcash and Claire! Bert is the Chairman of the House of Delegates of the Nebraska State Bar Association. Will you please remain standing, Claire and Bert.

C. Russell Matson, the immediate past President of the Nebraska State Bar Association.

Raymond M. McGrath and his wife Lena—he is President of the Omaha Bar Association.

Clarence A. Davis and Florence—a former member of the Board of Governors of the American Bar Association.

Deming Smith and Charlene—he is President of the South Dakota Bar and hails from Sioux Falls, formerly from Iowa.

Edgar A. Boedeker of Clayton, which, as I understand it, is almost a suburb of St. Louis, is the President of the Missouri Bar. Mrs. Boedeker is detained because they have a brand new grandchild in the family.

Judge Maurice A. Wildgen and his wife Pauline—President of the Kansas Bar. They come from Larned, Kansas.

The immediate past President of the Nebraska District Judges Association, the Honorable Ernest A. Hubka of Beatrice, and his wife Thelma.

Now, down this way we have John J.—that's "Jack"—Wilson and Sue. Jack is the Association's Delegate to the House of Delegates of the American Bar Association from the Nebraska Association.

William J. Baird and his wife Grace. Bill is President-Elect of the Nebraska State Bar Association. Bill, I have here a gavel which you will get tomorrow, but not tonight. It has your name on it and I want you to be sure to be back here about four o'clock tomorrow.

Honorable Roy E. Willy, also from Sioux Falls, South Dakota. Roy is "Mr. ABA" from South Dakota—and his wife Jo.

From the good State of Colorado, near Denver, the President of the Colorado Bar, Richard H. Simon and Barbara.

From Iowa, Mason City, that is, Don W. Burington, and Jean. He is President of the Iowa State Bar Association.

The immediately retiring past President of the County Judges Association of Nebraska, from Fairbury, the Honorable William J. Panec, and Carolyn.

The Chief Justice of the Supreme Court of Nebraska, the Honorable Paul W. White, and Carol.

We have with us a number of distinguished members of the judiciary, and I should like to present, and if you will greet them as a group, and I would prefer that they remain standing until all have been introduced:

From the Supreme Court of Nebraska, the Honorable Edward F. Carter

The Honorable Harry A. Spencer and Leone

The Honorable Hale McCown and Helen

The Honorable Leslie Boslaugh and Betty

The Honorable John E. Newton.

And from the Federal Court, the Honorable Harvey M. Johnsen, Eighth Circuit Court of Appeals

The Honorable Robert VanPelt, United States District Judge

The Honorable Richard E. Robinson and Mrs. Robinson—United States District Judge

Judge John W. Delehant and Mrs. Delehant—United States District Judge

And with them, the Senior member of the Past Presidents' Association of the Nebraska Bar, the Honorable Anan Raymond of Chicago.

Will you greet them, please.

We have a number of the members of our Executive Council here, and I would like to have you meet:

From Omaha, Harry Cohen and Elberta

From Osceola, "Alex" Mills and Dorothy

From Falls City, "Jack" Weaver and Marguerite

And the President-Elect designate of your Association, Thomas M. Davies and Faith.

Will you greet them, please.

I have some very special guests. There are a couple of absent places over there. I was hoping to have my younger daughter and her lawyer husband from San Francisco with us tonight, but they decided that their first baby was going to be born a couple of weeks ago and it seems that little Matthew isn't able to travel this far, so Ruth and Gene are not here. But I do have my cousin from Lincoln, a member of the Nebraska Bar, Alfred H. Adams and Dorothy. Will you stand and remain standing, please.

With them I have five-sixths of the Hamilton County Bar. The remaining one-sixth is John Newman. He and his wife Catherine, for health reasons, are unable to be present, but I would like to have you meet:

Charley Whitney and Emmy Lou from Aurora

Harold Powell and Lydia from Aurora

Bill Mersch and Marlene from Aurora

And my partner, Larry Carstenson and Barbara from Aurora.

Would you greet them please.

This morning it was our privilege to present a number of certificates to those of the members of our profession who have practiced at the Bar fifty years or more. Some of them are in the audience tonight. I would be very delighted if they would stand, with their wives, and be recognized—our Fifty-Year members, please! You saw standing Judge Carter and Judge Johnsen who received their certificates today. You saw Bill Frazer over there who received his certificate about thirty years ago, but he's still going strong.

I should like to pay particular tribute to the members of the Omaha Bar and their ladies for their delightful work in hosting such an affair as this. It takes a lot of nitty-gritty. I don't know whether it is more nitty or more gritty but, believe me, without them we could not possibly have the delightful time we have had with you.

There are four ladies down in front who have not yet been presented. I would like to have these four ladies stand and remain standing: Mrs. Ben Goble, Clarice; Mrs. Roman L. Hruska, Vicky; Mrs. Bernard Segal, the wife of the President of our ABA, Gerry; and somewhere here, my wife Trudy.

This noon our special guest, and all day today and part of tomorrow our special guest, and we are highly honored to have a man take this much time from an extremely busy schedule, I present to you, for a bow, the Honorable Bernard G. Segal, President of the American Bar Association.

I like to think of myself as a student of geography. There were two towns whose names rolled off the tongue so delightfully that I have never forgotten, Apalachicola, Florida, and Nacogdoches, Texas. I have had friends in both towns, but my friend in Apalachicola, Florida, died some years ago. I hope that my friend from Nacogdoches, Texas remains alive for another forty-five minutes. So it is my pleasure—and his subject tonight will be "That's My Opinion . . . I Think"—to present to you the Honorable Bob Murphy of Nacogdoches, Texas.

THAT'S MY OPINION I THINK

Bob W. Murphey

Mr. President, Distinguished Guests, Ladies and Gentlemen: Is this microphone working now? I had better quit asking that. I was down in Fort Worth about six months ago talking to the Texas and Southwestern Cattlemen's Association and they had been having trouble with the apparatus. It had been wheezing and, I believe they call it feeding back and squeaking. I had prepared what I thought was a major policy address and I wanted everybody to hear so I asked that same question that has been asked ever since these things have been in existence, "Can everybody hear?"

I never will forget. It was a tremendous ballroom in the Texas Hotel there at Fort Worth. They had 3,000 people there seated to eat that night. There was an old boy 'way at the back, and when I asked, "Can everyone hear?" he hollered up and said, "I can't hear, but go ahead. There ain't no need in *everybody* suffering." So if any of you are within sufferin' distance, I'll get this over as quickly and as painlessly as possible.

I have enjoyed meeting all the dignitaries as they have been introduced. I was a little surprised that you didn't introduce any tappers. Probably you don't have tappers in your Bar. Is this true? You ought to appoint some. They come in handy. We have them in our Bar.

They originated in the rural churches of East Texas. The tapper is an important man in church. He is right up with the elders and the deacons in the hierarchy of the church, and he has an important job. He stands at the rear of the sanctuary during the service. He carries a rod, a little bigger than my thumb, about like a broom handle. It's about four or four and one-half foot long. He stands at the rear of the church and observes the congregation during the service. If he catches anybody dozing or not paying strict attention to the pulpit, he comes down the aisle quietly and taps that offending person on the head. He is called a "tapper."

Not too long ago a feller from Dallas came down into East Texas to visit some of his country kinfolk. He was suitcase company. He come for the week end. This is the worst kind. I don't mind a fellow driving up, getting out and setting a spell, but when they open up the back of the car and start setting them suitcases out!

They took him to church that Sunday, and about the first hour and one-half of the sermon this feller from Dallas lost all interest

in what was going on. The tapper seen him, but he hated to hit a visitor. But he also recognized his obligations to the church. So he come down the aisle quietly and he reached over and hit this fellow from Dallas on the head pretty smartly a couple of times. This feller set right straight up, his eyes got about as big as one of these coffee cups and he turned around to the tapper right quick and said, "Brother, you'd better hit me again. I can still hear him."

So when I'm speaking it wouldn't be such a bad idea to have some tappers.

I do come from the great State of Texas. I'm proud to be speaking to fellow lawyers. You know, I go around a little bit. I'm not a good speaker. You've already discovered that. But I am *cheap*, and I get invited around. First of all usually when they introduce me they say, "He's from Texas." Well, when they say that, everybody kind of slides down in their seats, you know. The next thing they hit me with is that I'm a lawyer, and they go a little lower in the seat when they say that. Then when they say that I've been in politics, that's when they go under the table. That's three strikes right there.

Whenever you think of Texas, I know what pops in your mind. You think of braggarts, loudmouths, and rich oil people with depletion papers stuck in their pockets. We do have some wealthy people.

There was a feller went up to New York not too long ago, an oil man. They wined him and dined him up there. He got on the plane to go home and he said, "Boys, I'll never forget your hospitality. I deeply appreciate it. If you're ever down in Texas I want you to come by my office. I want to reciprocate. We'll go out to my fourteen year old's ranch. The boy has got 130,000 acres and some of the finest white-faced cattle you ever saw." He said, "What makes me so proud of him is he *earned* it every bit himself."

These fellows were amazed. They said, "How can a fourteen year old boy earn all that?"

He said, "He got four A's and a B on his last report card."

I am not one of those kind. I work hard for what I can get. I'm not a braggart either. I'm not going to tell you a thing on earth about Texas. A lot of people get up and brag about the state. Not me. I do bring you greetings from the largest State in the Union. You all laugh. You're all thinking about Alaska, aren't you? Well, let me tell you something about Alaska. Out in my part of the country we're great fishermen. We love to fish. There's an old saying down there that you can't judge the size of a fish by the amount of ice you pack it in." And if there ever comes a thaw in Alaska, it may not be as big as Connecticut.

But there I go. You'll say, "He said he wasn't going to brag, and he's bragging." No, seriously, we do have a lot to brag about. For example, *this* is one of my better audiences. This is an intelligent audience. You all are historians, lawyers, statesmen, all kind of folks here. How many of you knew that the Father of this country, George Washington, was born in Texas? Raise your hands. You see, there you are! We don't brag as much as we could. You very seldom ever hear that. Let me tell you the true story. You can take this home if you don't get nothin' else out of this talk.

Old Man Washington and Old Lady Washington, George's Mama and Papa, homesteaded a section of land west of the Pecos River in West Texas. Little George was born in that plains country out there. It's hot and it's dry, no vegetation, no trees at all, very little brush, a semi-arid country out there.

Old Man Washington built a sod house with his own two hands, and the only vegetation at all around the house was an old cactus bush in the front yard. Old Man Washington loved that cactus bush. He would prune it and fertilize it and water it, and it cast a purty good shadow on the first two steps of the porch there.

One day Old Man Washington come out of the south pasture, and somebody had cut down the cactus bush. Here come little George and he said, "George, do you know who cut down the cactus bush?"

Little George looked at his Daddy and said, "Papa, I cannot tell a lie. I done it with my little bowie knife."

Then Old Man Washington went in the house and loaded up the bedstead, the mattress, all the chairs, and everything they owned and put it on a covered wagon, and that day the Washington family moved to the great State of Virginia. On the way, Old Man Washington told little George, he said, "George, anybody that cain't tell a lie ain't got no business livin' in Texas."

I have thoroughly enjoyed the hospitality I have received since my arrival in town. I was up at the good President's suite a little earlier. We were drinking some Pepsis, RC Colas, and things up there, and I saw something I hadn't seen in years, and it just brought back old times. I saw a Shut-Eye Drinker. Have you ever seen one? You pour him a drink of whisky and he shuts his eyes when it goes down. I asked one of them one time, I said, "Why do you shut your eyes when you take a drink of whisky?"

He said, "I learned a long time ago, son, whenever I look at it, my mouth waters and I don't want to dilute it none."

So there were several of them up there.

I have enjoyed your hospitality. I am always overjoyed to come to a Bar convention, more especially because it is kind of a family convention. Look at the ladies present here tonight. This is good. I go to a good many conventions and make a few little talks. I've said it before and I'm going to say it here again tonight, that it's the women that make for a good convention. And it's nice to have a few of the *wives* here, too."

I'm kidding, of course. I almost broke one of my standard rules. I do not tell jokes on the women folk, a lot of speakers do. They tell jokes on their wives and on their mother-in-laws and on their secretaries. But I do not. I *used* to, but I've quit that. I used to tell stories about the old boy who got a telegram that his grandpa was dying. He got on an airplane, flew out across the country, rented him a Hertz car, drove out to the old homestead, went running up to the stoop of the house, and the old country doctor was coming down the stoop. The boy went running up and said, "Doc, how's my grandpa?"

The doctor shook his head—you know, those shakes cost you about \$10.00 a shake—and he said, "Son, you came too late. Your grandpa has passed."

The boy took his hat off and put it over his heart. He said, "Doc, what were my grandpa's last words?"

The doctor shook his head again and said, "Son, your grandpa didn't have no last words. Your grandma was with him to the end."

I used to tell that kind of story but I don't tell them any more.

You know, I got to looking around and do you know, the women in the United States today are taking over. Now, don't laugh. This ain't the funny part. I was reading in the Kiplinger Magazine just the other day—now, Kiplinger knows everything; he lives in Washington, and he'll sell it to you, either by magazine or newsletter—and I was reading in his magazine and he says that the women of the United States today own—now get this figure—51.6 percent of all the stocks in American corporations. They own these big corporations. They are outliving you men. They're outsmarting us. They're getting this stock, and they're going to own the world if it lasts long enough.

This same article, and you remember this if you don't remember anything else I say tonight, this same article said that women in the United States today spend—this is going to amaze you—women *spend* eighty percent of the money spent in the United States. And I'm confident they're charging the other twenty percent.

But I have a high regard for the ladies, and I'm certainly not about to say anything against them. I wish my wife could have come with me. She's a Georgia girl, a little girl, about five foot one, wouldn't weight 100 pounds with eight Sears Roebuck catalogues under each arm—just a little thing. But she's a great aid to me, as I am sure your wife is to you. The only reason I enjoy her traveling with me, especially when I drive, when she goes with me she does all the driving, and all I have to do is just sit there and hold the steering wheel.

It has been said before and I am sure it is trite but I'm going to say it before I leave the subject. We have some important men, both on the platform and in the audience, men who have risen to high places in their profession, in politics, and in all fields of endeavor, I'm sure. As I say, it has been said before but I'm going to repeat it here tonight: Behind every successful man you're going to find—a surprised woman!

The legal profession is a great profession. I'm proud to be a part of it, as I am sure you are. We get down in the dumps sometimes. I know I do. I don't guess there's a job or an occupation or a profession that sometime during the day or week or the month or the year that you get down in the dumps. Maybe you're a little bit off balance at the bank, maybe some notes are coming due, maybe a client hasn't paid you, or maybe you lost that case that you knew you couldn't lose. So many things can happen, so our spirits go up and down. This is natural. It happens to lawyers as it does to everyone else. Wherever I go I try to tell the people I'm speaking to, to be of good cheer, not to get down in the dumps. Goodness knows, there's a lot going on in our nation and world today that we could be very morose and be in despair about. But whenever you look at your family and yourself and your finances and your job, where you are, where you're headed, and where you've been, always remember this: No matter how bad it might seem, and no matter how low you might get, there's somebody somewhere worse off than you are.

I tell this story to illustrate the point. It's a true story. I have a friend in Nacogdoches who works for the Highway Department. He goes out on the road and does hard, manual labor in the sun and in the rain and in the snow, working on the Highway Department gang. I think he holds a red flag. At any rate, this summer he was going out. They were building a new section of road west of town. He took his lunch in a little brown sack, like all of us have taken it at one time or another in our lives. If you were raised in the country I know you have. Probably in town, too. You know, you put it in a brown sack, and your mother would fold it over

three times. I don't know why that is. Not once or twice. Three times is the proper number of folds at the top of the sack. You would take your sack to school or to work or wherever it was.

Well, this old boy was taking his lunch, and every day when he would open up his sack, you know what he would have? Turnip green sandwiches. I don't know whether you all eat turnip greens in this part of the country, but I tell you, it don't take long to get a spate of turnip green sandwiches. Well, this old boy had this for a couple of weeks and finally he made up his mind. He said, "I ain't goin' to eat any more turnip green sandwiches." He said, "Tomorrow I'm goin' to steal somebody else's lunch."

Sure enough, when it come time to eat he ran over to the tree where they had them in the shade over there and he rushed over and got somebody else's lunch and ran under a culvert down there to eat it. He got down there and he very carefully started unfolding the top of the sack to look in to see what he had got. You know what he got? Eight hickory nuts and a hammer!

So whenever things get bad and you look at your place in life, just remember, someone else has got it worse.

Sit back for just one minute here and enjoy this with me. I did not come to bring any professional paper. I'm not going to talk on any legal subjects, but I will be quite honest about it, I don't know any more about the practice of the law than you all do. I do know this, that I enjoy speaking to Bar Associations, I guess, more than any other group, because as I say, I'm one of you. You'll notice he didn't tell any lawyer jokes when he introduced me. Usually they have got some old corny joke you heard the first year in law school to make fun of the lawyers and all. Goodness knows, we don't need to be made fun of. We're in bad enough shape without them jokes. I don't know what they think of lawyers in Nebraska, but down in the piney woods of East Texas where I practice we ain't too well thought of. Down there they say a lawyer is something like a bullfrog. They say all that ain't stomach is head, and that's mostly mouth.

Let me give you an idea of the profession down there. We had a jury trial not too long ago, called in about seventy-five or maybe a hundred veniremen, and of course I don't have to go into the mechanics of picking a jury. You know the mechanics, so I'll get to the point quickly. To a layman audience I have to tell them about the lawyers getting to examine the individuals. We ask them questions, you know—Where does he live? Whom did you marry? What lodges, clubs, fraternities, or groups are you a member of? What is your occupation, profession—a bunch of questions that

ain't got a thing to do with the qualifications to set on a jury, but I tell them we get paid by the hour and we go into these things.

Anyway, the plaintiff's attorney got up, you know, and he looked the panel over and right on front row center, a prospective juror, a little old hatchet-faced woman sittin' out there, a little old hat on top of her head, flowers growin' out the top of her head. She had her arms folded cross her chest, a stern look on her face. You could just tell from looking, *this* girl had come to *serve*. She was ready to do her duty for the state and the county.

He started out with her and said, "Little lady, first let me inquire if you happen to know the attorney representing the other side in this lawsuit. He's the gentleman sitting at the table over there. Do you know that attorney?"

She looked over there and said, "Yes. I know him. He's a crook!"

Well, this lawyer paused. He was glad to get his adversary identified for the remainder. He said, "Thank you, little lady." He said, "In all fairness, of course, I'll have to ask you if you happen to know me. I represent the other party seated at the other table."

She said, "Yes, I know you. You're a crook!"

Well, the old judge banged his little mallet and said, "Order in the court. Let's have order. I would like to see both lawyers here at the judge's bench."

Of course when the District Judge says, "Approach the bench," you go! This is an order from the king. Both lawyers come up before the bench—he'd been on the bench thirty years, loved, respected, admired by everybody—up for re-election. He got them lawyers up there in front of him and he leaned over and whispered to them, "If either one of you lawyers asks that woman if she knows *me*, I'm going to hold you in contempt of court."

I guess it might be appropriate, you know, I didn't get here until after lunch, and I slipped in down at one of the sessions and heard a very fine talk on ethics. The chairman was reviewing the ABA committee report on the nine Canons that they have adopted to govern the ethical part of our professional service, and it was very, very informative. I enjoyed sitting in on it. Of course every time I think about ethics I think of one of the finest lectures that I ever heard on political ethics, Senator, from a member of the Texas legislature. This old man had been in the legislature for twenty-odd years from far West Texas, and whenever a young man would get elected, the boys from law school that got elected to the House of Representatives, he would always take them off to the side and

give them a little lecture on their conduct and their deportment and what they should do and what they shouldn't do. One of the main points was this: "Young men, above everything else, be honest. Just take money from one side and stay with them."

Of course politics is a fine thing. I have sat on the platform with many distinguished statesmen, none of which I think any more of than your Senator from Nebraska. I think as I look at the political picture, where we're headed, what we're in, and so forth, I could probably make you a pretty good Republican talk tonight. People ask me as I go around over the country, "Well, what's politics like down where you live?"

I tell two stories that more or less cover the philosophy of politics in East Texas where I live, one being this: I was in the District Attorney's office about six years, and I used to get a lot of information from the "sitters" around the Court House. I don't know whether you have "sitters" in your county seat towns or not, the elderly gentlemen, retired, ain't got nothin' to do, so they do it there at the Court House all day. They set on them benches under the trees, and all, and you can get some pretty valuable information if you'll just take time to sit and take a dip of snuff with them, sit there and talk to them.

I asked one of them one time, "What are you, Uncle Jesse? Are you a Democrat or Republican? Are you Liberal, Conservative, or are you right of center, left of center, middle of the road? What's your philosophy of government?"

"Oh," he said, "I don't know, son. I just vote."

"Well," I said, "you're bound to stand for something. You're bound to believe in something."

"Well," he said, "that I do." He said, "You know what they ought to do in this country?"

I said, "No, Uncle Jesse, what?"

He said, "Bob, they ought to take all the money in the United States, all the livestock, all the property, all the stocks and bonds, everything of any value whatsoever and put it in one big pile and divide it up equal with every man, woman, and child in the United States. I think that would be fair."

I said, "Uncle Jesse, that may not be no original thinkin' with you. We may be headed in that direction, but let me tell you something. Let's say we did that." I said, "It wouldn't be long, maybe one generation, maybe not that long, maybe fifteen or twenty years, but sooner or later in a relatively short time those people who

used their God-given talents for work, that didn't mind getting up a little earlier and staying up a little later, that were anxious to provide a little more for their families, who wanted to contribute to their community, to their state, and to their nation, who did not mind work, it wouldn't be long until those people would make it all back."

I said, "The lazy and the indolent and the ne'er-do-well and the something-for-nothing boys would lose theirs. They'd sit on their cane bottom chairs and would let theirs slip through their fingers." I said, "It wouldn't be long until the wealth of the country would be back in the hands of those who strived and worked and contributed."

He looked up at me and said, "Bob, you've missed the whole point." He said, "What I mean is, divide it up equal *every Saturday*."

It might work. I don't know.

Of course, I'm one of those who think maybe, and I don't want to step on any toes or hit any nerves tonight, but I'm just saying *maybe* we may be getting too much government. Does the government help you with the farming up in this country? They've just about helped us *out* of farming down in East Texas.

Not too long ago we had one of the government men, a fellow from the Department of Agriculture, come up to a little farm house 'way up in the woods there. He come up to the front door, knocked on the front door, and the old lady went to the front door. She opened the door and he said, "Good morning."

She said, "Good morning."

He said, "I am from the federal government. I have come to take a livestock inventory of your place. I would like to talk to you about the small grain program for this year, and also about some soil and water conservation here on your place."

She said, "Just a minute. We don't want to buy nothin'. Just get off the place."

She started to shut the door. He put his hand on the door and put it back open, reached in his pocket and said, "Here's my card. Under Public Law 1298 I have a right to come on this place. I have a right to inspect your stock. I have a right to talk to you about these programs."

She said, "Just a minute. I'll call Paw. Oh, Paw!" He was out in back somewheres. Paw comes to the door pulling his galluses up over his shoulders. He had been siesta-ing back there. He says, "Good morning."

The fellow says, "Good morning. I'm from the federal government. I've come to take a livestock inventory of your place. I want to talk to you about the small grains program. I'd like to talk to you about some soil..."

The fellow said, "Just a minute. We don't participate in any of the programs. Just get off the place." He started to close the door. The government man opened it back up, reached in his pocket and said, "Here's my card. Under Public Law 1298 I have a right to come on this place. I have a right to..."

The fellow said, "Just a minute. You go ahead and do all that and *then* get off," and he shut the door right quick.

The government man come around the house, went out the back gate, down into a little old pasture clear out below the house. What he didn't know was there was a pretty mean old bull in that little pasture. When he got out right in the middle of it, as we say in East Texas, this bull "taken to him."

Well, there was a sapling tree growing there and the government man made it to the tree and got up it. He put both arms and legs around the tree, about ten foot off the ground. The old bull trotted up there. He was a pretty mean old bull. The saliva was coming out of his nose and mouth—"Mo-o-o"—and started rubbing his head on the base of the tree. The government man was holding on for dear life. He hollered up to the house, about a hundred or two feet up there and said, "Up at the house! Come and get this bull!"

He couldn't rouse nobody. They were all inside. He was slipping a little, so he yelled again, "Up at the house! Come and get this bull!"

Nobody answered him, and he was slipping a little bit more. He was a pretty hefty fellow—he had been with the government for some time, you know. Finally, the third time he yelled, "Up at the house!" the old man come out on the back gallery there, looked off down there and saw the situation. The government man saw him and said, "You on that porch! *You come get this bull!*"

The old man hollered back to him, "Show him your card!"

If I could leave one thought with you, let me throw this out in conclusion. I think above everything else in the world today one little thing is missing that I would like to see reinstated, a little word we call "loyalty." I'm not particularly talking about loyalty, patriotism to this great nation of ours, although I stand for that one thousand percent. I told my wife the other day, we

were talking about the resistance to the draft, this thing and the other, and I said, "Well, I'm glad I've got mine behind me because I'll bet if the Marine Band came to Nacogdoches tomorrow and played the "Stars and Stripes Forever" about twice, I'd follow them right off again wherever they wanted to go." It just does something to me when the music plays and the Flag waves.

But I'm not talking about that loyalty right now. I've got a speech on that. Maybe I can come back. The loyalty I'm speaking about now is little personal loyalties that once were so important in the lives of Americans. I'm talking about loyalty to your neighbor. I'm talking about loyalty to your family. I'm talking about loyalty to your church. I'm talking about loyalty to your friends. I'm talking about loyalty, if you please, to this great profession that we have. I'm talking about the basic fundamental loyalties between individuals and institutions. I don't believe we've got it as much now as we once had. I'll tell you, one of the most loyal men in this regard that I ever knew was the sightseeing bus driver down at Vicksburg, Mississippi.

I was over there makin a talk one time and I went out to that Civil War Battlefield there, the Battle of Vicksburg, beautiful scenery, a deadly battle fought there, but it's hilly and the ravines, and all. It's well marked, a great historical spot.

I took the tour on the bus. As we drove through that thing the old man—the man was old, but he wasn't that old—somebody though had told him where everything happened because he knew every rock and rill in that battlefield. He was pointing out, saying, "If you'll look out the right side of the bus you can see where the Georgia volunteers defeated the New York regulars, outnumbered two to one."

We went over that hill, down and around, and he said, "Look out the left of the bus and you can see where the Arkansas volunteers defeated the Pennsylvania regulars, outnumbered four to one."

We went over that, down another one, and he said, "If you'll look out the front of the bus you can see where the Texas volunteers defeated the Rhode Island regulars, outnumbered six to one."

Of course that made my heart beat a little faster. We rode up that hill and down another, and he said, "Here's where the Mississippi volunteers defeated the Maine regulars, outnumbered ten to one."

About this time a very nicely dressed lady seated right in front of me on the bus kind of rose up out of her seat and said, "Pardon me, sir. Didn't the Northern boys win any battles at all on the battlefield?"

The old man turned around and he said, "Not as long as I'm driving this bus they didn't!"

This is the kind of loyalty I'm talking about. Historically he was just as wrong as he could be, but from a loyalty standpoint he was a great one.

One other thing, and I think this especially applies to lawyers, is you had better be prepared. It's the motto of the Boy Scouts. It's a good one. But it should be adhered to as much by adults as by these young Scouts—Be Prepared.

We had better be prepared to be better citizens. We had better be prepared in our profession. The law is a changing thing. We are challenged each new day by not only changes in the law but the applications of that law. We had better be prepared to be better parents. We had better be prepared in every facet of our activities as a citizen.

If I might digress just a moment I'll tell you about the most prepared man I ever knew. He was a little blacksmith at Etoile, Texas. Not one person in this audience knows where Etoile, Texas is, do you? It's the fifth largest city in Nacogdoches County. By your laughter you recognize, of course, that Etoile is not a metropolitan area. There's eight houses in Etoile, and they're not all right in town. It's scattered out considerably.

This little blacksmith in Etoile was an excellent blacksmith. I keep saying "little" blacksmith because he was a small man physically. He was five foot one-inch tall, just a little man physically, but he was a great blacksmith. He knew his job. He had the strength to do it. He didn't mind hard work. He could shoe an animal quicker and better and cheaper than anybody in East Texas. He could bend this iron—you ladies like this ornamental iron work on your porches and windows and all, and he was an artist when it come to bending that iron work, and women came from Beaumont and Houston and Dallas down there to get him to build their ironwork.

This little blacksmith had a good business and a happy life, except for one little heartache. This heartache was that he was deeply, passionately, but *secretly* in love. I say "secretly" for this reason. The girl that he loved so much that his heart would almost jump out of the bib of his overalls when she walked by the blacksmith shop, this lovely creature that he loved so devotedly was six foot six.

He never did even make his intentions known to her. He wouldn't even look at her as she came by. He admired her from afar off.

One day this gal came into the blacksmith shop. She had broken her little dog's chain. She wanted the blacksmith to fix it. He jumped at the chance to do something for her. He took that little old chain back there and forged it into a log chain. He made a better chain than it was the day it was bought, brought it back and handed it to her. She held it up and looked at it and said, "My, my! What a wonderful job! How much do I owe you?"

He commenced blushing. It come out of his collar, up his neck, and he kind of ducked his head down and said, "Little lady, you don't owe me a penny. I'm glad to do it for you."

She smiled down at him and said, "That's awfully sweet of you. Isn't there any thing at all that I can do for you to show my appreciation?"

Well, here it was—the girl of his dreams within two feet of him, wanting to know if there was anything she could do for him. He just blurted it out, "I just wonder if I might come calling on you some evening?"

She smiled down on him and said, "You certainly may. I would feel honored to have you call on me any evening."

With this encouragement he just couldn't restrain himself. He jumped up on that anvil sitting there on the floor of the blacksmith shop and grabbed that ol' gal and he kissed her a good one right there on the cheek, and she didn't resist. This encouraged him still further. He said, "Look, don't make me wait until tonight to come out to the house. It is springtime in East Texas. The grass is greening and the trees is leafing. The wild flowers is blooming and the birds is singing. Would you take a little walk with me behind the shop? There's a little stream of water back there and I just want to pour my heart out to you and tell you how I feel about you."

"Well," she said, "yes, I will."

So hand-in-hand they started down the little meanders of this little stream of water. They walked about a half or three-quarters of a mile back into the woods. They came to a secluded nook back there where the grass was a little greener and the limbs of the trees hung a little lower over the water and the wild flowers were brighter in hue and the birds were singing a love song in this particular place.

They paused there and the little blacksmith looked up at this ol' gal and said, "How about another kiss?"

She smiled down at him and said, "No, I think not. Not on the first date."

He kind of heaved a sigh and said, "Well, if there ain't going to be any more kissing, I'm going to set this anvil down."

Now, *there* was a man who went prepared.

Let me close by saying this. You know, had your budget been such that you could have employed a good speaker tonight, before he got through, Senator, he would have said this: "Ladies and gentlemen, we live in trying times!" And I just wanted to say it before I sit down. I'm not being facetious. I think these people are right. I think we do live in trying times today, but every time I hear a speaker make that statement, if I'm out in the audience where you are seated tonight, I always want to stand up at my place there and ask this one question, "Granted we *do* live in trying times, how come so many of our people have quit trying?" I'm not talking about people that won't work. We've always had those people. We're always going to have them. The government can't do anything about it. Nobody can do anything about it. I think they should be let alone. I think it is a freedom, and one of the important freedoms in this nation, the freedom not to work if you don't want to work. And I think right along with it goes the freedom to starve to death. I think both of them should be enforced.

But I think we all need to keep trying. We need to keep trying to be better lawyers. We need to keep trying to be better church members. We need to keep trying in our families. I had a man come to me not too long ago and he said, "I don't know what I'm going to do with my boy." This is in your line of work, sir. He said, "I've talked to him, I've threatened him, I've taken away this, I've done that. I can't do anything with him, so I'm going to quit!" He said, "He's going to have to learn the hard way, like I did. I'm going to let him go."

This fellow had quit trying to be a good parent. Granted, he's got problems, but you've got to keep trying in that field. We've got to keep trying in our profession. We've got to keep trying at whatever we undertake.

One other thing, there's an old man in Nacogdoches and you go up to him and say, "John, how are you?" and he'll say, "Well, I'm pretty good under the circumstances."

"How's the family?"

"The family's getting along pretty good, under the circumstances."

Under the circumstances! Friends, this great nation of ours was made great by men and women who were not content to live

"under" their circumstances. It was made great by men and women who rose *above* their circumstances. I don't know you people. I have met some of you but I still don't know you. I dare say in this audience tonight, not only out there but on this platform here, are men and women who have risen *above* their circumstances. This is America. The opportunity is still here. It can be done without government grants or government assistance or programs. The secret of it is hard, dedicated work.

You know, "hard work" seems to be losing its popularity. I thought about it the other day. You know, even a mosquito don't get a slap on the back until he goes to work.

We've got to rise above our circumstances.

This last thing, I hear people talking to our young people, and I've been very much impressed by your award winner here tonight. I visited with him about his work with young people. He's got a tremendous job to do and he seems to be taking care of it all right. But he probably has heard people talking to young people, and he might have said it himself—people are telling our young people today to have a good aim in life. "Have a good aim in life!" Here, again, I'm not being facetious. I think this is good advice for our kids, to have a good aim in life. But unfortunately when they say that they quit. That's it. That's their point—have a good aim in life. What they're not telling our kids is that having a good aim is not enough. You've got to pull the trigger. Those of us who hunt, I don't care if it's a rabbit or turkey or deer, or whatever it is, you can have the finest gun, a telescopic sight, you can be ready to go, you can take dead aim on a stalk with the fender of the car or a fork in the tree, you can put that curled hair on the neck of the biggest deer in the woods, you can have a perfect aim, but you're not going to put any meat on the table unless you pull the trigger, are you? Unfortunately, you can't *aim* a deer to death. Neither can you, in this world of ours, accomplish anything by merely having a good aim.

That's one of our troubles. We've got too many dreamers, we've got too many "idea" people, we've got too many Utopiasts. And don't misunderstand me. I love these people and we've had some great ones, and they've helped build this nation. I admire a dreamer. I admire an "idea" man. I admire a man who seeks Utopia. But what we must always remember is that we can't *dream* a thing into existence, we can't hope a thing into existence. Somebody has got to pick up the check. Somebody has got to pay the bills. Somebody has got to roll their sleeves up and do the work to accomplish the great dream. It's just that simple.

Now, tomorrow I'm sure there are many who are not here tonight and undoubtedly some of them will ask some of you people in the audience, "Did you go to the banquet last night?"

You'll say, "Oh, yes."

They'll say, "Who was the speaker?"

And you'll say, "Oh, some little feller from down in Texas—I don't remember his name."

They'll say, "Well, what did he say?"

And there's where they'll have you! So I'm going to do it like they used to do it when you was in the service. Anybody who was in the service will remember that they would seat you all down there and then the feller would come in and tell you what he was going to tell you, and then he'd tell it to you. Then when he got through, he would tell you what he'd told you. This was their way of instruction. It was all right. So I'm going to sum it up for you all tonight:

First, I've tried to help you digest this chicken that we've had tonight. We eat lots of chicken in Texas. When my wife and I married we'd eat chicken three times a day. It's cheap. We raise them by the millions down there. It's available. Man! We eat chicken. I went home one day and I had bought some chickens down at the Farmer's Market. My wife was on the telephone, which was not unusual, but she saw me come in with these chickens and she said, "Well, Bob just came in with some more chickens. You know, we've eaten so much chicken here at the house we've just took the mattress off the bed and we're roosting on the slats." But I enjoyed it. This was well prepared. So I've tried to make you chuckle a little and laugh. I don't think we laugh enough nowadays. Maybe we don't have anything to laugh about, but at any rate I hope I've told you a story or two that you hadn't heard.

In addition to this, I've tried to sneak up on you a little bit and leave these thoughts—be loyal to your profession, to your family, to your friends, to your community, to your state, and to this great nation that we are privileged to live in. Be loyal.

Be prepared in every undertaking that you go about. Be prepared to be a better citizen.

Keep trying. You're going to have failures. You're going to be on the losing side some. You're going to have disappointments. Keep trying!

Rise *above* your circumstances.

And pull the trigger for this great profession and this great nation. Thank you very much.

PRESIDENT ADAMS: Thank you, Bob Murphey.

Thank you all for coming. This program is concluded.

FRIDAY MORNING SESSION

October 31, 1969

The second session of the Institute on Insurance, Banking, Corporate and Commercial Law was called to order at nine-five o'clock by Chairman Overcash.

CHAIRMAN OVERCASH: Gentlemen, I wonder if we could come to order. I know the dining room downstairs has been slow and it may be a little while before all of us have assembled. Of course we had a very interesting program last night and maybe some of them were up a little late, but we do have an important program today, particularly this morning, and we want to start with the program as soon as we reasonably can.

We had an interesting presentation yesterday, I believe. No doubt some of you thought we were dealing with matters that might be complex. We were in two fields of commercial law, but while we were discussing that I called to your attention that as lawyers it is our duty to be familiar and to be informed about matters that are complex. If we aren't informed and we aren't in a position to give consultation and advice, then we are not performing our service.

I don't know how you feel about it or whether you were here yesterday noon and heard the President of the American Bar or not, but I have heard him three times at these meetings—first at a dinner Wednesday night, yesterday noon here, and again at a breakfast this morning. I think he has pointed out clearly the importance of the law profession putting itself in a position to render the professional service that the public expects us to render.

I want to say to you in all frankness that the officers of this Section, to the best of their ability have designed a program for you that will help you identify and provide service that is expected of you as lawyers. You may not be able to handle all of the matters that come up in these fields yourself, you may not want to, but you have to have the information to identify the problems, to understand them, to advise people who come to you so that they will rely upon you as their professional advisor.

This morning we are going to turn from the commercial law areas we discussed yesterday to an area of corporation law, the responsibility and liability of corporation officers and directors. Now, many of you lawyers are directors of corporations of one kind or another. Many of your clients are. But whether you are or not, you either own stock in corporations or your clients own stock in corporations, and this area of law presents developments and activities that you as a lawyer should be familiar with. With that in mind, this program has been organized this morning.

This Section that is putting on the seminar for this meeting, and I explained the officers to you yesterday, their subsections, and each one of them has a chairman. The Chairman of the subsection on Insurance Law is Jim Hewitt of Lincoln.

Jim is one of our outstanding young lawyers. Many of you probably knew his father, who was a distinguished and respected lawyer in Hastings. I have been particularly grateful for the help and assistance of Jim in formulating and carrying out this phase of the program.

We have with us today a national authority in this field and we also have a panel of distinguished lawyers from our own group in Nebraska. We are going to present to you today a rather broad discussion in this field. I have asked Jim Hewitt, who was instrumental in organizing this phase of the program, to take over, to introduce the speakers, outline this phase of the program to you, and take charge.

It is with real pride that I introduce and bring to you, Jim Hewitt.

INTRODUCTION, LIABILITY OF CORPORATE OFFICERS AND DIRECTORS

James W. Hewitt

Thank you very much, Bert. Gentlemen, we are very pleased to present to you this morning what I consider to be an outstanding program in the area of the liability of corporate officers and directors. As Bert has already indicated to you, there are enough problems in this area that I think we all need to be quite alert, not only from the standpoint of giving adequate representation to our clients, but to keep somebody from pilfering the bread from our table and depriving our wives and children of their livelihood. It seems to me that there is some pretty hairy law developing in this area, and

I hope that we can point out to you this morning some of the pitfalls which may be present for the unwary.

I think that we can, without fear of contradiction, say that we have with us this morning the outstanding expert in this particular area in the United States. I am sure that many of you have received several pamphlets and flyers from the Practicing Law Institute within the past few weeks. We had no control over the fact that they were mailed out, but it was extremely appropriate, it seems to me in light of our program, that we had this deluge of material from the East outlining a series of programs which the PLI is putting on all over the country. And our principal speaker this morning, Professor Joseph Bishop of Yale Law School, is going to be a featured speaker on all of these programs which the PLI is putting on.

I think that Professor Bishop is clearly the outstanding man in this field. He has written extensively. I have had the opportunity to read much of his work in various legal periodicals and I've found it literate, witty, and charming, just as I have found him.

Professor Bishop is this gentleman seated to my right, whose hirsute adornment I think puts Harold Rock and Arnie Stern to shame. I think this is probably the finest beard we have seen in Nebraska or the Midwest since Eric the Red brought the rune-stone out to Minnesota. I think you will find what Professor Bishop has to say very exciting, very enlightening.

As I say, I've found him to be most enjoyable. I met him at the airplane last night, and since he has never been to Nebraska I felt it was only fitting that we show him some of the treats which Omaha has to offer. We didn't get to see the Ton-of-Fun Go-Go girls but we toured some of the West Omaha bistros. My wife was with us and on the way home she said to me that she thought Joe Bishop was one of the most charming men she had ever met, and she said, "I don't give a damn what he talks about, see if you can't get him out here again." We may very well have him back again soon.

He is going to talk to us this morning on the Liability of Corporate Officers and Directors. As Bert has indicated, copies of the outline of his material are available, as are outlines from our other speakers, on the table in the back of the room. I hope you will help yourself after he has concluded.

I would like to say that as we were driving to West Omaha last night I told him that we were going out into the western portion of the city, as we pulled into one of the restaurants. He said, "Yes, I

thought that to be the case. I figured if we had been going east we would have crossed the Missouri River into Iowa." Gentlemen, I admit that anybody that smart is well worth listening to—Professor Joseph Bishop, Jr.!

TYPES OF LIABILITY OF WHICH CORPORATE DIRECTORS AND OFFICERS ARE SUBJECT AND METHODS OF PROTECTION AGAINST SUCH LIABILITY

Joseph W. Bishop, Jr.

Gentlemen, if that is all it takes to be a genius here, I feel fairly confident.

The main thrust of what I am going to say is, of course, the problem of *protecting* corporate directors and officers against liability, but before I start talking about the therapy I would like to take just a couple of minutes to talk about the disease; in other words, the types of liability and expense which put the fear of God into the directors and officers of just about any corporation which has any stockholders besides the Chairman, President, Treasurer, and his wife.

I have found it convenient to divide these types of liability into two basic categories: Type No. 1, third party suits, so-called; that is, suits which are claims which are not based on any breach of duty to the corporation but which arise out of the directors' activities on behalf of the corporation. There are several varieties of these third party actions, all of them unpleasant.

In the first place there is the possibility of criminal prosecution, and here the main worry, I suppose, is antitrust which, as I am sure most of you know, is far from rare these days. Also there is always the possibility of some kind of criminal prosecution for violation of the Internal Revenue Code or, even more, the securities laws.

Second, there are a number of varieties of third party suits brought by outsiders, not stockholders, or not stockholders in their derivative capacity, against directors. One obvious example was suit for violation of the securities laws, violations which were allegedly committed by the director in the course of his employment with the corporation as, for example, when he signs a registration statement which turns out to be full of omissions and misrepresentations. As a general proposition, no doubt, the corporation is jointly liable with the individual director in this kind of litigation, and I

suppose would normally retain counsel to defend both itself and the individual and would satisfy any liabilities. But that isn't much help when the corporation is bankrupt, as for example in the *Escott v. BarChris* Case which you will hear about from Mr. Johnson.

Then there is another type of third-party liability to which a director or officer may be subject because of his status as a director or officer, not anything he does for the corporation's benefit, but a situation in which his liability is predicated on the fact that he is a director or officer. I am talking, of course, about liability for so-called insider trading, trading in the securities of his own corporation for his own benefit. But what makes him liable is the fact that he is a director or officer. Of course the example of that which you will also hear about from Mr. Johnson is the *Texas Gulf Sulphur* Case.

The other broad category of litigation and claims which plague corporate directors and officers are, of course, stockholders' derivative suits, suits in the right of a corporation based on alleged breaches of duty to the corporation. I would say that ninety-nine percent of them, and 99.9 percent of those which get anywhere, are based on breaches of the so-called fiduciary duty, by which I mean some kind of self-dealing, conflict of interest, selling his own property to the corporation at an allegedly fancy price, causing the corporation to issue more stock to him at an allegedly unfairly low price, and so on.

In theory at least there are also stockholder suits, derivative suits, which are based on negligence, the failure to use reasonable care in managing the corporation's affairs. In my opinion, suits which are based merely on negligence, and especially successful suits, are so rare that they are practically museum specimens. I haven't been able to find a single genuine case of such liability, liability for negligence against a director of an industrial corporation, in the whole history of the United States. There are comparatively rare cases, most of them very old, which assert such liability against bank directors, directors of money corporations, usually where the director never went to a meeting, just sort of took the directorship as a tribute to his standing in the community and let the management embezzle freely.

I might mention one other category of legal headache, though it doesn't take the form of litigation proper, and that is the administrative or legislative investigation or maybe a disciplinary proceeding, as for example by the Securities and Exchange Commission. True, these aren't litigations, nobody is seeking damages from the director, but from his standpoint it isn't very different. He feels like a de-

fendant, and he certainly needs a lawyer, and it is certainly going to be an expensive business.

You will hear more about the details of these types of liabilities from Mr. Garfinkle and Mr. Johnson.

Now I would like to talk to you a bit about the techniques of protection against such liability and expense. First, what you might call the traditional or classic techniques, other than insurance which corporations have been using for many years.

No. 1, of course, in the derivative, is the business of causing the corporation in any litigation against its directors or officers which arises out of something they did in the corporation's behalf, causing the corporation to retain counsel, to pay the counsel fees, which are often the biggest part of the expense, often more serious than any liability, causing the corporation to retain a lawyer and pay him for both itself and these individual directors. This is common in the third-party situation, and I think it is generally proper too because normally, since both the corporation and the individual director are said to be liable, or jointly liable, the corporation in defending itself usually also defends them. But it isn't very often, I think, proper in the case of a derivative suit, a suit in the right of a corporation, and it is becoming much less common in that situation for two reasons, which I think both courts and Bar associations have begun to recognize in the last five or ten years:

1. When the corporation spends its money to defeat what is, in effect, its own cause of action, it is very doubtful if that is the proper use of the corporation's assets.

2. And I think from the standpoint of the people here, it normally puts the lawyer in the position of representing conflicting interests. In other words, he is representing both the corporation, which is said to have been wronged, and the individual directors who are said to have wronged it, and a good many large law firms have found that that is a very uncomfortable position to be in.

The next classic technique, and of course extremely common, is to have the corporation indemnify the director or officer against such liability and expense. This may be done, normally is done, pursuant to a bylaw or, less frequently, a charter provision authorizing such indemnification. There are a few cases where it has been done pursuant to an ad hoc special contract agreement to indemnify. The only ones with which I am familiar are situations in which the corporation and the directors are indicted for a criminal violation of the antitrust laws, the corporation wants to enter into a favorable consent decree. The antitrust division's condition on

that is that *all* the defendants, including the individuals, switch their plea from not guilty to nolo contendere, and the director says, "Well, I'll do this for you if you'll do something nice for me. If you will agree to pay my lawyer and indemnify me for any fines I may have to pay, then I will plead nolo." There are at least two cases in which that kind of an ad hoc agreement has been upheld, on the reasoning that the corporation got a good quid pro quo.

We now have at least forty-three state statutes which authorize corporations to indemnify their directors and officers. I classify them roughly into two groups, the restrictive and the permissive. New York and California are good examples of fairly restrictive statutes. They are, I believe, exceptional. The permissive statutes all follow Delaware, and now the Model Business Corporation Act's provision on indemnification is practically identical with that of Delaware, so I anticipate you will see an awful lot of states with the same indemnification provision that Delaware enacted in 1967. As I am sure most of you know, the Nebraska legislature at this session just ended amended the indemnification provision in the Nebraska Corporation Law so that it is now exactly that of Delaware and the Model Business Corporation Act. This is Section 21-2004, Subsection 15 of the Nebraska statutes.

I might take a minute to tick off what I think are the main features of that new statute and where it differs from the old one.

The old statute was probably intended to permit indemnification in almost every imaginable situation, but as it turned out, under the opinions of the Delaware court and other courts, there were a number of ambiguous areas where it was not at all clear that the corporation could properly indemnify a director. As you might expect, the new Delaware statute dealt with these by removing the ambiguity in favor of management which, you might say, is the general propensity of the State of Delaware—although one thing they didn't do is make it any harder to sue the director of a Delaware Corporation in Delaware; this is just as easy as ever. I don't wish to be cynical, but I suspect that it has something to do with the idea of not breaking any Wilmington rice bowls.

The old statute failed to distinguish between third-party suits and derivative suits, and it forbade indemnification in *any* litigation in which the director was adjudicated liable, without distinguishing between the situation in which he is found guilty of a breach of duty to the corporation and the situation in which he is found guilty, perhaps innocently, of a breach of duty to somebody else while acting in what he thought was the corporation's best interest.

The new statute now permits him in this third-party situation to be indemnified, even for fines and amounts paid in judgment or settlement but not, of course, counsel fees, so long as he acted in good faith with the intent to advance the corporation's interest and without reason to believe that his conduct was wrongful.

The old statute talked about the defense of any action suit or proceeding in which directors are made parties, and it was pretty hard to fit that language to the situation which I mentioned of the legislative or administrative investigation, because the guy certainly isn't a party—he is a witness. He may feel like a defendant but he really is only a witness. The new statute takes care of that by specifically covering administrative or investigative proceedings.

A somewhat more serious omission in the old statute was its failure to deal with the situation in which the insider is subject to liability because of his status as a director or officer, but not because of anything which he did for the corporation's benefit, the perfect example of course being the insider trading situation in which the liability is predicated on the fact that he is a director or officer. That is why he is vulnerable to suit, but he hasn't been acting in the corporation's behalf, he has been trading for his own benefit. It wasn't at all clear that the old statute applied to that.

The new one pretty clearly does, because it says that an insider may be indemnified if he acted in a manner which was "not opposed to" the best interests of the corporation, and according to the draftsmen—at least some of the draftsmen; they say several different things in their publications on the subject—at least some of them say that this "not opposed to" language was intended to cover the insider trading situation. In other words, he intended neither to hurt nor to harm the corporation, but he is liable because of the fact that he was an insider, a director or officer.

The old statute had another weakness. It authorized indemnification but it didn't *require* it in any circumstances. So a director who lost a power struggle, who got fired, might find that the new management would refuse to indemnify him. The new statute takes care of that, partially at least, by making mandatory the indemnification of a director whose defense has succeeded. In other words, if he wins, no matter whether he is still in the good graces of the incumbent management, he is entitled to be indemnified.

The new statute, like the old one, prohibits indemnification, in respect of derivative suits, when the director is adjudged, held liable by a court, for a breach of duty to the corporation. But, unlike the old statute, it allows the court to order indemnification, even in the circumstances where he is held adjudicated, liable, if the court finds,

in effect, that he is equitably deserving. I think the situation they had in mind, they got this out of the British Company's Act, is the situation where the fellow is the hero of the first case which determined that a particular kind of conduct was a breach of duty to the corporation, where he might reasonably have believed, before the Supreme Court came down with this holding, that what he did was all right. In that case, the court can order indemnification even though he has been adjudged liable.

The most serious ambiguity in the old statute, without any question, was its failure to deal explicitly with the compromise settlement, which is safe to say is *the* normal method of disposing of derivative litigation, if that derivative litigation has any basis at all.

The Delaware Chancellor, at least, had questioned whether the old statute authorized indemnification of a director who elected to settle instead of proceeding to an actual adjudication, and it did it on the very sensible ground that if you could be indemnified when you settled but not if you were adjudicated liable, it would be, of course, an enormous temptation to settle every suit, if you thought there was any chance at all of your being found liable.

The new statute explicitly authorizes indemnification in case of settlement but it makes a more or less convincing effort to protect against collusive, unwarranted indemnification. It provides that the director who settles and wants to be indemnified must, in effect, be found by directors who are not themselves parties to the litigation, if there was a quorum of them, or stockholders or "independent counsel" to have lived up to whatever standard of duty and care he owed the corporation. My difficulty is, of course, that I question just how disinterested any of these people are likely to be. Even if you can find a quorum of directors who aren't actually named as defendants in the litigation, they ethically are not too hostile to their fellow directors. They don't know when they might be in the same boat themselves.

Stockholders—well, typically, as we all know, stockholders will do what they are asked to do by the management. Furthermore, I would suppose that in a fair number of cases where there is a settlement the management wouldn't be any too keen to disclose all the circumstances to the stockholders.

Independent counsel is the real puzzler here because it is not at all clear what it means. Apparently independent counsel can be any lawyer who isn't actually an employee of the corporation, isn't house counsel, and there are some bylaws, Westinghouse is one that comes to mind, which say that the independent counsel may

even be an employee of the corporation, may be house counsel. I would question that interpretation of the statute. But even if independent counsel is a member of the firm which handles that corporation's business, it is going to be a little bit difficult for him to be really all that independent.

The general counsel of one very large corporation that I talked with said viruously that if they had this problem they would go out and find some ornament of the Bar who had never done any work for their corporation. Perhaps that is as good a solution as you could find, although again, since it's a man of the corporation, which means the management, which means the individual defendant that is retaining him, has got to be a man of considerable integrity to come up with a finding that they are guilty of some dereliction of duty.

Another puzzler in the statute is Subsection (f), the non-exclusive clause, which is just about what it was in the old Delaware statute. I didn't know what it meant in that statute and I don't think anybody else did either, and if the draftsmen of the new statute know what it means they have been mighty carefuul not to say so. *Perhaps* it is intended to cover the antitrust situation, which I mentioned, the ad hoc agreement to indemnify in exchange for an agreement to switch the director's plea from not guilty to a nolo. That *may* be what they had in mind, but my guess is that it would not be construed by the courts in Nebraska or Delaware or anywhere else to validate indemnification which was otherwise against public policy.

The most controversial subsection of this new indemnification statute, this is Subsection (g), permits the corporation to purchase insurance on behalf of directors, against liability, even if the risk against which the director is insured would not otherwise be indemnifiable under the statute. In other words, whatever we have just said you could *not* do, you *could* do if you go buy insurance and pay for it, of course. Some of the insurance which is now on the market, and I am sure many of you have seen it and vainly tried to figure out what it meant, is so atrociously drafted that it seems to me, maybe unintentionally, to insure against some types of liability for conflict of interest and self-dealing, including just plain stealing. I don't know whether that is what the draftsmen of this junk, who are in London, meant or whether they knew what they meant, but it certainly seems to me to be open to that construction.

Again, even if the legislature really meant to permit insiders to insure themselves against the consequences of looting the coporation, self-dealing, I doubt very much that many courts would hold

that that provision was enough to overcome the quite deep-rooted public policy against permitting a man to be insured against the consequences of his own deliberate wrong-doing.

I think I would take the same rather dim view of such coverage as that insurance may provide against liability which is based, not on ordinary negligence, not on lousy business judgment, but on total abdication of duty, which is about the only type of negligence for which directors historically have ever been held liable. I think that that sort of abdication of duty, which in effect is deliberate wrongdoing, is almost like intentional wrongdoing, and I doubt whether public policy permits insurance against liability which is based on it.

Now I will talk just a little bit, I think Mr. Garfinkle will talk in more detail, about this so-called directors' and officers' liability insurance. By way of background, let me say that I don't know and, again, I don't think anybody else has any idea of what the incidence of the risk is and therefore what the premiums ought to be; in other words, what the chances of the directors being (a) sued, and (b) held liable, really are. As I have suggested, the chances of their being held liable or even sued for just ordinary negligence, bad business judgment, I think are so small that if that is all the insurance covers they ought to give it away! But despite this total lack of reliable information on the incidence of the risk, the stuff has been selling so well that the premiums have been rising astronomically in the last year, and the insurance companies are getting very coy indeed about selling it, they have such a demand. Partly their advertising and partly, I guess, the natural fears of directors have really created a small panic among a lot of directors and officers.

I won't try to describe the insurance in detail. The basic organization of the thing is fairly simple. The policy comes, and by the way no matter what insurer is selling them they all follow the basic Lloyd form. Why some American insurance company hasn't come up with a well-drafted form, I really can't tell you, although I am told that it is impossible to re-insure anywhere except in London, so therefore they have to follow this god-awful English form. Again, why some American re-insurer isn't in the business, I can't say. At any rate, the policy comes in two parts which are sold as a package.

Part No. 1 reimburses the corporation for any payment which, under the applicable law, and that means both state law and in the context I think of liability under federal law, also federal law, federal policy, any payment which the corporation is legally required or permitted to make by way of direct indemnification; in

other words, if your statute says you can indemnify in case of settlement if independent counsel finds that the directors were not guilty of any breach of duty to the corporation, then the insurance would presumably reimburse the corporation for that payment. I don't have too much trouble with that in its basic concept. I think it is quite good.

Part No. 2 covers the individual director or officer with respect to certain liabilities and expenses for which the corporation *cannot* indemnify him legally. In other words, suppose he is adjudicated liable to the corporation for a breach of duty to the corporation, and the court doesn't find he is equitably deserving of indemnification under Subsection (b) of your new statute. Then as far as you can tell what Part 2 of this policy means, he would be individually entitled to be reimbursed by the corporation for what he may have to shell out.

The total cost of the two policies is paid by the corporation, but the insurer suggests that a fair allocation of the premium would be 90 percent to the corporation and 10 percent to the individual director. I don't know that that means much because even if the corporation pays 100 percent, of course it is very easy for them, indirectly, to increase his compensation by an amount equal to whatever part of the premium he has to pay.

I don't want to go too deeply into what I regard as the appalling draftsmanship of the thing, but I will just give you a couple of the things that bother me the worst. I am now talking about Part 2 of the policy, and particularly its exclusions. Get this one: "Underwriter shall not be liable to make any payment for loss in connection with any claim made by the insured, that is the individual directors or officers, for the return by the assured of any remuneration paid to them without the previous approval of the stockholders of the company, which payment, without such previous approval, shall be held by the courts to have been illegal."

As a general proposition, almost never is the approval of stockholders requisite to the legality of the compensation of the officers of the corporation. This is something that is entrusted to the Board of Directors. The only situation in which you may have to have stockholder approval in a few states is if the compensation takes the form of stock or options.

So if this thing means what it says, it means that the directors can vote to pay themselves ten times what they are worth, if there is a derivative suit and the court finds that the compensation is excessive, for the usual reason, which is not that the stockholders didn't

approve this compensation but that it bore no reasonable relation to the value of their services, the court says, "Give back \$500,000 to the corporation," then if you take this policy literally they can go around to the insurance company and say, "Give us back that \$500,000 that we just had to put back in the till." I can't believe that is what Lloyd's meant, but that certainly is what it says.

There are other gems, too. They exclude claims brought about or contributed to by the dishonesty of the assured. However, notwithstanding the foregoing, "the assured shall be protected under the terms of this policy as to any suit which may be brought against them by reason of any alleged dishonesty on the part of the assured unless a judgment or other final adjudication thereof adverse to the assured shall establish that acts of active and deliberate dishonesty committed by the assured with actual dishonest purpose and intent, were material to the cause of action."

What is the difference between active and deliberate dishonesty, and passive and inadvertent dishonesty? This language literally doesn't mean anything that I can detect, but if it *does* mean anything it means that this policy does not exclude liabilities of various kinds, what amounts to plain stealing. I don't know if that is what the underwriters *intended* but that certainly is what it seems to say.

I am told, by the way, in fact I know, that the Section on Corporation and Banking Law, the ABA, sent a delegation probably on their knees and wearing white garments to London this summer to plead with Lloyd's to revise this policy so that somebody could tell what it meant, but so far at least they have had no results. The English seem to be perfectly satisfied with what they have done. After all, I must say, they are selling it. Why should they change it?

There are other defects in the draftsmanship which I don't want to go into at length. One of the worst is that it is extremely difficult to tell to what extent this standard D. and O. liability insurance is supposed to cover liability under the Federal Securities laws, particularly Section 10(b) and Section 16(b). That is a complicated question of construction, but I would certainly not give a client an unhedged opinion that if he bought this insurance he was covered for that kind of liability.

I think one exception to that, it is pretty clear that if the corporation could legally indemnify him for the expenses of litigation, or perhaps even liability in a 10(b) or 16(b) proceeding, if the corporation could legally indemnify him, then I think the policy would pretty clearly reimburse the corporation, although even that is not entirely clear.

I would like to talk, finally, for just a few minutes about a problem which bothers me a good bit, which is the public policy which governs the legality of indemnification against liability and expenses which arise out of alleged violation of the Federal Securities laws. Here the question is not solely whether it is permitted under state law, pretty clearly under a state law like Delaware's or Nebraska's such indemnification would now be permitted as long as the fellow was acting in a manner not opposed to the best interests of the corporation. But there is also the question whether to indemnify a man for expenses and liabilities growing out of a violation of the Federal Securities laws would be inconsistent with the paramount federal policy of those statutes. The SEC at least takes the position that indemnification for actual liability under the '33 Act, that is for liability which is predicated on the signing of a registration statement which contains misleading statements or omissions, which is deliberate, in other words liabilities for deliberate deceit under the '33 Act, the SEC says that that is against public policy, they would resist it in the courts, and I think they are pretty clearly correct about that. As a matter of fact, there is at least one decision which I think supports that opinion of the SEC. This is a case which I believe Mr. Johnson will probably mention, *Globus v. Law Research Service*, 287 Fed. Supp. 188. That didn't deal with the type of indemnification I have been talking about, but with another type of indemnification. Here was a situation in which the issuer, as is common in such financing, the corporation which was issuing securities which were being offered to the public had agreed to indemnify the underwriters against any liabilities to which the underwriters might be exposed under the 1933 Act. The court found that the underwriters had knowingly, deliberately participated in the filing of a registration statement which the underwriters knew to contain misleading statements and omissions. In that case, said the court, the contract by which the issuer agrees to indemnify the underwriter is invalid and unenforceable, because to allow the underwriter to be indemnified would frustrate the policy of the statute by relieving it of the penalties for this deliberate deceit, this deliberate violation of the statute.

I can think of no reason why the court's reasoning wouldn't be just as applicable to an agreement by the corporation to indemnify a director who knowingly signs a false registration statement or maybe an insurance policy which purported to indemnify him in that situation.

I have much more of a problem when liability under the '33 Act rests on nothing more than negligence, as was the case in the *BarChris* Case; in other words, where the directors didn't use due

diligence. They signed this thing which was full of misrepresentations, fraud, and so on, without knowing that it was a violation of a statute but without taking any steps to check up. Whether it is against public policy to indemnify directors whose liability is based on negligence under the '33 Act really depends, I think, on whether you conceive the basic purpose of that statute to be to compensate the defrauded public investor or to punish the director who is negligent. I think I would argue for the proposition that its main purpose is compensatory, although there is no square holding to that effect.

One other qualification I think I would make, I think in all cases the director ought to be indemnifiable for his litigation expenses, his counsel fee, even if he is unsuccessful, even if he is found to have violated the '33 Act or the '34 Act. I say that because the Supreme Court a couple of years ago in a tax context said that, in effect, the paramount public policy was to enable one who is accused of wrongdoing to have a good defense, to pay for a good defense. This was a case called *Commissioner v. Tellier*—you will find it in 383 U.S. 687, in which a broker had been convicted in a criminal prosecution of a deliberate violation of the '33 Act. Nevertheless, the court held that he could deduct the expenses of his unsuccessful defense, although not of course his fine, as an ordinary business expense, and they did it specifically because they thought that the paramount policy was the one in favor of enabling him to conduct a good defense. I think I could apply that reasoning to one of these 10(b) or 16(b) suits, too, even if the man is found to have violated the statute, still I would argue that it is not against public policy to allow him to insure himself or be indemnified by his corporation for the counsel fees for the expenses of his defense.

When the insider is not vindicated in a 10(b) suit or a 16(b) suit, then again I think the propriety of indemnification, that is, its consistency with the federal policy expressed in the Federal Securities laws, depends on whether you think those statutes are intended to be primarily compensatory or intended primarily to penalize the violator. If they are punitive, then of course there's a strong argument that it is against public policy to let him armor himself against the consequences of violating it.

As far as 16(b) goes, that is the short-swing profit section, the section which provides that any insider who purchases and sells, or sells and purchases the securities of his own corporation within a six-month period, and I won't go into all its ungodly complexities, even though he didn't have or misuse any inside information, is absolutely liable to cough up to the corporation whatever profit

he made on this short-swing transaction. As I say, that is certainly punitive because, in fact, the person who is compensated, the corporation, isn't the person who suffered in this short-swing proceeding. In other words, there was no purpose to this provision except to punish him, to make him cough up his profit.

Now, 10(b) is a harder case. I would think, myself, that the propriety of indemnification for liability in a 10(b) proceeding, that is, a suit by a public investor or any investor who claims he was defrauded in violation of 10(b) because the insider from whom he bought or to whom he sold didn't disclose some relevant inside information, depends upon whether the violation of 10(b) was deliberate knowing or just careless. Frankly, I don't think there are many 10(b) suits, and certainly not *Texas Gulf* in which the violation was just careless, but I can imagine such a thing.

Some ingenious people have suggested the situation in which one having inside knowledge waits until it has been announced to the public, but doesn't wait long enough; in other words, he waits ten minutes after it has gone out on the Dow-Jones and then he buys or sells. But then the court decides that ten minutes isn't long enough for this news to percolate into the market, he should have waited twenty-four hours. I don't think that is terribly likely, but that, I suppose, would be a negligent violation of 10(b), and I would be inclined to argue that the interest in punishing the negligent violator is not strong enough to make it against paramount federal policy to allow him to be protected either by indemnification or insurance.

I might add that I get some support for this. There are a couple of recent decisions of the Federal Circuit Court of Appeal, both of which seem to indicate that the purpose of 10(b) is not punitive, at least in the case of, well, not punitive even in the case of the deliberate violator but only to compensate the defrauded investor. These cases are *Baumel v. Rosen* at 412 Fed. 2d 571, and *Green v. Wolf Corporation*, 406 Fed. 2d 291. I think they are both cited in this outline material. They were decided respectively by the Fourth and the Second Circuit.

Let me raise one more quite practical question. If you are asked to buy this insurance, I have been casting doubt on whether it is valid and enforceable consistent with public policy, particularly whether it is consistent with federal policy as enacted in the Securities Act of 1933 and the Securities Exchange Act of 1934. You know, maybe I can get up a swell legal piece which very strongly suggests that this policy is not enforceable. Does that matter? Is there much serious likelihood that the validity of that

insurance will be questioned? I guess I would have to answer that "No." Well, one way it might be questioned is in a stockholders' suit, but I don't think that is very likely to happen because—what can the stockholder do? He can ask that maybe the amount of these premiums be repaid to the corporation by the individuals who were covered. Well, the stuff is pretty expensive, but still it is unlikely that any premiums might be recovered would be great enough to give plaintiff's counsel a really substantial fee, and that, of course, is the motive power of most derivative suits. But that's a possibility. If a dissident stockholder found out about this insurance he might challenge it in a derivative suit.

Second, *maybe* some of the state insurance regulators would question whether this insurance is valid and enforceable in the state. The New York Superintendent of Insurance was issuing alarming rumbles to this effect. Nobody else has that I know of, and now New York has a statute, a very peculiar statute, not like this one which makes such insurance O.K. if it is O.K. with the Superintendent of Insurance, in effect. The difficulty is that the Superintendent of Insurance may rumble all he wants but he can't keep these people from going to London and buying it.

Finally, and this perhaps is the most realistic danger, maybe if some gigantic claim against the insurance company really came in, the insurance company might discover, "My gosh, we've been selling something that is illegal and against public policy, and here's your premium back." I don't think this is *likely* to happen, because this is a very lucrative kind of insurance, I am sure, and it would take a helluva loss to make them willing to kill this goose that is laying golden eggs. But all I can say is that in the past such sad things have happened.

If you take a look at Mr. Patterson's treatise on insurance you will find a small but alarming collection of cases in which insurers have suddenly discovered that policies which they had sold were invalid and unenforceable because against public policy, and which they have gotten away with.

I will put it this way—I would not give a client an unhedged opinion that this insurance would be valid and enforceable. I would tell him as informally as possible that I thought he could probably collect, that is, if he can figure out what the policy covers, if it is something the policy clearly covers, and that I thought it was unlikely that the payment would be challenged in court, but I sure wouldn't give him a written opinion that it was impossible. I sure wouldn't give him a written opinion that the insurance is worth what it costs, either. I don't know, and the insurance companies

don't know, but my guess is they are not giving themselves any of the worst of it.

Well, I think that is all I have to say. I will, at an appropriate time, answer such questions as you might want to put up.

CHAIRMAN HEWITT: Joe, thank you very much. I am not at all hesitant to render an unhedged opinion that that was most worthwhile, and I think I can, with safety, tell my wife that we need not rely on your charismatic personality to bring you back, but that your erudition certainly justifies it, and I hope we can have you back in Nebraska very soon.

... Recess ...

Gentlemen, I think we can reconvene, if it is convenient for everyone.

Our next speaker is a member of the Lincoln Bar, Mr. Warren C. Johnson of the firm of Cline, Williams, Wright, Johnson, Oldfather & Thompson in Lincoln. There are also any number of other individuals in that firm. Every time I go up there there are two or three more names on the door, going down one whole panel on the left side of the door and then coming back up on the right side of the door. I think they are almost becoming a corporate octopus, although I am not sure they have incorporated for professional purposes. I suspect one of the reasons "Bud" Johnson was so willing to appear on the program this morning was because he was somewhat concerned about this problem as far as the operation of their own significant empire in Lincoln is concerned.

In all candor, I think "Bud" is here today as a living proof of the fact that a young man from a small farming community in a State like Nebraska can find happiness in the cold, concrete canyons of Wall Street, and not only find happiness but remuneration as well. I think that he is acknowledged to be one of the finest securities lawyers in the State of Nebraska, a man whom I know of personal knowledge is extremely conversant with the entire area of Securities Exchange Commission practice. He is quite cognizant of the Blue Sky laws of Nebraska. I think that the title of his address is indicative of the expertise which he will bring to us this morning, although I would hesitate to say that it is indicative of the skill and caliber of his prose, but it is with real pleasure that I introduce to you "Bud" Johnson of Lincoln, who will speak to you on "The Grass is Green, The Sky is Blue—The SEC Is After You". "Bud"!

**THE GRASS IS GREEN, THE SKY IS BLUE—
THE SEC IS AFTER YOU**

Warren C. Johnson

I enter a general denial to everything that Jim said.

If the price of securities always went up, and if all corporate officers and directors never had any desire to make any money, there wouldn't be any point in my talking to you at all today.

Unfortunately, the green grass of the market place for securities has its crab grass and its sod web worms and its fungus, and the price of securities goes down as well as up, and also probably naturally so, officers and directors like to make money, they like to see their wives and their children make money, and they like to see their friends make money. And one of the best ways to make money these days is to get a good, hot stock issue and ride it up, sell out, pay a capital gain, start and do the same thing over again. Where better is the place to do it than the stock of your own corporation, because this is the one you know the best?

As a result of these factors, we've had growing very rapidly a whole new set of corporation law, and this is what is referred to as the Federal Corporation law. You can't go to any one book and look at it and find out much about the Federal Corporation law; you have to look at a series of federal legislative acts that govern the sale registration of securities and the people who handle or deal in securities, and you have to read a number of court cases.

This body of federal law has grown up primarily through the decisions of federal courts in interpreting some of the securities acts and also through the rulemaking power of the Securities and Exchange Commission. The Securities and Exchange Commission is a very highly skilled, independent commission in Washington which, despite what many people think, is basically there to give fair and just enforcement to the securities laws and, at the same time, to be helpful to the people who have securities problems.

Now, why are Nebraska lawyers and why are officers and directors really concerned about this federal corporate law? Incidentally, it has been said that the federal corporate law is far more important as far as the activities of a corporation that has any publicly held securities are concerned than the corporate law of its domicile.

The reason that we are interested in it is because the Federal Securities Act of 1933 imposes both the criminal and civil penalties

upon every person in control of the issuer or the corporation, and they have defined "control" as "the power to direct management and policies," and it includes people who are acting under common control to direct the management and policies of the corporation. Well, very obviously, the people who really direct the policies and management of the corporation are its principal executive officers and its board of directors. And probably nine times out of ten there is a group of them that act together to get this job done.

Therefore, it is very important that anybody who is an officer or director of a corporation and also any lawyer that represents the corporation or an officer or director at least be familiar with some of the pitfalls and traps that you can fall into.

I am not a book salesman, but due to the fact it is difficult sometimes when you go to look up some of these problems, at the last page of my outline I put in three books, that really was sort of a lazy way to do it because if you look in these books, they have a real bibliography of all the articles and treatises that govern this, so that if you have a problem I would suggest that you start there. I would particularly suggest that you look first at the book "Liability of Corporate Officers and Directors" because this will give you a sort of handbook thing as far as federal securities regulations are concerned. You can start there and then go on to where it leads you.

We start out with a basic premise that the sale of any security, and, incidentally, if you look at the definition of a security, a security just includes about every kind of a piece of paper that represents an interest in a corporation or a business venture, even to the place it covers these things where you have mink farms and you sell people interest in that. Those are investment contracts—certain of the feedlots that operate, and you invest in the feeding of the cattle—these are investment contracts within the purview of these laws.

We start out with the premise that every sale of a security in interstate commerce or by use of the mails—and it's pretty darned hard to sell anything without using a letter at one time or another—has either got to be registered under the Securities Act of 1933 or has to be exempt.

There are two kinds of exemptions: First is an exempt security. You can look at the law. These are basically government bonds, municipal bonds, certain obligations of charitable, religious corporations or organizations, and others.

There is also, in addition to an exempt security, an exempt transaction. An exempt transaction is one in which the security comes

under the act but the way you are selling or buying the security, they give you an exemption. You go to your father and say you want to borrow \$5,000 for two years and you give him a note. That is a security and it is not exempt as far as the security goes, but you look under the section of the act and you find out this doesn't involve a public offering so it is an exempt transaction. This is one area of liability, and, really, as far as a corporate officer or director or the corporate counsel is concerned, if he violates this provision of the act, no intent is necessary, and even the due diligence defenses that are generally there in the act to protect you from a liability, I just don't see how it can apply particularly to a lawyer or a director or officer of a corporation. It is there in black and white. It is the law. You are presumed to know the law. So if your corporation or the one you are representing is issuing securities at any time, the first thing you want to be sure of is that you've got an exemption. If it isn't, you maybe need to go into the tedious, expensive process of registration. So an officer or a director who violates this part of the act is subject to the penalty.

One of the second areas of liability is for false registration statements. Professor Bishop referred to this in the *BarChris* Case. A majority of the officers and directors are required to sign a registration statement. A registration statement is the thing you file with the SEC to qualify your securities for sale to the public. Any director or officer who files the registration statement is specifically liable on the registration statement for an untrue statement of a material fact or an omission to state a material fact.

I think probably the easiest way to understand this is to just read *Escott v. BarChris*, which is quoted in the outline. Now, briefly what happened in the *BarChris* Case is that BarChris was a company that was building and selling bowling alleys. The more bowling alleys they built, the more money they needed, so they had to go to the public market for financing. In the process of this, I think there were a couple of brothers or something like that, and they had to get a respectable looking Board of Directors so they invited some of the nice people of the community. They got their faithful lawyer to come on the Board and they got somebody from the underwriting firm to come on.

They sold their security, and it wasn't long before the BarChris troubles really started to show up. They were building bowling alleys faster than they could sell them and there were too many bowling alleys at that time. As a result, BarChris went into bankruptcy. There wasn't much point in trying to get any dough out of BarChris because they didn't have any, so they turned around and said, "Well, who can we sue?" And they just sued about everybody

they could think of. They sued the officers and the directors of the corporation. They sued the accountant. For some strange reason they didn't sue the lawyer. They sued the underwriters, but they probably said they would leave it up to the underwriters to make peace with their own counsel if they got stuck—and they did get stuck.

The basic liability here was the fact that the officers and the directors and the lawyers for the corporation didn't use due diligence in setting out the facts and getting a true and correct registration statement.

One of the problems in these kinds of cases is that they are always judged from 20-20 hindsight. You know, after the business has gone busted it is very easy to look back and say, "Well, anybody could have known that this was going to happen! Just look!" At the time you are really going through these things a lot of things don't surface.

One of the problems they had was that the underwriter's lawyer hadn't read the minutes of one of the Executive Committee meetings. He could not get them very handily. They said they hadn't been written up. Then after he rendered his opinion, the securities were sold, they wrote up the Executive Committee minutes, backdated them and said what lousy financial condition the company was in.

The moral of this case is that officers and directors *are* liable, that lawyers, officers, and directors are liable, and that in order to escape this liability for a false registration statement they have got to use due diligence. It doesn't make any difference if you are naive, if you were new on the Board, Section 11 imposes liability in the first instance upon a director no matter how new he is. He has got to exercise due diligence and a high standard of care to see that this thing is right. Old Faithful Joe Lawyer that they put on the Board, they put an additional duty of due care upon him and said that he was in a particular position to know what the law was and what the liabilities were, and he fell down miserably in taking the word of the officers and directors as to the truth of the facts. You've got to go outside and find out for yourself whether these things are true.

One of the real problems in this, as alluded to by Professor Bishop, is that most officers and directors rely on indemnification provisions in the bylaws or the articles of incorporation. As he mentioned, the Securities Exchange Commission takes the position that these indemnification provisions are unenforceable. I believe that they are right. While the court has not gone as far as they

claim, the indications are that the courts are headed in that direction.

He mentioned the *Globus v. Law Research* Case, which held the liability on the underwriter. The next step is without any benefit of any indemnification from the company. This was affirmed last week, I think, in the Second Circuit Court, and it is just a logical step to go on. But what good does indemnity do you when the guy you are looking for indemnity against is broke? And that is usually the case that comes up in these types of situations.

There are other reports that you file when your company is a public company that become liability documents. These are generally referred to as 8-K, which is a monthly report of important things that happen in the corporation, the 9-K, a semi-annual report of profits, and the 10-K, an annual report, and there are proxy statements that also impose liability.

You'll probably remember Bernard Goldfine, the Vicuna coat man. They tried to get him every other way, but they finally found out that as president of the corporation he wasn't filing these reports like he should have been, and as a result he ended up in the federal prison.

There is even a broader area of this new Federal Corporation law that is causing concern for officers and directors, and this is what is called Rule 10b-5. It is really a very simple rule. Under the Exchange Act of 1934 it says "It is unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or the mails or any facility of the National Securities Exchange, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement or omit to state a material fact necessary to make statements true, or engage in any act, practice, or course of business which operates as a fraud or deceit on any person in connection with the purchase or sale of any securities." So this rule applies, not just to those companies that have public stock, it applies to *everybody*.

It was recently commented that while other federal securities antifraud provisions are important, none has become as far-reaching as Rule 10b-5, which, although little used in early years, now represents approximately one-third of all the current cases, private and public, brought under the Federal Securities statute. It generates almost as much litigation as all the other antifraud provisions combined.

What is basically the effect of Rule 10b-5? We want to remember this applies to everybody, and this particularly gets down to the

officers and the directors of the corporation. Most of the cases that are litigated under Rule 10b-5, other than the out-and-out fraud cases which probably could be litigated under your common law fraud provisions just as well, but most of the cases related to incorrect disclosure or failure to disclose by the corporation, or some other act by the corporation or officer or director that the courts don't think is quite fair play in connection with the purchase or sale of securities.

One of the first ones in this area was *Cady, Roberts* in which the corporation—I think it was United Aircraft—was going to omit their dividends, and the director who worked for Cady, Roberts quick left the room and called his shop and said, "Sell my wife's stock in United Aircraft." They did, and of course he got in before the market went down on the dividend cut, and they held that this was unfair, and the man had to pay back the difference between what he got for the stock and what the thing was worth after the market absorbed the bad news.

Of course the leading case that has been mentioned this morning is *Texas Gulf Sulphur*. We could spend all morning talking about *Texas Gulf Sulphur*, but basically this involved the duty on both the corporation and its officers and directors where you have got some confidential corporate information, and what do you do with it? It presents almost the horns of a dilemma.

Texas Gulf was doing some prospecting up in eastern Ontario in Canada and had indications from some drilling they had done that they might be discovering a real ore bed, great for mining. However, the tests, at least in my opinion, were greatly insufficient to make any kind of a projection of what they found, so they kept this very confidential, except, of course, there was the guy who was the geologist up at the place and some of the other officers in the corporation had to know about it. They had some discussions, "What do we do? Do we tell people or don't we tell people?" They decided to keep it quiet, but the information, or at least rumors leaked out. The market had been about \$16.00 or \$17.00 a share when they made their first drilling, and after a few months it started creeping up a little bit, and then along in April—it was in October when they did the first drilling—the rumors got to be pretty thick and they felt they had to do something. So on April 4 they came out with a release and said, "We have been doing drilling up here and we had one good hit but we just really don't have any way of knowing whether we have hit a bonanza or whether we haven't."

Of course the market assumed that they had hit, and the market started to go up. As a result, they felt that about ten or twelve days

later they had to come out and tell everything they knew about it. So they did prepare a release.

In the meantime, certain of the officers had gone to the stock option committee of the Board of Directors, these were all independent directors, and said, "We are doing a good job. How about granting us some stock options?" Of course they were granted it down at the lower price level. Right at the end, just before the release, some of these officers and directors started buying stock, some of their wives started to buy stock. Then good old Joe the Banker over at one of the biggest banks in New York—and I would rather guess, but I'm not quite sure, that they were going over to Joe for loans and they had to tell Joe why they were borrowing this money, so Joe started to buy some stock.

They finally made the announcement, and I think this was decided about nine o'clock in the morning, they busily wrote out the press release, and then they gave it to one of the secretaries and told her to run over to the WALL STREET JOURNAL or Dow Jones and get this on the broad tape. You know, the broad tape is the big one in the brokerage office that prints all kinds of information that keeps you about as current on market happenings as you can get. Some of them figured, "Well, let's see, it is going to take her about so long to get over there and get this on the broad tape, then the broad tape is going to come out, and we will give about an hour for the market to assimilate this news, then we are all free to go in and buy.

Well, they hadn't told this secretary how important this news release was, and this was about eleven o'clock in the morning, so on her way over to the WALL STREET JOURNAL she goes by the lunch room and says, "Now is a pretty good time for me to have lunch," so she sat down and had lunch.

In the meantime they figured, "Well, it's out," so they called their brokers and placed orders, and they got into the market before the market knew about it. Anyway, the market ended up a few weeks later at about \$57.00 over what it had been at the start, about \$17.00.

Well, the SEC jumped in right to start with and brought proceedings against the corporation for failure to disclose, and against the officers and directors and insiders and tippees. Now, the "tippees" are like Joe the Banker. He is the guy who got the hot tip.

First they sought to enjoin the corporation from doing this kind of thing again, then they sought to recover from the insiders who had made this profit. The SEC was successful, and after it got to

circuit court it held that they had a duty to disclose this information and they had not done it in the right way, so the corporation was liable, and that the insiders and their tippees were also liable to make restitution.

This is pretty clear as far as the law goes here—but to whom? and at what price? This is being litigated, is still being litigated now. The corporate liability here is just astronomical! Everybody who bought or sold stock during this period and didn't make money maybe can come in and claim liability. The fellow who bought from Joe, does he have to be able to trace that he bought at exactly the same time, or bought exactly Joe's stock, or can he just say "This is fungible, and I was in the market place at that time and they bought the stock from me on the basis of information that it was worth \$57.00, and I only got \$20.00 for it, so I've got this much coming back." When do you judge when Joe's seller would have sold if he *had* known the facts? So it presents some real problems.

One of the things that you come to the conclusion is that there have been a lot of maybe premature disclosures. People say everything that is happening on the corporate basis so they won't get caught in this trap, and I submit that here they are putting out useless information or trivial information that might be interpreted as material information and they could get in trouble that way.

What they've really called what this has raised is the "Damned-if-you-do, and damned-if-you-don't theory." That is the position Texas Gulf puts insiders in, according to lawyers that have studied it. They point out that if the company had issued an optimistic press release, it would have put them under SEC fire for exaggerating the prospects, but not having put out an optimistic press release they were liable because they failed to disclose what was going on.

One of the things that people say that the result of all this 10b-5 litigation is that you could get down almost in the purchase and sale of securities to the face-to-face result. Any time you are going to sell a security you've got to get the buyer there and tell him everything you know and then let him make his judgment as to whether he is going to buy or not. They haven't gone that far but at least this is one of the things that is worrying them.

Insider trading was mentioned. This is when an officer or director of a corporation either sells or buys, buys a security within the six-month period, and it is just automatic, the liability, if he makes a profit he has got to pay it back to the corporation. The corporation cannot waive the right of recovery. There are a number of lawyers in New York City and the East who check all these reports that have to be made on insider trading profits, and if they see one that is

even suspicious, you have a stockholders' lawsuit facing the officer or director who has made the purchase or sale.

Where are we now in Nebraska? As you know, we have a relatively new Blue Sky law in Nebraska. The Securities Act of 1933, unlike most federal acts, said "We don't usurp any of the state's powers in the area of securities regulation. This is just another securities regulation on top of it," so you are faced with fifty separate Blue Sky or securities laws in the United States as well as the federal law.

In Nebraska, here again you get to the point, "Why is an officer or director liable?" Our act says that every person who directly or indirectly controls a seller of securities, every partner, officer, director, or person occupying a similar status who materially aids in the sale, shall also be liable, jointly and severally, to the same extent as the seller." So officer and director liability, I think, is very evident here.

I would point out several things in Nebraska. Again, any securities you sell either have to be registered or exempt. I commend to you the reading of Sections 8-1110 and 8-1111, which in Nebraska are the sections referring to exempt securities and to exempt transactions. If you have a corporation that has more than ten stockholders, you very well could have problems, and unless you registered under the Nebraska act you could have problems that you violated the act.

One other thing that people don't realize about the Nebraska act is that a broker dealer in Nebraska is defined as any person engaged in the business of effecting transactions in securities for the account of others or for his own account, and then the Model Act goes on and exempts a number of people, including the issuer of the securities of the corporation. Nebraska's act does not exempt the issuer, so if the issuer puts on any kind of a concerted effort on his own to sell the securities, he probably is a broker dealer, he could qualify as a broker dealer in Nebraska, and if he doesn't, not only is the issuer liable but probably the officers and directors.

You have got problems in other states. All I can do is to commend that if you are doing something in another state you look at the state law there.

I will give you some examples. Suppose you are in Omaha and you have got a corporation and you think it is nice to let some of the employees buy stock. You can say, "We've only got a few of them," but what about the fellow who works for you here and lives over in Council Bluffs? You have got the Iowa law to contend with.

Suppose you are giving stock options and you have salesmen who are in Missouri and Kansas? You have got the Missouri and Kansas laws to worry about.

What are the penalties? The criminal penalties you can read in the act. They just involve imprisonment and fine. The civil liabilities generally, under both acts, are that at any time if you violate this, the purchaser can wait until the statute of limitations is about to run and then if the price of the securities went up he forgets about it; if the price of the securities went down, he comes in and says, "Here, you violated the law. You've got to pay me back what I paid for the securities plus interest at 6 per cent," or the going rate, depending on what the law is, "plus my costs if I have to get an attorney to make you cough up." So you get thhe attorney's fees too.

The punitive damages, the *Globus v. Law Research* Case even indicated that you could get punitive damages for violation of this act. The circuit court about ten days ago said, "No, we are not going to award punitive damages under the Federal Securities Act because they specifically set out what you are entitled to, which is only the difference in price of the security."

To bring one final thing to your attention, in most of these cases under Rule 10b-5 if the corporate officer or director violates the confidence of the corporate confidential information, if he tips somebody off and causes any kind of liability to the corporation, the corporation has got a right of recovery back against the officer or director, maybe even the tippee.

Finally, I think you should caution your clients as you raise these questions and they say, "Well, gee, look at such-and-such corporation, or so-and-so. They're a great big company and their president does this, or their director does that," you shouldn't let him have any solace in this because even the biggest boys have got caught. The biggest broker in the country, Merrill, Lynch, Pierce, Fenner & Smith has proceedings pending against them involving Douglas Aircraft, and recently, a couple of weeks ago, private individuals came in and started to sue Merrill Lynch for great sums of money because of the violation of Rule 10b-5.

Other than that, I hope you make a lot of money in the stock market!

CHAIRMAN HEWITT: "Bud," thank you very much for a very spritely exposition of the problems that obtain in this particular area.

I should like now to turn to the next speaker on our program. I have received several inquiries from members of the audience as

to the genesis for the title of Mr. Garfinkle's work this morning. I would hasten to add that it is not the hit tune from the off-Broadway production of "The Boys in the Band" but is rather indicative of something William Shakespeare said a long time ago in the play "As You Like It"—"Blow, blow, thou winter wind, thou are not so unkind as man's ingratitude."

It seems to me that some of the greatest ingrates we have moving around these days are these people who lurk in the weeds, and after you've carefully nurtured them by developing a corporation that feeds them and clothes them and gives them all kinds of fantastic dividend returns, they then find that the officers and directors have done something wrong and pounce upon them with a vengeance and succeed in getting all the funds out of the corporation into their own swollen coffers. This strikes me as being a horrible result, one that I think we all ought to pay some heed to.

Mr. Garfinkle, being somewhat of a classicist himself, wanted to call this speech, instead, "How Sharper Than a Serpent's Tooth It Is To Have a Thankless Stockholder" but I prevailed upon him to use the other one.

Al Garfinkle is a practitioner here in Omaha. He is a member of the firm of Monsky, Grodinsky, Good, & Cohen. He has been a close friend of mine since we both entered law school together. He is an acknowledged authority, possessing considerable expertise in the field of corporate law, and he is going to talk to us this morning about what the status of the law is in Nebraska and what we might very well predict from the seven solemn owls who sit in conclave down in the State House. I think, really, he is probably the hottest property to come out of Leavenworth, Kansas, since they sprung "Bugsie" Siegal in 1940.

It is with a great deal of real pleasure that I introduce Al Garfinkle.

BLOW, BLOW, OH WINTER WIND

Allen J. Garfinkle

That is very much too kind. I really wish we had discussed this a little more fully beforehand, because on the basis of my rather limited understanding of my title, I am now going to talk on "The Liability of Officers and Directors for Permitting Weather Conditions Which are Adverse to the Corporate Interest."

Actually, ladies and gentlemen, while our attention in this area

has quite naturally been focused primarily in the last few years on the rather dramatic developments in the Federal Corporate Law, we all know that the problem of liability of officers and directors is neither new nor confined to the federal level. Indeed, in a Nebraska case which was decided over thirty years ago, directors were held liable for approving the issuance by a subsidiary corporation, and the sale on behalf of that corporation by its parent, of \$400,000 in bonds which were purportedly secured by a first mortgage lien on real estate. Actually, the security was not real estate, so held the court, but rather a 99-year lease, and perhaps more importantly there was a \$250,000 first mortgage ahead of the bonds.

The case of *Ashby v. Peters*, 128 Neb. 338, was decided in 1935. Some of the statements made by the court in that case are worth noting. Albeit cast in generalities, they are repeated in many later cases and express a quite contemporary tone in harmony with that of the recent federal cases which have so shaken the nation's board rooms.

The court stated: "Directors are required to give the same degree of care and prudence as is generally exercised by men in their own affairs. The law requires of directors such diligence and supervision as the situation and the nature of the business requires. Their duty is to watch over and guard all the interests committed to them. The idea formerly prevailed, to some degree at least, that a director was chosen because he was a man of good character and outstanding financial ability, and for those reasons he would add prestige to the financial institution and that he had nothing further to do but simply let the officers run the corporation. This is not the rule in Nebraska. Directors, it has well been said, are not gilded ornaments to enhance the attractiveness of an institution and to supinely allow the officers to use the institution until some event occurs which arouses their suspicion. This theory would lead to the idea that the more ignorant directors could prove they were about its affairs, the more they could escape from any liability in connection therewith.

"Directors should know of, and give direction to, the general affairs of the institution and to its business policy, and have a general knowledge of the manner in which the business is conducted. No custom or practice can make a directorship a mere position of honor, void of responsibility.

"Where the duty of knowing exists, ignorance due to neglect of duty on the part of a director creates the same liability as actual knowledge and a failure to act thereon.

"It was the duty of the defendants in the case at bar to know

that the material statements in these bonds put out and sold under authority of the board of directors of the Peters Trust Company in a meeting which they attended were true. Such directors are liable for damages sustained by any one purchasing such bonds who had relied upon the truth of such material statements which are now proved to have been false."

Ashby v. Peters is not the only Nebraska case to impose liability upon directors in connection with the sale of securities.

In *Davis v. Walker*, 170 Neb. 891, a 1960 case, directors were held liable to a purchaser of securities sold by a corporation which had not been able to obtain a license for the sale thereof under the old Nebraska Blue Sky law. The court cited *Ashby v. Peters* on the duty to know. However, the reference to duty to know in the *Davis* case is really dictum, since it was found that the directors had been repeatedly warned that they could not sell the securities until a license had been obtained. In fact, no license was obtained and the securities were sold.

The court noted, and this is rather interesting presumably as an indication of their participation, which the court said they had actually had, the fact that they received payment of their salaries: at least in part from the proceedings of this transaction.

This case is somewhat narrower in scope, of course, than *Ashby v. Peters*, in the sense that here the court found that directors actually had knowledge that the securities were sold in violation of the act. It is broader, however, in the sense that the provision for recovery in the statute, unlike the present Blue Sky statute, did not provide for any liability on the part of the officers or directors. Nevertheless, the court, referring to the pre-existing responsibility and duties of officers and directors, held the defendants liable.

Neither the *Ashby* case nor the *Davis* case involved an attempt by officers or directors to enrich themselves at the expense of the corporation. Of course, in Nebraska, as in other states, such breaches of the fiduciary duties of officers and directors will be rewarded by judgments against the offending fiduciaries in appropriate action. Thus in *Howell v. Pock*, a 1932 case, a suit in equity was brought for an accounting and for the appointment of a receiver for an ice company. Here the president and majority stockholder had a competing ice company, and he was charged with doing all kinds of things. The most overtly and clearly wrong, of course, was selling ice from this corporation to his competing company at a price less than that which this company had to pay for the ice, and many other things which, in the presence of that kind of dealings, took on

really the cast of sabotage rather than mismanagement or carelessness.

The court held that in spite of the affidavit of the defendant which resisted and challenged a lot of the statements of the plaintiff, that the plaintiff's affidavit was more convincing and that a receiver should be appointed. We really don't know the result of the accounting action, but in view of some of the statements of the court I think it is probably safe to say that there was some kind of liability or some kind of settlement made by the defendant in the case.

The case of *Duffy v. Omaha Merchants Express & Transfer Company* involved a sale by the majority stockholders, who were also a majority of the Board, of stock in the corporation at a price set by them. The court stated—well, I was going to quote the statement by the court but I can't find it—the court held that here the sale was injurious and prejudicial to the minority stockholders, particularly in view of the need for money in the treasury, and ordered the sale set aside.

While the problem of self-dealing is a very common one, often in the most innocent of situations in which it is to the mutual benefit of both the fiduciaries and the corporation to deal with each other, and while the rules are sufficiently vague to permit considerable doubt and uncertainty as to the permissibility of transactions on the periphery, the area of self-dealing does not, in my estimation, pose nearly so much of a problem to officers, directors, and their counsel as do other areas of officer-director liability. Presumably officers and directors know when they are dealing with the corporation and also know, in most cases, that such dealings can give rise to liability, and that legal advice should be had with respect to each transaction. I think in most instances also counsel can arrive at some kind of reasonably confident state of advice as to the likelihood of liability being imposed.

The cases which seem of much greater interest are those in which the officers and directors may have no idea that what they are doing may well involve them in liability, and where they have nothing personally to gain from their action, except to the extent that they will gain as other stockholders will gain.

A Nebraska case of the latter type is *Johnson v. Radio Station WOW*, 114 Neb. 406, which was decided in 1944. That case involved the leasing by the Woodmen of the World Life Insurance Society of Radio Station WOW and the assignment of the license to the station goes to a corporation formed for that purpose, called Radio Station WOW, Inc. The fifteen-year lease was for a substantially

lesser rental than the yearly average of net revenue derived by the Society from the station during the seven years immediately preceding the lease. The discrepancy was \$74,000 per annum as compared to \$194,000 per annum.

During the preceding seven years the Board had frequently discussed the sale of the station for many reasons. Among them were the possibility of the radio station's income being made subject to income tax, and indeed the possibility of *all* of the Society's income being made subject to income tax by reason of the ownership of a station; fear of regulatory measures destroying the value of the station; fear of crossing a development such as television and frequency modulation.

While noting the reasons which, to me, seem rather substantial and rather real, the court, however, pointed to the very substantial reduction in income and a number of other items in the lease which it considered unsatisfactory from the Society's point of view, and concluded that the Society's president, in his zeal to promote the welfare of a close personal friend of his who happened to be in the lessee organization, had entered into a lease, which the Board authorized, the terms of which were grossly inadequate to protect the Society, and to permit it to remain in force would be a fraud upon the Society and its members. The court ordered that the station be returned to the Society and that all costs incurred by the Society in connection with the transfer away from and back to the Society of the station be paid by the defendant.

There was a vigorous dissent, which pointed out that the plaintiff really had not presented evidence to the effect that the rental under the lease was inadequate, that the President of the National Broadcasting Company and the Vice-President of the Columbia Broadcasting System had testified that if anything the rent might be excessive, more than the station was worth as a rental property, the fact that no one who had to pay federal income taxes would pay either to purchase the station or to lease the station an amount which would produce the kind of revenue that the Society had been enjoying without paying any taxes. Nevertheless, the directors were held liable for a very considerable expense.

The Society's directors and officers had previously fared better in *Price v. Fraser*, which was decided in 1930 and involved a 99-year lease of and a sale of the fee title to the old WOW Building at 14th and Farnum. In that case the President of the Society was a member of the Board of Directors of the corporation which acquired the leasehold. The court recognized the rule contended for by the plaintiff, namely, that transactions between corporations having

common officers and directors are presumptively fraudulent and the burden was on the defendant to sustain the fairness of the transaction by clear and convincing evidence.

The court found that the Society's President became an officer and director of the corporation which acquired the leasehold merely in order to permit that corporation to obtain the prestige required to sell bonds to finance the acquisition. The court therefore did not regard the transaction as being between two corporations controlled and directed by the same officers and directors. The court concluded that, in any event, the sale was for a fair and adequate consideration.

In *Rettinger v. Pierpont*, 145 Neb. 161, decided in 1944, an unsuccessful attempt was made in a derivative suit to impose liability upon officers and directors by reason of a sale. There was a judgment on the district court for approximately \$1,500,000. The Supreme Court reversed and dismissed the action, however.

The case involved a sale of the assets of the old Standard Oil of Nebraska to a new Standard Oil of Nebraska, which was a wholly owned subsidiary of Standard Oil of Indiana organized for the purpose of effecting the purchase. The purchase was for all the assets of the old corporation at a purchase price equal to \$17.50 per share of stock of the old corporation. That price was substantially less than the book value of the company's assets, even without there being any value ascribed to the name "Standard Oil." The company had been losing money for a number of years. While a number of other companies had expressed interest in acquiring all or a majority of the assets, none had offered as much as Indiana.

The directors recommended that the offer be accepted, and it was by an overwhelming vote of the stockholders at a special meeting held on August 29, 1939. On August 30, 1939 it was arranged that the president and a director of the old company become the president and director of the new company at the same salary he had been receiving. The vice-president and a director of the old company was hired as vice-president and director of the new company at a reduced salary. The secretary and a director of the old company was hired as secretary and a director of the new company at the same salary he had been receiving.

The testimony of such officers and of the officers of Indiana was that the hiring of such persons had not been discussed prior to August 30, 1939, and the court stated there was nothing in the record to the contrary.

The officers of the old company had refused to provide stockholder lists to parties expressing interest, but such refusal had long been the policy of the company, and the court said that while this was not the best policy, it was not one which would produce liability in this case. The officers did offer to mail to the stockholders any offer which other companies expressing interest might make. The proxies sent to the stockholders gave the choice of accepting the Indiana offer or any other offer that might be made, or voting against the sale of the assets for any sum whatsoever.

In another cause of action the plaintiff had included allegations of mismanagement of the company in such a manner as to practically deplete the assets. Shortly after the commencement of the trial the attorney for the plaintiff abandoned that claim. Nevertheless, much evidence was introduced regarding bad judgment on the part of management. The court made the following comment with respect to that:

"Looking backward it would appear that some of these business policies of management, as adopted and carried out by the officers and directors of the old company, especially between 1932 and the date of the sale in 1939, did not work out for the best interests of the company, but it is altogether too easy to be critical of the actions of others based on hindsight rather than foresight. Especially is this true in view of the economic uncertainties of this period, due to what is generally referred to as a business depression. But examining the action taken by the officers and directors, we find nothing that tends toward usurpation, fraud, or gross negligence, and in their absence nothing for which they should in any way be held legally liable for damages."

And, quoting from *Johnson v. Radio Station WOW* the court stated:

"Within the limits of their authority, directors or trustees possess full discretionary power, and in the honest and reasonable exercise of such power they are not subject to control by the stockholders or by the courts at the instance of a stockholder. In the absence of usurpation, of fraud, or of gross negligence, courts of equity will not interfere at the suit of dissatisfied stockholders, merely to overrule and control the discretion of the officers on questions of corporate management, policy, or business."

With respect to the adequacy of the purchase price, the court quoted from *Price v. Fraser* to the effect that the value of property is always a matter of judgment, and a contract will not be set aside for that reason alone unless the inadequacy is so great as to furnish, of itself, convincing evidence of fraud. The court found that the

assets were sold for their fair value. The fact that despite wide publicity was given to the sale, no one bid as much as the sale price, was cited as strong evidence of the fairness thereof.

With respect to the rule about transactions between corporations with common officers and directors being presumptively fraudulent, the court held that said rule had no application here because at the time the offer was made there were no common officers or directors, and those officers and directors of the old company who became officers and directors of the new one did not do so until after the acceptance of the offer by the stockholders. The court concluded, however, that in any event the agreement was fair. While the officers and directors had many opportunities to benefit themselves during the course of their negotiations, they did not do so, and did not seek any profit not common to all stockholders.

Peters v. Woodmen Accident and Life Company, a 1960 case, gives some comfort in cases in which the directors who recommend the sale of the corporation's assets, themselves own or the families of whom own the great majority of the stock of the selling corporation.

In that case a life insurance company purchased the assets of another one. In the purchase there was no value ascribed to an agency force of the selling company which, the plaintiff alleged, was wrong. The court found that the selling company really did not have an agency force, but for many years they had been using the agency force of the purchasing company, that both companies had considered that fact and decided that there was nothing to value in the way of an agency force.

While the court did not explicitly base its decision on the fact that the defendants and their families and business associates owned the overwhelming majority of the stock, it noted that of the \$167,000 alleged by plaintiff to be the value of the agency force, \$115,000 would go to the defendants, their families, and business associates if the plaintiff's position were upheld.

The court stated as follows:

"In that situation, it would be highly illogical to say that the financial interests of the defendants was such that they could not have honestly performed their duties as officers and directors in making and approving the reinsurance agreement, which deprived them of those benefits."

While there is language in the Nebraska cases about the liability of officers and directors for gross negligence, it is most difficult to find a case actually imposing liability for negligence other than in

the context of the kind of negligent misrepresentation in the sale of corporate securities that existed in *Ashby v. Peters*.

There is a case, *Whaley v. Matthews*, 134 Neb. 875, decided in 1938, which held the president of a life insurance company liable for, among other things, purchasing mortgages without securing and examining an abstract title which would have revealed prior liens. The court applied the following principles of law, quoting from other cases:

"The director of the corporation bears to it and its stockholders a fiduciary relation and is treated by courts of equity as a trustee. Every violation by a trustee of a duty required of it by law, whether willful and fraudulent or done through negligence, or arising through mere oversight or forgetfulness, is a breach of trust."

The court's decision probably very largely resulted from the fact that under the statutes in effect at the time, a domestic insurance company was limited in its real estate mortgage investments to bonds or notes secured by first mortgages. Therefore I do not think that the case is really very strong authority for the imposition of liability on a director in Nebraska purely for negligence to the corporation, as distinguished from negligence toward those who are purchasing securities or other assets from the corporation.

Thank you.

CHAIRMAN HEWITT: Thank you, Al, very much, for making us aware of the fact that I think the corporate law in Nebraska is considerably more sophisticated than any of us probably thought. In fact, I understand that the corporate law in Nebraska is so sophisticated that it is being bruited about, at least in Lincoln legal circles, that there is a case projected down there in which a stockholder is going to seek to recover from an executive of a corporation the fair value of his secretary's time for the period in which their noon-time amours stretch out over the normal resumption time for starting work, and I think the time has come to man the barricades, frankly. That is just *too* sophisticated.

Our next and final speaker is Dick Berkheimer, a member of the Lincoln Bar, a member of the firm of Mason, Knudsen, Berkheimer, and Endacott, a firm which we in Lincoln realize has a strong nautical bent, and we thought that that being the case it was entirely appropriate to have the title of Mr. Berkheimer's speech this morning reflect that old dictum of J. P. Morgan when he was questioned by a member of the nouveau riche, "How much does your yacht cost, Mr. Morgan?" and Morgan very peremptorily said, "Buddy, if you have to ask how much it costs, you can't afford it."

Obviously there are problems along that line in the field of buying officers' and directors' liability insurance. Mr. Berkheimer has investigated this field thoroughly, and although I must say in all candor his primary expertise is that he is probably Nebraska's leading expert on the detective novel, he is also quite familiar with the entire problem concerned in this area, and it is with real pleasure that I present Dick Berkheimer.

IF YOU HAVE TO ASK HOW MUCH IT COSTS YOU CAN'T AFFORD IT

Richard L. Berkheimer

Jim Hewitt gets and is entitled to the credit of the intriguing title of this talk, but I don't want anyone to get the impression that I am going to talk about yachts.

You know, it is a dangerous thing to endeavor to match quotes or quips with Mr. Hewitt, but in an effort to preserve the nautical vein, however, briefly, I will call upon Sir William Gilbert who once wrote the following bit of verse:

And down in fathoms many
Went the captain and the crew,
Down went the owners, greedy men,
Whom hope of gain allured.
Oh, dry the starting tear,
For they were heavily insured.

I note that we are supposed to have been out of here five minutes ago, so I will make this somewhat brief.

One important factor in determining whether to insure might be considered to be the degree of exposure, but here we must remember that insurance underwriters can never be considered to be a naive group, and they are, in fact, a fairly suspicious breed. If you are looking for this type of insurance, it is likely to occur to them that *you* believe you need it very badly, and they are likely to wonder *why*, and therefore it is well to consider this type of insurance before the directors are contemplating some sort of questionable transaction, which makes this type of protection particularly inviting, because probably the decision will come too late. The moral is, buy this insurance when the skies are sunny and no thunderclouds appear on the edge of the horizon.

The stockholder group and its makeup has a bearing on exposure, and the underwriters are not unaware of this. Usually you will find it difficult to insure a closed corporation, or any corporation that the underwriters think is a closed corporation, and that might be a situation where you have a fairly large number of outside stockholders and maybe quite a lot of stock widely held, but if the control people in the corporation, that is, its management, actually control a high majority of the stock, they probably aren't going to insure you.

The next item on my outline is the dollar amounts of potential liability and I am not too sure why I put it there, because it is difficult to measure unless you are looking at a particular source of trouble and, there again, you are probably too late. But the type of business needs to be considered. In a business corporation the normal exposure is to stockholders as such, with maybe some to bond holders, but they are people who are making an equity investment in the corporation who generally are aware that investment in stock often involves substantial risks.

However, in the case of banks, for example, we not only have stockholders as potential sources of litigation but also depositors, and they usually do not consider that a bank deposit is a risk investment.

The same is largely true of savings and loan investors and mutual insurance company policyholders who have stockholder status as such.

While banks and savings and loan associations do have these exposures, the insurers, the underwriters in the fairly recent past have developed some policies and premium rates for federal savings and loan associations and for smaller banks which are more attractive than the insurance available to business corporations generally.

National banks, at least, also fall in a somewhat different category because they do not have the benefit of the extensive statutory indemnity provisions which Professor Bishop discussed earlier.

The size of the corporation is important because the underwriters have established minimum size limits for insurability, which vary for the type business involved. I understand that the total amount of assets is usually the test, and I have not been able to get a schedule of these. I have received some indications that a manufacturing company with assets of about \$4,000,000 is probably too small.

I think one of the best reasons for purchasing insurance is probably to obtain and keep a good Board of Directors. A good deal has

been written lately about the value of an outside Board, maybe not for merely prestige reasons but to bring new objectives and valuable viewpoints to bear on management's decisions and policies, and it may well be that these people will become more and more reluctant to accept the risk of Board membership without insurance.

Now let's look a little bit at the policies themselves. Most policies contain a \$20,000 retention feature. That is really a deductible feature. And that \$20,000 cannot be insured. It must actually be paid by the insured before the insurance will pay the balance.

The costs and expenses are covered from the first dollar, and this feature could be particularly important, for instance to directors of national banks for whom there is no statutory provision allowing the lending of funds to directors for litigation expenses, which is now in our statutes and which is a part of the Delaware indemnity provision.

Policies available to banks under \$40,000,000 and to federal savings and loan associations have only a \$5,000 deductible. But in addition to any top dollar limit, the policies generally only cover 95 percent of the loss and of costs and expenses. If a defense is successful, 100 percent of the costs and expenses are covered. However, if loss payments on the entire loss exceed the top dollar of the policy, that is, where the insureds have to pay something in addition, the costs and expenses are shared proportionately by the insurer and the insured.

Professor Bishop discussed some of the exclusions from the policy, and he mentioned particularly the one of remuneration to stockholders, and some of the others which I think he felt gave the directors some comfort in being able to take something out of the corporation and still recover for their insurance if they had to pay it back. But there is a provision on the exclusion provision which excludes liability for unlawful profits and personal advantage of the directors, so I would think that that might be broad enough so the insurance company would not pay if there was some personal advantage or profit to the individual director, and probably when it is not really a license to steal.

There is another provision, liability for failure to effect or maintain insurance, and it is not surprising that the insurer wants the directors to have every incentive to buy all types of insurance because he is probably selling some of these other types, but there is probably some justification in the exclusion because otherwise in a friendly suit the insurance might be useful in filling gaps in the company's general insurance program.

I think probably one of the things you might be most interested in is cost. The premiums take into consideration the size and types of businesses. For example, banks under \$40,000,000 and federal savings and loan have relatively low rates, and I think it might be inferred that a business subjected to periodic examination by regulatory bodies probably may expect somewhat more favorable ratings than other businesses.

If you are going to go after this kind of insurance you are going to have to expect a fairly extensive investigation, and it is better to include the unfavorable facts in your presentation to the underwriter than have them uncover it in an investigation.

As to costs for general corporations, probably premiums will be not much under \$40,000 for three years, maybe \$50,000 to \$60,000, and maybe even more. I have heard of a medium sized life insurance company where the three-year premium was \$30,000. For banks under \$40,000,000 the minimum three-year premium is \$5,500, but that is a minimum premium.

One thing, if you use this kind of insurance, the company is going to lose some control of the litigation because the question of whether or not you are going to defend a claim is to be decided upon by counsel who are mutually agreed upon by the insurers and the underwriters. The corporations may feel this is more of a disadvantage in stockholder suits than it would be in automobile accident or workmen's compensation litigation, and as a practical matter the underwriters really determine the counsel to be employed.

If you are going to decide to insure, how do you go about it? First, of course, you contact a broker. A broker may work directly with underwriters or through other brokers or through other insurance companies, but finally the matter is going to end up with Lloyd's or, as I understand it, St. Paul Fire and Marine is also acting as underwriters on this type insurance. So on reinsurance for this kind of insurance, no matter where you go you are going to end up with one of these two companies.

There is not much difference in the St. Paul Marine policy and the Lloyd's policy, so as far as policy provisions there is not a great deal to choose between them.

However, it is well to choose your broker carefully. If he has access to the underwriters directly and does his job well, the underwriters will probably receive a better presentation from the insured's standpoint than would be the case if he has to move through one or more middlemen. Communication back and forth between the underwriters and the broker can often iron out problems which otherwise might lead to a denial of insurance or to high ratings.

In theory different routes to the underwriters should not affect premiums, other than the advantage of direct communication, which I have mentioned. But I have been told that there are differences in commissions resulting from one route or another which sometimes are reflected in premiums. But a proper presentation to the underwriter will often require disclosure of information which the corporation will consider confidential. It is therefore well to choose a broker to whom the corporation will feel free to make these full disclosures.

I have mentioned that underwriters will pretty well determine what attorneys are going to handle claims. However, I understand that it is possible, at the time the policy is written, to have the underwriters approve attorneys in advance, and they will often approve the general counsel for the company. They will never approve a house counsel, but they will often approve counsel for the company for types of litigation where no conflict of interest is involved. Of course, if you are talking about a derivative suit it is likely that you would get into some conflict-of-interest situations. In that case you can also, I understand, at the time the policy is written, obtain approval of alternate counsel, which gives the corporation a little more leverage as far as control of the litigation is concerned if this is done at the time the policy is being written rather than after the event of loss or event of litigation occurs.

This field of officers' and directors' liability insurance, I believe, is in a developing stage, as witness the recent two types of policies, the smaller bank policy and the federal savings and loan policy, which has generally more favorable premiums and retentions than the others. I think perhaps we will see more and more of these different groups being carved out, groups of businesses for somewhat different treatment than some of the others. I think also it can be expected there may be some refinements in policies, and therefore I suppose that it can also be expected that a good deal of what I have said will be out of date shortly. But I think this should give you a sort of a bird's-eye view of what you are going to find if you go looking for this type of insurance, and some idea of what the cost of it is.

CHAIRMAN HEWITT: Dick, thank you very much, both for your presentation and for your kindness and thoughtfulness in, I know, condensing what you had to say in the interest of expediting the purposes of the meeting.

Ladies and gentlemen, our revels now are ended. I want to thank again, on behalf of the entire Section, our panel of speakers

this morning who contributed a great deal to our understanding of the problems that are inherent in this field of the law.

Now I would like to turn the meeting back over to Mr. Bert Overcash, the Chairman of the Section.

CHAIRMAN OVERCASH: We will adjourn now until after the luncheon and then begin another session this afternoon.

... The session adjourned at twelve-five o'clock . . .

FRIDAY AFTERNOON SESSION

October 31, 1969

The third session of the Institute on Insurance, Banking, Corporate and Commercial Law was called to order at two-fifteen o'clock by Chairman Overcash.

CHAIRMAN OVERCASH: At this time I have a very pleasant announcement to make to this Association. When our program was arranged by your President and the Officers, we thought we were providing a creditable program. I have just learned, however, that we may experience an unusual and distinct honor on this occasion. The Attorney General of the United States is in Omaha today and has kindly consented to visit our meeting. He will be presented to you by the President of our Association, Charles Adams.

It is a distinct pleasure and an honor for me to turn this meeting back to our President.

PRESIDENT ADAMS: Gentlemen of the Nebraska Bar, those of us who read the papers, even if only occasionally, realize that there are some very important people in government today, and I have no hesitation in reminding you that aside from the President of the United States himself, probably the most important person in government, and his personal advisor, is the man I am about to present.

It is a distinct honor and pleasure to present to you the Attorney General of the United States, the Honorable John N. Mitchell.

REMARKS

Honorable John Newton Mitchell

Mr. President, Senator Hruska, Distinguished Members of the Association here on the panel, Ladies and Gentlemen: I love what the gentleman just said but I have to deny it. There are eleven other members of the Cabinet and many other people in government who certainly fit the category that I occupy, so I will unfortunately, even though gracefully, have to try to deny what he said.

I know that you have been addressed by Senator Hruska and my friend, Bernie Segal, the President of the American Bar Association, so I am sure your meeting here is not only stimulating because of the people who have addressed you, but I am sure it is worthwhile because of the program which you have.

I think there is nothing more appropriate for a lawyer than to belong to a Bar Association and to participate in it to the fullest extent possible. I think a great part of my education came through activities in the various Sections of the American Bar Association.

Since I had not prepared any remarks for today, I think I could take a few minutes to talk about a subject that we all are interested in in this country, and that is our problem with crime.

I am sure you all have read the statistics that appear in the newspapers, many of which come from the Federal Bureau of Investigation, and through those statistics you realize that crime has increased 122 percent from 1960 through 1968, and that each of us now has a double risk in the year 1969 of being a victim of a crime as we had in 1960.

There are those who refer to crime as having its genesis in our social problems, and I think to some extent that is undoubtedly true. I think we will have to rectify our social problems before we eliminate crime in the country. But in the meantime, I don't believe that we can wait for that. I think we have to improve our law enforcement, we have to improve our judicial system, we have to improve our institutions to the point where those who are incarcerated therein can be rehabilitated.

Recognizing this problem, the Administration in Washington made it an order of high priority. The thing that concerns most of us is crime in the streets, and we have three aspects of a program, major portions of it, going hopefully through the Congress, hopefully to be funded, and hopefully to have appropriate results in this area that is really frightening our society.

As you know as lawyers, the federal jurisdiction with respect to crime in the streets is relatively limited. We hopefully through our image, through pilot projects, and through our leadership can set the pattern and the tone for better local law enforcement in this area.

But I am happy to report that, in addition to that, there is a program operating under the Law Enforcement Assistance Administration which is designed not only to do the things that I have just mentioned but also to fund the state and local agencies in this area.

I would be remiss if I did not point out to you that Senator Hruska was one of the prime architects of the Law Enforcement Assistance Administration concept that came out of the '68 act, the Safe Streets Act of 1968. This program, which we hope will be funded to the full extent of the statutory authorization this year, that number being \$296,000,000, will provide under that concept, if so funded, \$250,000,000 for action grants to the fifty states which, in turn, allocate them to the municipalities and counties.

I am also happy to report that the programs that have been submitted to this Administration for consideration of these grants provides 77 percent of it will be used in the police and law enforcement area. We think that that is the place to start.

In addition, the crime in the streets problem is a product of our other problem of narcotics and dangerous drugs. As you probably know, the addict who has no other means of support has turned to violent crimes in recent days in order to obtain sufficient funds to take care of his addiction, to provide \$70.00, \$80.00, or \$90.00 a day that a heroin user needs in order to satiate his addiction.

We have before the Congress now a bill sponsored by Senator Hruska which reorganizes the entire federal statutory provisions with respect to this area and, of course, needless to say, adds to the statutory law many new provisions that are required in order to make these federal establishments fighting the drug problem more effective.

Some of our laws have been on the books without substantial change since 1914, and they grew like Topsy did, and there are inconsistencies and many loopholes. We feel that this comprehensive act will place the appropriate powers in our Bureau of Narcotics and Dangerous Drugs and enable it to get at, not only the wholesale trafficker but also the clandestine manufacturer and the legitimate manufacturer whose product goes into illegitimate avenues of dispersal. We feel if we can cut down on the use of narcotics and dangerous drugs this will have a measurable effect upon crime in the streets.

Then there is the organized crime aspect of it that also has a direct effect on crime in the streets because they provide the narcotics and, of course, they engage in gambling, prostitution, loan sharking, all of the items that provide the substantial number of dollars that they obtain every year.

There is a reasonably good estimate that organized crime in this country siphons off some \$50-billion a year in this country, and, as you know, once those moneys are obtained they go into taking over what were normally legitimate businesses into additional types of rackets, and of course the corruption of the police and our political office holders.

We have, in the Department of Justice, reorganized the concept of strike forces that are designed to deal directly with a specific family of the Mafia. We are implementing them, and as the budget allows we will put them in all of the metropolitan areas. This strike force is composed of not only the people from the Justice Department but the Federal Bureau of Investigation, Immigration and Naturalization, but it also includes the Treasury agents, the Secret Service, and all the other law enforcement establishment over in the Treasury. This has become quite effective. In the first six months of this year I think we have indicted at least twice as many people as were indicted in a similar period in 1968.

As we get our court calendars cleared and get our U.S. attorneys offices more fully staffed, we will be able to try these indictments and hopefully remove from the process those who are at the head of these organizations. We have gotten a number of them put away so far, and once you put the top man away, the promotional operation doesn't work as well in the lower echelons.

There are a number of items of legislation in this field that are before the Congress which will implement our powers, and, I am sure, add greatly to the effectiveness of the programs that we propose to carry out.

I would hope that you gentlemen of the Bar would be interested in these subject matters because they directly affect you and your neighbors, your corner businessmen and all the rest of the citizenry. I would hope that you would support this legislation through your Association, and I hope that you will join with us in the Justice Department and the other areas in examining your local court systems to see what can be done to expedite trials, to provide adequate prosecutors and, of course, last but not least, provide adequate defense for the defendants, because without adequate defense and lawyers of competency in this area, all we do is add to the problem of reversals on appeals. We certainly have had built up in this

country in the last number of years a tremendous number of criminal cases, many as you know by habeas corpus and other collateral proceedings, so we must find a way in our courts, both state and federal, to streamline this criminal proceedings process; otherwise I am sure we will break down our entire system of criminal justice. We are trying, it is a very difficult problem, and with the help of associations like yours around the country I am sure that we will make a substantial dent in it, turn the tide around, and hopefully eliminate the problem that we have.

I surely appreciate being with you today. If these thoughts that I have left with you will stimulate you to the point of assistance, it will more than pay me for having been here. Thank you very much.

CHAIRMAN OVERCASH: Gentlemen, we are about an hour behind in our regular program, due to the long lunch hour. The speakers on the afternoon program have been reviewing their remarks with the idea of tailoring them to our situation as best they can, so we will now proceed with the scheduled agenda as set forth in the program.

When I was a very young lawyer in 1937 I joined the Attorney General's staff in Lincoln, and when I got down there one of the first assignments that was given to me was about a dozen permits to sue the State of Nebraska. I didn't know anything about this practice, but I learned that from time immemorial it had been the practice for members of the legislature who had constituents with some political persuasion and a claim against the state to get what they called a "permit to sue," and they would get that resolution through the legislature and then bring a lawsuit somewhere in the state. And it was the duty of the Attorney General to go out and defend the case in front of a jury.

Well, they turned these over to me, and I didn't know exactly how I was going to defend these cases. One of them was filed in my home town of North Platte. I got to thinking about the matter and thought, "Well, maybe the easiest way to defend these cases is to put a stop to this practice."

So Reta Cox had a case out there and I went out to North Platte—it gave me a good opportunity to go back home once in a while, with a case there—and filed a general demurrer. I proceeded to do some research, wrote a brief, and claimed that the legislature should not be permitted to let one individual through and deny it to others. Anyhow, the case got to the Supreme Court in 1938 in Volume 134, and the Supreme Court sustained that view and said that under our equality of law if there is going to be any suing of the state, everybody has to be on an equal basis.

We then, at that time, in that office told the legislature, "You ought to set up a comprehensive uniform system." Now, that was 1938, gentlemen, and here we are thirty-one years later before we got any such system, and we've got it only by virtue of developments in the court itself, as will be explained to you, and by virtue of the exerted action in the legislature by many members, such as Senator Luedtke.

This first portion of our program relates to this new system of tort suits against the state, and from now on we're on a different basis. The head of our Subsection on Municipal Law is Ralph Nelson of Lincoln. He will take over this portion of the meeting and introduce Senator Luedtke.

INTRODUCTION

Ralph D. Nelson

Mr. Chairman, Ladies and Gentlemen: The Doctrine of Governmental Immunity is now better known as the Rule of Abrogation. What this really means is that even faster than the change in manned flight in space has been the change in the imposition of tort liability upon the State of Nebraska and its governmental subdivisions.

Not too many years ago there was a simple rule long adhered to which stated that the sovereign could do no wrong and had no liability. The Nebraska Constitution has provided that the state can be sued and that the legislature shall provide by law in what manner and in what court suits shall be processed.

The Supreme Court held that this section is not self-executing (*Gentry v. State*, 174 Neb. 518, 118 N.W.2d 643) and the doctrine was preserved. Every rule has had its exceptions and so some found their way as the courts considered the doctrine. In 1913 in the case of *Henry v. City of Lincoln*, 93 Neb. 331, 140 N.W. 664, 50 L.R.A.N.S. 174, the court said that the city has no duty to engage in private business enterprise and when it does so it is bound by the rules applicable to private enterprises. The courts were making a distinction between governmental and proprietary activities, and having made such a line were then concluding that government had no immunity from tort liability when engaged in proprietary activity.

The court continued to hold that a municipality was not liable for the negligence of its officers, agents or employees in the exercise

or performance of governmental functions—*Greenwood v. City of Lincoln*, 156 Neb. 142, 55 N.W.2d 343.

In a continuation of this distinction the court decided that an airport operation is a proprietary activity even if the legislature says that it is a governmental activity—*Brasier v. Cribbett*, 166 Neb. 145, 88 N.W.2d 235.

In a further discussion of the exception, the court also declared that the state may incur liability when engaged in proprietary activity—*Stadler v. Curtis Gas, Inc. and Board of Regents of the University of Nebraska*, 182 Neb. 6, 151 N.W.2d 915.

Then in 1957 came a landmark case originating not too far from the space launching site known as Cape Kennedy. In this case a widow sought recovery of damages from a town whose police officer locked her husband in jail. The jail was unattended at night, there was a fire resulting in the jail becoming filled with smoke, and the prisoner suffocated. In the case of *Hargrove v. Town of Cocoa Beach* (Fla), 96 So. 2d 130, 60 A.L.R.2d 1193, the court abolished the rule of governmental immunity and stated that it was not going to wait for the legislature to change it.

There was an indication of change in Nebraska just three years ago in *Myers v. Drozda*, 180 Neb. 183, 141 N.W.2d 852, when our court stated a change in the liability of a non-profit charitable hospital.

Then came abrupt changes in the cases of *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805, *Johnson v. Municipal University of Omaha*, 184 Neb. 512, 169 N.W.2d 286, and *Root v. School District No. 25*, 184 Neb. 570, 169 N.W.2d 464. In these decisions the court indicated that the abrogation of governmental immunity would best come of legislative rather than judicial origin.

In the Johnson case, for example, the court declared that the legislative processes and procedures can be more effectively applied to a comprehensive solution.

Such a change in direction needed a command pilot who, in this situation, was a State Senator with a legal background to provide the comprehensive solution. Two bills were prepared and presented—LB 154 and LB 155. Our legislative rules require public hearing on all bills, and these bills were fully presented and received no objection on any matter of substance.

So that you may be fully advised, our Section is proud to present the expert in this field of law, the Senator, Roland A. Luedtke, Nebraska State Legislature, of Lincoln.

**THE KING IS DEAD—NEBRASKA TORT CLAIMS ACTS
CHANGE ENTIRE LEGAL CONCEPT OF
SOVEREIGN IMMUNITY**

Senator Roland A. Luedtke

Thanks, Ralph. Fellow Members of the Bar: I think from looking at my watch that my speech is just about over so we can just about quit right now. It was real nice we managed to delay it this long so now you will not have to listen to me.

The title of our presentation this afternoon is "The King Is Dead." I could have added—"Well, Almost," but I will not because the maxim, "The King Can Do No Wrong" is dead in Nebraska. It will be given a long-deserved burial on and after January 1, 1970, due to the passage by the 1969 legislature of LB 154 and LB 155.

LB 154 deals with tort claims against the State of Nebraska itself, and LB 155 deals with tort claims against all of the political subdivisions in the state, including "villages, cities of all classes, counties, school districts, public power districts, and all other units of local government."

Both of these acts become operative for all actions occurring on and after January 1, 1970. Both were passed by a rather substantial majority of the legislature—LB 154 by a vote of 40 to 5, with 4 not voting; and LB 155 by a vote of 39 to 6, with 4 not voting.

A tort claim is defined as "any claim against the State of Nebraska or a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the State of Nebraska or a political subdivision, while acting within the scope of his office or employment, under circumstances where the State of Nebraska or a political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death, which will not include any claim occurring before the effective date of this act."

The immunity relied upon for over one hundred years of our history was based upon Article V, Section 22 of the Constitution of Nebraska, which provides that: "The State may sue or be sued, and the legislature shall provide by law in what manner and in what courts suits shall be brought."

The legislature never, by general law, provided the manner for bringing suit against the state for damage resulting from the negli-

gence of the state or its employees. It is interesting to note that in 1938 suits had been brought against the state under the provisions of a statute which gave the district courts jurisdiction over "all claims or petitions for relief that may be presented to the legislature, and which may be by any law or by any rule or resolution of the legislature refer to either said courts for adjudication." This language is still part of Section 24-319 of our statutes today but has no validity since the Supreme Court decision in *Cox v. State*, 134 Neb. 751 decided in 1938. In that case the 1937 legislature passed a bill authorizing the claimant to bring suit for damages allegedly resulting from an improperly maintained highway.

The Supreme Court held the legislative action to be special legislation and unconstitutional under Article III, Section 18, saying "While a special privilege is granted to this plaintiff, the right is denied to others similarly situated to recover for the torts of the agents and servants of the state . . . The legislature is without force to pass a special law creating a liability in behalf of an individual to institute suit in the absence of a general statute providing liability on the part of the state for the negligence of its agents and servants."

These tort claims acts actually reverse one hundred years of Nebraska history during which time the legal doctrine of sovereign or governmental immunity prevailed.

The basic doctrine of sovereign or governmental immunity goes back to at least Thirteenth Century England. Legal scholars have argued quite forcefully that the use of the doctrine of governmental immunity actually misread the early English law. However, the argument is moot since it is a known fact that until the past few years it was a firmly established proposition that a sovereign state could not be sued without its consent. Nebraska courts assumed the existence of this doctrine until approximately two years ago.

It was at this time that the Nebraska Supreme Court followed the lead of several other states in removing governmental immunity by judicial decisions. In fact, within the past decade the doctrine of governmental immunity was abolished in whole or in part by the Supreme Courts of California, Arizona, Michigan, Wisconsin, Minnesota, Florida, Illinois, and New Jersey.

A change in the judicial direction was definitely in the air when, in 1966, the Nebraska Supreme Court decided the case of *Myers v. Drozda*, 180 Neb. 183, 141 N.W.2d 852, changing the liability of a non-profit charitable hospital.

The court took the next step by declaring that the state may incur liability when engaged in *proprietary* activities when, in 1967,

it decided *Stadler v. Curtis Gas, Inc. and Board of Regents of the University of Nebraska*, 182 Neb. 6, 151 N.W.2d 915.

Subsequent cases showed the Court's readiness to remove immunity from governmental activities, and the judges in most of these decisions, including some rather strong dissents, pointed out that such removal of the immunity should be the task of the legislature.

A rather important decision along this line was made in 1968 in the case of *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805, in which the court held that cities and all other governmental subdivisions and local public bodies of the state are not immune from tort liability arising out of the ownership, use, and operation of motor vehicles.

Up to this time the only way in which a citizen could seek recourse for personal injury or property damage was to file a claim against the State of Nebraska before the Sundry Claims Board, which claim ultimately was determined by the Legislature's Salary and Claims Committee. This necessitated a delay until the legislature was in session, a hearing in the usual legislative fashion, and the drafting of an appropriation bill to pay such claims by the full legislature.

During the 1967 session of the legislature one automobile accident claim for over \$300,000 was heard by the Salary and Claims Committee which resulted in the legislature awarding \$140,000.

During the 1969 session of the legislature two claims in one accident were filed against the state for a total of \$725,000. This time the legislature awarded over \$300,000.

The members of the legislature thereby realized that with the increase of such serious claims before the legislature, some new procedure would have to be sought with regard to the entire tort claim area. As a result of this concern and the challenge of the Supreme Court for the legislature to do something about it, the legislature conducted an interim study on state tort claims between the 1967 and 1969 sessions of the legislature. The committee's report recommended the specific legislation which was passed as LB 154 and LB 155.

The study revealed that "claims procedure in a legislative body does not allow proper judicial presentation of evidence, or an effective cross-examination of witnesses by the complaining citizen as would otherwise be afforded by a proper court of law." It was concluded that as a result of these inherent weaknesses in

the system itself, "the legislature could not possibly arrive at the full truth in these complaints."

James E. Dunlevey, attorney on the Legislative Council staff, served as counsel to the Interim Study Committee on the State Tort Claims Act and largely was responsible for the diligent legal research which developed these acts. Seven meetings, including three public hearings, were held and twenty witnesses appeared before the committee. Mr. Dunlevey traveled to Des Moines, Iowa, to study the operation of the Iowa Tort Claims Acts covering state agencies and political subdivisions where he met with the special assistant Attorney General of the State of Iowa in charge of the Iowa Tort Claims Division. He also conferred with the Des Moines city attorney concerning the political subdivisions act.

Proposed drafts of legislation were then prepared by the committee counsel, and all who appeared as witnesses before the committee were asked to review these drafts. The Attorney General's office made an extensive review of the drafts and provided many valuable suggestions before the final draft was approved by the committee.

By way of summary, the basic conclusions of the committee were that:

(1) The state and its political subdivisions should be liable for negligence resulting in personal injury, death, and property damage.

(2) There are certain activities, unique to government, in which immunities should be retained.

(3) It is essential that uniform procedures and standards of liability should be adopted for all state agencies for all political subdivisions.

(4) Nebraska should follow the pattern established by the Federal Government and the State of Iowa in regard to tort claims legislation.

The two bills were accordingly drafted following the framework of the Federal and Iowa Legislative acts. The committee felt that more than twenty years of judicial interpretation of the Federal Act and recent experience on the part of our neighboring State of Iowa would provide us with valuable precedents for Nebraska. In this connection we would recommend to those who care to research the Federal Act as precedent in this regard the volume "Handling Federal Tort Claims" by Jayson.

It is important to note the procedural and mechanical steps set forth in these acts in order to perfect a claim against the State

of Nebraska under LB 154 or against other political subdivisions under LB 155. For this reason we shall conclude with a rather brief analysis of each of the tort claims acts, section by section, as follows:

(A) *ANALYSIS OF LEGISLATIVE BILL 154*—known as “STATE TORT CLAIMS ACT”

Section 1. Statement of policy. Reaffirms basic immunity of the state, except as it is waived by the Legislature. Declares that only the uniform procedures provided by this act shall be used in bringing tort claims against the state.

Section 2. Definitions. These follow the policy of covering all agencies and employees of the state. Specifically excluded from coverage by the act are contractors and “private corporations.” The “private corporations” exclusion refers to the State Board of Agriculture, since the Nebraska Supreme Court some years ago used this language in holding the board subject to tort liability and not an agency of the state.

The definition of a “tort claim” is virtually identical with the federal and Iowa acts, and would not include any claim arising before the date of the act.

Section 3. Authorizes the State Claims Board to make a final determination of all claims, acting on the advice of the Attorney General. Claims over \$5,000 also would require court approval. This is very similar to the Iowa act.

Section 4. Procedural. Makes the Director of Administrative Services secretary of the State Claims Board and gives the Attorney General the duty to investigate all claims. Provides for *service of process* on Attorney General.

Section 5. Authorizes suit against the state, but only after final action by the State Claims Board. Suit could be brought if the claim is rejected by the board, or the claimant is not satisfied with the amount allowed, or if the board does not act within six months. Similar to Iowa.

Section 6. Provides that all suits shall be heard without a jury by the district court for the county in which the claim arose. Similar to Iowa. The committee considered use of juries, and also considered establishing a special claims court, but concluded that the recommended method would provide fairness and ease of operation.

Section 7. Provides that in suits permitted by this act the state shall be liable to the same extent as a private individual, with the specified exceptions. Similar to Iowa and federal acts.

Section 8. Directs the use of the regular rules of civil procedure. However, Section 6 provides that suits shall be heard by the court without a jury. Also provides that judgments are subject to appeal to the Supreme Court.

Section 9. Prohibits additional suits after judgment in a suit under this act. Similar to Iowa and federal acts.

Section 10. Provides that the Attorney General shall represent the state, and gives him authority to settle suits.

Section 11. Exclusions. Specifies areas in which suits are not permitted. In paragraph (1), subdivisions (a) through (e)* are virtually identical in language with the Iowa and federal acts. The federal act contains exclusions for military activities and subdivision (f) was drafted to correspond with those exclusions. Iowa does not now have such exclusions, but recommends them. Subdivision (a) would prohibit claims based on legislative actions, and the federal courts have held that the exclusion of claims based on the performance of "discretionary function" covers regulatory and licensing activities. For example, no claim could be based on the refusal to issue, or the revocation of, a license, nor could it be based on an employee's action in enforcing a statute, even if that statute should be found unconstitutional. There is extensive federal judicial interpretation of this language which the committee feels will provide excellent precedent for the Nebraska act.

Paragraph (2) covers claims based on defective highways. For many years Nebraska counties have been liable by statute for improperly maintained highways. The committee reviewed the judicial interpretations of this statutory liability and feel these interpretations provide a proper basis for the assumption of state liability, and expressly stated that conclusion in this paragraph.

Section 12. Amends the existing section establishing the Sundry Claims Board to create the State Claims Board. Since Section 3 of this act authorizes the board to make a final determination on claims, the committee feels the board should be made up of elected officers, namely, the Lieutenant Governor as Chairman of the Board and the State Treasurer and Auditor of Public Accounts.

Section 13. Directs the State Claims Board to follow the Administrative Procedures Act in adopting rules and regulations. (Chapter 84, Article 9 of the statutes)

* (a) Discretionary function or duty; (b) assessment or collection of taxes; (c) imposition of quarantine; (d) false arrest, etc.; (e) workmen's compensation claim.

Section 14. Establishes a Claims Division, responsible to the Attorney General; and permits the Attorney General to employ persons to investigate claims. Iowa has a similar claims division, consisting of three attorneys handling all claims, tort and otherwise, against the state. Two of these attorneys have handled all tort claims, and some other matters, since adoption of the Iowa act in 1965.

Section 15. Procedural section providing that all awards shall be final. Similar to federal and Iowa acts.

Section 16. Provides for payment of awards. Contains a specific provision for review by the legislature of awards over \$50,000. Under this provision, \$50,000 of any award could be paid upon certification of the award, but any amount above that would require a specific appropriation.

Section 17. Establishes the Tort Claims Fund for payment of awards. The legislature may, if it chooses, appropriate to this fund not only from the General Fund, but also from other funds, such as the Highway Cash Fund or the Game Fund, as is now done for the premium for liability insurance on state vehicles. For example, if in one biennium \$100,000 in claims against the Department of Roads is paid from the Tort Claims Fund, the legislature for the next biennium may appropriate \$100,000 from the Highway Cash Fund to the Tort Claims Fund.

Section 18. Provides for reports to the legislature.

Section 19. Statute of limitations. Provides claims shall be brought within two years after they accrue. Exceptions are provided for situations in which the State Claims Board does not act until the deadline is past.

Section 20. Permits the court or the State Claims Board to allow attorney's fees. Similar to Iowa, where the Bar Association's minimum fee schedule has been followed by the courts and the board. The federal act has a more restrictive percentage limitation on fees.

Section 21. Re-emphasizes that all tort claims must be brought only under this act.

Section 22. Re-emphasizes that this act applies only to tort claims.

Section 23. Provides that where insurance is in effect, the provisions of the policy shall govern settlement of claims. This would allow the insurance company to investigate and defend claims, reducing the work load for the Attorney General.

Section 24. Allows the state to bring an action for recovery from an employee whose acts have led to an award against the state. Generally, this would apply where an employee has individual liability insurance.

Section 25. Requires employees to report all accidents and to cooperate in their investigation.

Section 26. Standard language to cover conversion of Sundry Claims Board to State Claims Board.

Section 27. Short title of act.

Sections 28 to 31. Amend existing sections to change name of Sundry Claims Board to State Claims Board and provide that the board shall continue to exercise same authority as in past on non-tort claims.

Section 32. Amends existing law with regard to liability insurance on state vehicles (LB 503, 1967 session) to conform with this act. Adds a provision that the policies shall be of the \$500 deductible type, with the state liable for the first \$500 of any claim. A study of claims during the first year of insurance indicates a very sizable premium saving with the deductible provision, a saving that would more than offset the amount the state might pay out.

Section 33. Eliminates the exception of the University of Nebraska and the National Guard from the vehicle liability insurance program. The committee feels a uniform pattern should be established for all agencies of state government.

Section 34. Makes a clarifying change in one section of the motor vehicle inspection law. The change in paragraph (5) makes it clear that an inspection station is not an employee of the state, and thus not covered by this act.

Section 35. The committee felt a specific operative date is needed for a law of this type, and that January 1, 1970, will allow sufficient time for administrative implementation.

Section 36. Repeals the sections amended by this act and also the section on vehicle liability insurance that deals with state immunity and employee liability.

(B) ANALYSIS OF LEGISLATIVE BILL 155—Known as "POLITICAL SUBDIVISIONS TORT CLAIMS ACT"

Section 1. Statement of Policy. Reaffirms basic immunity of political subdivisions, except as it is waived by the Legislature in this act. Declares that only the uniform procedures provided by

this act shall be used in bringing tort claims against the political subdivisions.

Section 2. Definitions. The definition of "political subdivision" is intended to cover every unit that is not covered by the State Tort Claims Act. The definitions of "employee" and "tort claim" are similar to those in the State Tort Claims Act, since the committee felt it is desirable to have the greatest possible uniformity. Realizing that there can always be some questions on definitions, the committee wishes to state specifically that it has no intent to substitute the tort claims procedure for matters that are now in the eminent domain category, such as Sections 15-229, 15-701, 16-615, and 16-645 of the Nebraska statutes.

Section 3. Authorizes the governing body to make a final determination of all claims.

Section 4. Procedural. Provides for method of filing claims (with clerk or law dept.)

Section 5. Provides that there must be an administrative determination on the claim as a prerequisite to suit. Suit could be brought if the governing body rejects the claim or does not rule within six months, or if the claimant is not satisfied with the amount allowed. Similar to the state act.

Section 6. Provides for the same procedure in suits against a political subdivision as in suits against private individuals, except that the cases shall be determined by the court without a jury, as in the state act. The size of the claim would determine the court in which suit could be brought.

Section 7. Provides that in suits permitted by this act the political subdivisions shall be liable to the same extent as a private individual, with specified exceptions. Similar to the proposed state act.

Section 8. Prohibits additional suits after judgment in a suit under this act. Similar to state act.

Section 9. Exclusions. These are quite similar to the exclusions in the state act. Claims based on legislative, licensing and regulatory activities would not be permitted.

Section 10. Amends the existing law under which liability has for many years been imposed on counties for improperly maintained roads. The amendment would make this section apply to all political subdivisions, and would adopt the procedural provisions of the tort claims act.

Section 11. States specifically that it is the intent of the legisla-

ture that the liability previously imposed upon counties for improperly maintained highways shall now be imposed on all political subdivisions. The committee reviewed the prior judicial interpretations of Section 39-834 and felt that these interpretations should continue to control the amended section, and expressly so states in this section.

Section 12. This section is taken from the Iowa act and, in effect, establishes a type of contributory negligence as a defense against claims based on alleged defects in public sidewalks or other public facilities.

Section 13. Authorizes all political subdivisions to purchase liability insurance. Some do not now have that authority. Authority also is granted for purchase of insurance in areas in which immunity is not waived, in which event the purchase of insurance shall constitute a waiver of immunity to the extent stated in the policy. Under this provision, for example, a city could purchase liability insurance to cover false arrest, and the terms of the policy would then cover the question of immunity. The determination of waiver would be made by the governing body when it purchased the policy. This section also provides that the terms of the policy shall govern settlement of claims, which should lighten the workload of the attorney for the political subdivision.

Section 14. Procedural section providing that all awards shall be final. Similar to the state act and the Iowa and federal acts.

Section 15. Provides for payment of awards. Realizing that some political subdivisions have constitutional and statutory levy limits that might make it impossible to pay awards promptly, the committee is proposing a loan system. The committee felt this proposal will be to the advantage of a deserving claimant and will protect the fiscal stability of the political subdivision. Under this proposal the State Treasurer would make the loans from funds available for investment. The interest rate of one-half of one percent would reimburse the state for the expense involved. The committee considered this proposal carefully, particularly in view of Article XIII, Section 3 of the Nebraska Constitution, which provides "The credit of the state shall never be given or loaned in aid of any individual, association, or corporation." The committee concluded that its proposal would not contravene this section of the Constitution.

Section 16. Statute of limitations. Provides claims shall be brought within one year after they accrue. Suits must be begun within two years. Exceptions are made for situations in which the governing body does not act until the deadline is past.

Section 17. Re-emphasizes that all tort claims must be brought only under this act.

Section 18. Re-emphasizes that this act applies only to tort claims.

Section 19. Allows a political subdivision to bring an action for recovery from an employee whose acts have led to an award against the political subdivision. Generally, this would apply where the employee has individual liability insurance.

Section 20. Short title.

Section 21. Amends existing law covering claims against cities of the primary class to specify that it does not apply to tort claims.

Sections 22 and 23. Amend existing law covering claims against cities of the first class to specify that it does not apply to tort claims.

Section 24. Amends existing law requiring counties to purchase liability insurance for their vehicles. Removes the language that places all liability on the employee, and permits the county board to include a deductible provision in the policy. This might bring a premium savings.

Section 25. Amends existing law under which liability had previously been imposed on counties and townships to make the procedures conform with this act.

Section 26. Amends existing law requiring counties to purchase liability insurance for school buses. Changes are similar to those made in the county insurance law by Section 24.

Section 27. The committee felt a specific operative date is needed for a law of this type, and that January 1, 1970, will allow sufficient time for administrative implementation.

Section 28. Repeals the sections amended by this act and also several others which will be replaced entirely by provisions of this act, or which are obsolete. These sections are:

3-207, prohibiting tort suits against a municipality based on the operation of an airport. This section has been ineffective since a Supreme Court decision in 1958.

3-512, which provides procedures for suits against an airport authority. Airport authorities now will be covered by this act.

14-801 to 14-803, which provide procedures for claims against cities of the metropolitan class. The procedures in this act will now apply.

15-843, which requires advance notice of a defect of a public way or sidewalk in cities of the primary class before a claim can be made. The procedures in this act will now apply.

23-176, which provides that county board members shall forfeit their office if they fail to purchase the liability insurance required by law. The committee felt this is an unnecessary provision since the same procedures could be used without this provision.

31-451, which provides procedures for claims against drainage districts. The procedures in this act will now apply.

Chapter 23, article 10, which imposes upon counties the liability for a lynching resulting from mob violence. Under this 1927 law, counties are liable to the victim's family for a sum not to exceed \$1,000. The committee felt this law is obsolete.

19-3201, which provides procedures for claims against cities of the first and second classes and villages. The procedures in this act will now apply.

The committee specifically did not amend or repeal Section 46-160 relating to the negligence of irrigation districts in delivering water. The committee felt this is a special category which is handled adequately by the existing section. Any other tort claims against an irrigation district would be subject to this act.

CHAIRMAN OVERCASH: Thank you very much, Senator Luedtke.

More than one hundred years ago an American lawyer made this statement: "It is as much the duty of government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals." That was Abraham Lincoln.

Senator, I think you deserve the commendation of this Association.

Now we have one more matter on our program. A member of this Bar, a distinguished lawyer of Phoenix, Arizona, is here, and after about a ten-minute recess we will present him to you.

CHAIRMAN OVERCASH: Gentlemen, we have the unusual pleasure today of welcoming back to Nebraska a native Nebraska lawyer who is a transplanted lawyer to Phoenix, Arizona, as a part of the Subsection on Corporation Law.

The Chairman of that Section is Howard Moldenhauer, who in considerable part is responsible for the Corporate Practice bill in the legislature, and I am therefore going to turn the meeting over to Howard Moldenhauer to complete our program.

HOWARD H. MOLDENHAUER, Omaha: Thank you, Bert.

As most of you here know, practically this whole Bar meeting has placed emphasis on the changes which are happening all around us. Last night Senator Hruska mentioned these changes. The whole meeting of the House of Delegates on Wednesday had to do with change in the Bar structure, and President Adams' report concerned change. You may remember President Segal's comment, both yesterday and this morning, that organizations or institutions which do not bend, break. This afternoon we have another example of change in our professional institutions.

As you know, LB 330 was passed by our current legislature, and I may give you a little bit of background which you may or may not be familiar with.

As you know, last year the House of Delegates unanimously approved LB 330 and the proposed court rule which would authorize lawyers to practice under certain restrictions. This bill was introduced this spring and there were two amendments tacked onto it by certain of our Senators in the legislature, one of which would have required the distribution each year of all income to a professional corporation, and another of which would have prohibited professional corporations from adopting any pension or profit-sharing plans which would give greater benefits to the members than individual practitioners or partnerships could obtain.

Senator Luedtke was one of the primary sponsors of this bill, along with Senator Robinson of Kearney, and Senator Luedtke really went to bat for the Bar Association and the professional associations and told the Senators in no uncertain terms that they could either kill the bill or delete the two amendments. They deleted the two amendments, and the bill finally passed the legislature 32-10, with a great deal of opposition.

This is not a new concept, because Nebraska was really only about the forty-seventh state in the union to adopt some kind of professional corporation act. Only in Iowa, New York, Wyoming, and the District of Columbia are there no professional corporation laws. In all of these states, all organizations cannot practice as corporations; in some the legal profession can; in some it cannot. But this is nothing new. It is something that has been going on for some time.

We looked all over the United States for a speaker knowledgeable in this field, and we finally ended up with a native of Nebraska who has been transplanted to Phoenix, Arizona.

James E. Hunter was born in Kearney, went to the University

of North Carolina where he majored in Business Administration, and then he graduated from the University of Nebraska Law School in 1950. He has practiced law in Arizona ever since.

In his law firm, Hunter, Bartlett, Penn & Lurch, P.A., which is a professional association, they have been incorporated for the last seven or eight years.

I met his partner, Stan Lurch, a year and one-half ago at the ABA Regional meeting in Denver, and Stan told me at that time that they were working on a book for the Economics and Law Office Management Committee of the American Bar Association, on professional corporations. It is my understanding that this book, which will cover all aspects, the ethical aspects as well as the practical business aspects and tax aspects, is due in about another week. When it will actually be published I'm not sure, but in the very near future.

They have also incorporated approximately one hundred doctors in many different professional corporations, going back to about 1960. So we feel we have a speaker here who has a great deal of practical experience in the area of professional associations.

I am very pleased to present to you Mr. James E. Hunter, originally from Kearney, Nebraska, of the Arizona Bar.

PROFESSIONAL ASSOCIATIONS

James E. Hunter

Thank you very much, Howard. Senator Luedtke, a classmate of mine, Fellow Members of the Nebraska State Bar: I really never expected to have this pleasure, but it was certainly a thrill to receive a telephone call from Howard asking me to appear here before my old friends, and there are some in the audience.

I detest code numbers, and I do not profess to be a tax expert. I keep one of those in the law firm. So I am speaking to you as a fellow general practitioner and I am really talking to Conrad Erickson and John Cassel, Moller Johnson from Ravenna, people like that who were my classmates at the University of Nebraska Law College and who used to debate with me in the basement of my little home on the Indian Reservation in South Phoenix when we were studying for those exams in June. So this is just a talk to you, Conrad, if you are interested in professional corporations for yourself or for the professional men in your community.

I never would have gotten into this type of thing had I not been a graduate of the University of Nebraska College of Law. I was in that class right after World War II, and we had what I thought was an outstanding class—every class thinks that. But I learned something there. I learned from a man, Dean Beutel, whom many of you will remember, that there is always a good way, a proper way to challenge authority, even the Supreme Court of the United States. I learned from Dean Belsheim that all those tax laws weren't always right and they weren't always the same. And of course I learned from Dean Dow that if you got in trouble, you could just plead the statute and you would come out all right. Then of course I've stayed in close contact with Hank Grether ever since, because he is now a personal friend of mine and I almost think of him as a classmate because he was a young professor just starting out in his profession at the time I was graduating.

So when I went to Phoenix, Arizona, to try to build my future—and I'll assure you, not a fortune, just a future—I was instilled with what I thought was the spirit of a very progressive state, that is, the spirit of Nebraska. I think Arizonians have the same feeling, because you would be surprised the number of transplanted Nebraskans we have, especially in Maricopa County and Phoenix, Arizona. We still root for "Big Red" and we get together. A lot of us even come to the football games. You all got me two tickets for the game Saturday and I'm sure we'll win.

This spirit that I was instilled with at the University of Nebraska College of Law was one that the law is a changing, dynamic thing, and I was taught there to challenge but to think and to challenge the written word, and that is the way I approached professional corporations.

We had a professional corporation statute seven or eight years prior to yours, which surprised me because I have looked at Nebraska as a leader in many of these types of things, but you have done it and I am proud of you for that, proud of Roland.

I looked at it not as a great tax savings, but I looked at it as a way to build a law firm. That is the reason I went to Phoenix, Arizona—I thought here is a growing dynamic community where a young man can go and grow with the economy, grow with the West, if you will, and build his own thing and do his own thing.

I was there for ten years before I got into the professional corporation. Our law firm actually started in 1954. I was a Republican—you did a good job here—and now we have some Democrats in Nebraska, I understand. We've changed over in Arizona, by the way. We've gone from the Democratic to the Republican side, you

know—Senator Goldwater. But I felt that this was something that would really build a law firm. I looked at it that way more than I did at the tax savings. I was intrigued by the tax savings and the fringe benefits, but I had a greater purpose in mind and I never did believe that the partnership concept was one that held a law firm together, because every January it is like moving day in Nebraska and Missouri—the first of March when all the farmers change tenancies and find a new place to practice their profession; well, the lawyers about the first of January in Phoenix in partnerships do the same thing. So what interested me was trying to create an entity concept, to build a law firm and then hold it together, and this is just one little tool.

The real pioneers were the firm in Denver of Drexler & Wald. We count ourselves among the pioneers, Hunter, Bartlett & Penn, and now Lurch, and we've added P.A. I wish we had selected P.C. instead of P.A. You learn a lot by doing these things. Everyone thinks we are a Professional Association or Poor Attorneys or PA, something like that. Under our code we can be limited, if we want to be, Ltd., we can be Inc., we can be incorporated, we can be Professional Corporation, or just Incorporated. At this time we selected P.A. because you were kind of a renegade seven or eight years ago if you did this. I don't believe you are any longer. We didn't feel we were renegades. We had been active in all the county Bar Affairs, all the state Bar affairs, and I have a partner on the Board of Governors of the Arizona State Bar, and I have Stan Lurch active in the American Bar, so we felt we had enough stature as young lawyers that we could go ahead and do this in Arizona, and we were the first to do it.

We did not sponsor the bill in Arizona for professional corporations. I wish I could claim that, but the law firms that at that time represented most of the medical profession in Maricopa County presented a bill to the legislature and it passed with very little opposition.

It is not as technical a bill as yours. Your bill, together with the proposed Supreme Court Rule for Nebraska, to me really almost goes too far. I am not critical of it at all. I read it and I knew as soon as I read it that whoever had prepared both the bill and the Rule were so conscientious of the responsibility of the Bar, of the ethical requirements and what we owe to the public, that it was drawn with undue caution, almost. You can live with it, I am sure, but there sure are a lot of filing requirements and notices and ways to get dissolved. But that's all right.

In Arizona we talk about retirement in our bill that yours does not mention, but you do it indirectly in your Supreme Court Rule,

but disability and retirement or disqualification—and that's a nice word; I like it better than "disbarment," disqualification—all of those things, you have to be a stockholder and you have to have those qualifications, so I am sure that our Supreme Court and our State Bar can remove one of us or fold up the whole corporation without all the fancy steps that you have in Nebraska. But there is good intent there, and for that reason I am not the slightest bit critical about it.

There have been twelve cases tried in the district courts of the United States and we had the last two district court cases in Arizona. There was one just this summer, the Tucson Clinic case that goes by the individual doctors' names. This was a complex of twenty-five doctors and perhaps one hundred employees, and we appeared in that case *amicus curiae* for the State Medical Association and the Maricopa County Medical Association, for about five groups of lawyers that had incorporated in Arizona, for our own corporation, and for the doctors that we represent. That case was handled by a Chicago law firm. This clinic had been incorporated long before we were, but relied on the old *Kittner* Case.

The next case was our case in Maricopa County. The first one I mentioned was tried in Tucson. The next one was our *VanEpps, Jones and Lawrence* Case, and we won it on a motion for summary judgment. So those district court judges have really got the word. They are doing a good job for us.

After that case, which was decided by Judge Craig, former President of the American Bar Association, and no doubt he has been in Nebraska, a very fine gentleman and a very fine judge and an old friend of mine, he ruled for us on a motion for summary judgment which was supported by every kind of piece of paper we could find that had the words "professional corporation" on it, from the billing notices of the doctors to their letterhead to the prescription pads to show that they were corporations and acted like corporations. It was then appealed. We received a notice of appeal to the Ninth Circuit and we were quite thrilled. We thought, well, here is where it all started in the Ninth Circuit and here we are back in the Ninth Circuit, so maybe this will be the wind-up. But Uncle Sam finally decided in September that they were going to dismiss their appeal and this made our doctors very happy, and allow us to go on.

We know this thing is going to be challenged in other ways, challenged on unreasonable accumulations of earnings if you don't go Subchapter S, unreasonableness of salary, the Internal Revenue is going to challenge it in every way they can. Now it has been

challenged in the United States Senate. You all read the release in the WALL STREET JOURNAL this week, that they are trying to revamp to put professional corporations back in the position of the Keogh Bill, the ten percent contribution to the profit-sharing plan with a \$2,500 limitation. Well, that hasn't been done, but even if it is it doesn't bother me because I believe in the concept of the entity and what it can do for your law firm, and I am not looking at it just from the tax standpoint.

Just a little historical background. You recall that we had HR 10, which I just mentioned. Then after that we had those bootstrap regulations of the Treasury Department in 1955, which just made my blood boil. If I ever felt like Dean Beutel it was when I read those regulations! If I ever saw legislation by bureaucracy it was there. I was so glad we had incorporated because I really was in hopes they would test us. They never have. They have audited our law firm and they have never challenged a thing. They came by and said, "Well, now we've changed. We've got this 1965 regulation, and if you will be good boys we will let bygones be bygones and leave all the money you put in your profit-sharing plan right there if you will just switch this over and go Keogh..."

We said, "No sir. We're happy just the way we are," and we went our merry way. We are still thankful for that.

As I indicated, in the early days we had to be cautious because we were the forerunners of something, and we were very conscious of our ethical and professional responsibilities, just as you folks are. For that reason, when I started to draft our articles of incorporation—I am dividing this talk into three bases for this visit: One is a little bit of history that I have given you; the next is how we did it or what we did, the mistakes we made, and you can learn from our mistakes; and the last part, the most exciting part, when I got the letter from Howard he said, "You might tell them about the pitch you give the doctors," and of course that is the exciting part of it, that's the fun part—we knew we had to be cautious because I didn't know how to draw the articles of incorporation for a professional corporation because I had never seen any articles.

Let me say this, to begin with, and I say this in Nebraska, not Arizona, you don't have to be a specialist to set up a professional corporation, you just have to be a lawyer. That's all in the world you have to be. Any lawyer can do it. Any Nebraska lawyer or Arizona lawyer can do it. You don't have to call in an outsider. You don't have to call in an expert. You just have to sit down and think about it, use what you've learned, read your code and your

rule when it is passed, and I am sure it will be, and that's all in the world I did. I looked at the statute and I said, "I just don't feel comfortable." I put all the things in. I incorporated our business corporation requirements—we have a lot of silly requirements in Arizona—so I incorporated all the silly requirements for our business corporation and all the requirements of the professional corporation law, our limited liability. We have the same thing as you do, we are liable jointly and severally for any acts of omission or commission in the practice of our profession. However, we have the limited liability which goes to the business function of the corporation. That would be perhaps owning our own law office, for the mortgaging, for the lease we put our corporate name to, our friend and company from Los Angeles where we all buy our stationery, things of this nature. We do have a degree of limited liability, but we have the same as you on the general liability of our profession to our public.

But I was uncomfortable just talking in cold terms, so in the articles of incorporation I, for my own conscience perhaps, incorporated that this corporation was to be guided by and governed by and regulated by not only the laws of the State of Arizona and the professional corporations statute but by the Code of Ethics of the American Bar Association and the Arizona Bar Association. This gave me a good feeling.

We were the forerunner, and we published our articles of incorporation six times in a weekly newspaper in Arizona, so we could keep the newspapers financially solvent, so I could see these in print, and when people read them I wanted them to get a message other than just the corporate structure. I am still glad these things are in there. They are not required. Your statute, but more especially the proposed Rule does that for you, so you wouldn't have to have that feeling.

We did research the ethical requirements and the legal requirements before taking this step. We did call the state Bar office, that type of thing. But we went ahead and did it and we received a lot of criticism, and I am sure it was cocktail party talk, and all of that, about those young lawyers doing this. They didn't class us as ambulance chasers because they couldn't, but it was almost akin to that in a way. But now they come to us to visit about it, and I think they are kind of proud that we went ahead and did it. Although we are not specialists, we have incorporated some other law firms since we handled our own.

Now "How to do it?" We followed the statute, in your instance the statute and the court Rule. The statute in Nebraska, and also

ours, requires that a specific procedure be set up for the withdrawal or disqualification, or upon death, of a shareholder.

By the way, what do you call someone who is a member of a professional corporation and an owner as distinguished from the young lawyer employee with you? You don't want to call him an employee. We make everyone a vice-president, but you don't go around calling him "Vice-President," so we have just fallen into the term of calling them "principals" and "associates." "Principal" in our firm means—it's not written anywhere—but it means about the same as the old concept of a partner, so to speak. You have more voice in the management. And the "associate" is the employee lawyer. He is not treated any differently than he is in the partnerships that you have here in Nebraska. A man comes out of law school, he's a lawyer. He may not be the smartest or the most knowledgeable or the most experienced, but he is treated as a man and respected for what he is, and it's the same way when you are incorporated. It won't make any difference.

The difference in ownership of shares makes no difference, we still operate on an executive committee level, which are the principals. We have a firm meeting once a week where the associates are with us, and we discuss a lot of the problems connected with the next man we are going to bring into the firm, that type of thing. But some of the other things, we don't want to worry the young men about how good business is or how bad it is, so we hold that for the executive meeting.

We do not write up all the minutes of each executive or board meeting, but we do write up the ones if we are handling stock or lease requirements or the borrowing of money from the bank, things of that nature, the traditional things. But we do operate as a corporation. That's very important. Of course for maintaining your status as a corporation you can't have an empty minute book and function as a corporation.

As to our buy and sell, we must be able to close that deal within ninety days under our statute. I have read your statute but I don't believe there is a time limit, but I would assume a reasonable period of time in Nebraska—I think perhaps that was one detail that was left out—instanter, perhaps, because the Attorney General is going to come after you pretty quick, the way I read your act, if you don't do something. So the buy and sell agreement does become very important, and this is the concept that I value most in the professional corporation.

In the firm of Dexler and Wald in Denver they merely value their stock at book value. I don't believe in that. I don't believe that

when I pass on to the Great Reward that all the time I've spent doing community work, building my law firm, building my community, perhaps sacrificing my income personally for the building of the firm and the spreading of what little wealth there is, has to be sold out at ten cents per book and nothing more. So this is the great thing, I think, of the professional corporation. You can have partnerships with tenths or thirds or however you want it, but it is still a different concept, and you can divide up ownership and the transferability of ownership so much more easily and develop a concept that there's something of good will or going concern value and create your own market for your buy and sell within this concept. I tell this to the doctors.

Our concept is that we are bringing in the young lawyers and trying to grow, not by mergers of law firms but by training our own young men and creating the market for the stock. When I am sixty-five or fifty-five, or whatever it is, and want to slow down, maybe I can afford a trip to Europe and be gone three months. Lawyers never seem to do that, but if I were to decide to do this I do not want the resentment among the young lawyers of "There's Hunter. Sure, he was good in the old days but now he is milking this thing and I'm doing all the work."

If I can peel off a percentage of my stock to the young lawyer via bonuses, keep his salary where it is but via the bonus route, give him the money to pay for my stock, it is a different route but it is more understood because he is seeing his growth within our law firm and his ownership, and he knows when he pays for my stock as I have slowly retired and want to keep my income level up, not all out of salary but a part of it out of the sale of a percentage interest of my stock on a capital gains basis, then he feels he is growing within that law firm. Perhaps it will all be gone by the time of my complete retirement, perhaps it will not. But if he pays for it based upon a reasonable valuation, then it is worth more in his eyes. But the law firm really helps him buy it, and that is what we tell them: "You don't have to come up with this money. You don't have to pay for it until the money is there. This law firm will help you make the money to buy your interest in it."

It has been accepted in our law firm. We are not old enough to experience anyone retiring yet, or death. We have experienced someone leaving the law firm. One of my partners is Campaign Manager, unsuccessfully, for Governor of the State of Arizona, and after that he decided to go into something else. So we had the problem of having a man go out of our law firm, and it was so simple when we had the buy and sell and the young men there capable or wanting some of the stock, so that is what we did.

In Arizona, and this won't interest you because you were a community state for about the year I graduated from law school, but we are community property, and if for some reason you happened to represent someone in a community property state going through this, you have the problem of the wife. Most of our wives are not licensed to practice our profession and, as you know, your statute requires that all shareholders be licensed practitioners. Well, we recognize in Arizona that wives may make a disclaimer with reference to real property or personal property of any community property interest, so this was the device we have used, a disclaimer agreement executed by the wife disclaiming any interest in the stock, giving up any interest in it. This can be a problem with lawyers' wives and doctors' wives in Arizona, but luckily our wives all went along with it.

We had the problem of selecting our fiscal year, and we found that this was a great thing for us. We selected January 31, so this lets us decide along in November or December whether or not we want to declare bonuses in 1969, for example, and up our personal income this year or declare them in January of 1970 and still have the money to pay those Christmas bills, either way it works, or throw our income into the personal taxable year of 1970 payable in April of 1971 and still be a deduction in the corporate fiscal year of 1969-1970 ending January 31; or we can throw it over to the first of February and throw it clear off so far as our professional corporation is concerned until the succeeding taxable year. A couple of years we made enough money to make use of this device.

I think it is a great advantage over forced splitting of income, even though we do have devices for the leveling of income in the tax code now but I find lawyers don't use it too much, and they are looking to cut up the melon, as we say. We can still cut up the melon between December, January, and February and utilize some of these devices.

We have declared only one dividend. We have usually used bonuses, contributions to our profit-sharing plan, or just used it up on salaries and our fringe benefits, but we have declared one dividend.

When we incorporated our law firm we thought we might have a cash flow problem. As a partnership we paid our quarterly estimate and always went to the bank to borrow the money to make that and then fight to pay the bank back so we could borrow again for the next quarterly estimate. So when we incorporated we had to start withholding, so we not only had the problem of paying that quarterly estimate, we didn't have the money because we were

withholding it from our salaries and making a pay-as-you-go plan, so just be aware of the problem. There is no solution to it except a friendly banker—or the good negligence case, something like that. Be aware of it and plan for it.

There has been a problem of what do you do with your accounts receivable? When we incorporated we took the depreciated book value or the net worth of the partnership and transferred all these assets into the corporation and divided the stock. At that time we were four equal owners and we divided it four ways, a very nominal capitalization. It amounted, really, to a little cash in the bank and the books and the leasehold improvements, whatever they were. Then we took the accounts receivable and we wanted to know what to do with those. We really didn't know. All of a sudden it just kind of came to us, which we reasoned and Uncle Sam has passed it, and now you really don't have this problem, my tax expert tells me. It's just a direct assignment of the accounts receivable to your corporation—and for your doctors too—because if you take no stock for it, you take it in as zero base and you are going to have ordinary income when you collect those accounts receivable because we're all on a cash basis in our professional partnerships and corporations.

But if you sense a particular problem, what we did was continue the old partnership merely for the purpose of collecting these accounts receivable, and we hired the law firm in a very formal contract to collect our lousy accounts receivable, which we reasoned and felt we could support were worth about fifty cents on the dollar, and therefore charged the partnership one-half contingencies for collecting the old accounts. That gave us some operating capital or some cash flow in the corporation. We took our salaries down for the first year or two in the corporation and "divied up" the other half out of the old partnership, which didn't do anything except be a receptacle to continue to hold the accounts receivable. The way Uncle Sam audited us, he did not question this at all, and we thought that was quite a thing, but it isn't any problem right now, I guess, from what I am told.

I have already talked to you about the use of the corporate name. I think the drafters of your legislation were right. I think "Professional Corporation" is a lot better sounding than "Professional Association," and that is all you can use here, as you know, P. C. But we were very careful for two reasons, both the ethical reasons and the tax reasons, to let people know that we were operating in the corporate form. Luckily we took in a new man at that time so we announced the formation of the Professional Corporation and a new associate coming with us. It took a little of the edge off. Then

we made sure that all our pleading forms bore the P.A.—or the P.C. which you would use—our cards, our name on the door, in the yellow pages, the white pages, on the letterhead, the billing notices, the will jackets, the blue back manuscript covers—all those things. We timed it so that all those things carried our corporate identity because we felt we had to hold ourselves out as a corporation ethically, and then also we felt that if Uncle Sam were to challenge this he would always start looking and say, “Well, you say you are a corporation but you don’t act like one and therefore you are not one.” We have done the same thing with our doctors. We insist upon this same type of thing.

Along the same line, in Arizona we have to file the articles of incorporation for any corporation in every county in which the corporation does business. I think the practice of law is the rendering of a service. I don’t know that it’s “doing business,” but we did record our articles of incorporation in the fourteen counties of Arizona so that we would not be barred by some sharp lawyer objecting to our appearance in court in Cochise County, or some place like that. That was quite a raft of filing, but we did that, and I have done it for every law firm that I have incorporated since then.

We did enter into employment contracts with every lawyer employee. They were very simple employment contracts, but I do think you need one to show that you are an employee and that you are acting like a corporation, that you *are* a corporation.

We adopted a profit-sharing plan and we have made contributions to our profit-sharing plan and we have enjoyed the profit-sharing plan. We did not trustee it with a corporate fiduciary, for two reasons: There wasn’t enough in it for anybody to be interested in handling it, so I was selected as the trustee. We have a Management Committee. Although I don’t think a corporate fiduciary is completely protected by the ignorance of his clients who will waive any negligence or non-prudent investment, that is what I would do right now while it is small. We all agree we want to buy some stock or take a stock option, we put a lot of those into the profit-sharing plan where we have a corporation that wants us to have a piece of the action, as they say, and we’ll put it into the profit-sharing plan, maybe buy it or maybe it is just a stock option that is granted. The client likes it because he feels like these are all of the lawyers in the firm, and if Bartlett is out of town, Hunter will jump right in. It creates something the client seems to like and I think our men like it.

Our profit-sharing trust has grown, and I notice that as it grows and grows we become more conservative, although we do a lot

of things with our clients that they want us to, our investments in the stock market have become more conservative as more dollars are involved. In fact, I think we are in a mutual fund right now. I think they lost confidence in me, and we put some into a mutual fund. It will stay there because of the front-end loading and we don't want to lose that cost.

Of course you will have your leasehold interest to assign to your corporation, which is a very perfunctory thing. You have a decision to make with reference to whether or not you will go Subchapter S and be taxed as a partnership or whether you want to accumulate at a lower tax rate in the corporation until you reach a point where you would have an unreasonable accumulation of earnings before declaring a dividend. You may decide *not* to go Subchapter S. Let me warn you, if you think you are going to have a bad year, don't go Subchapter S because if you have two bad years in a row and you have a low capitalization, and as you know you use up the basis of your capital stock, that is the only thing you can offset those losses against, what you have invested in your stock, and you are going to end up if you have losses, and it could happen where you had to borrow money to keep the firm going for a year because you had two or three big cases you spent all your time on, and next year is going to be a great year but it ate up more than you had in your equity ownership of your stock; say you had \$5,000 in and by the time you borrowed and kept the firm going you were down \$10,000, well that extra \$5,000 over and above the basis of your stock is gone forever. That is a decision you will have to make, based upon what you think your next year's business is going to be.

It is the same way with the doctors, but I don't know any doctor who has that problem, really. We don't worry about it with the doctors very much, but some young law firms do have. I incorporated one this summer that their previous year had been that way, and I worked very closely with their CPA and we discussed it and determined that we would *not* have them go Subchapter S this year.

You have all read enough articles, I am sure, to know that some of the great fringe benefits you have are that you can buy your disability insurance, a tax deductible item for your corporation, you can buy your major medical plan with up to \$50,000 worth of life insurance, and the premium for major medical. We have a \$15,000 major medical and it covers husbands, wives, and children, and this is all deductible for the corporation. It still takes money, but if you are in a thirty percent tax bracket you are using a seventy-cent dollar to buy these things with, and we lawyers who are relegated

to making a living and building an estate based upon time, need all the help we can get, such as this.

We also have adopted a thing called a medical reimbursement plan, which many of you have adopted for your clients in a closely held corporation, but this means that we pay up to \$2,500 for each man in our law firm, and his dependents, anything that is not covered by the major medical plan, that is, eye glasses, dentistry, orthodontist, medicines, and this is not the over three and under five percent thing you have on your deductions when you schedule your deductions. This is again using, if you are in the thirty percent tax bracket, a seventy-cent dollar to buy your glasses or have your dentistry done. This is everything over and above what is covered by the major medical.

We have a County Bar and State Bar Disability program in Arizona, and we have worked that in with the disability program I mentioned to you.

I missed one thing. Let me talk about your social security payments. You have your self-employment tax as a partnership, a fellow practitioner, and that is some more money you have to dig down in the pocket once a year to come up with if you didn't plan for it. Now it is withheld monthly, but of course the corporation does make its contribution. It withholds from your salary and makes its contribution and the total percentage of the two is greater than the total number of dollars you would make as a fellow practitioner. However, it is withheld each month, it is an enforced budgetary thing, and we actually like the enforced budgetary thing on our withholding tax, income tax, over the quarter, after we got over that first cash flow hump I told you about. We like that and we have been living with it. When I talk to my doctor clients, they seem to like the idea, too, and the ones who have lived with it say it works better for them.

So we have the business purposes for the corporation and of course the tax purposes and perhaps there are some I've missed. We may have some changes in the offing by the Senate, by Congress, but I don't think these are reasons to not seriously consider the professional corporation. When I meet with the doctors, and this would go for a law firm trying to decide whether they want to incorporate or not, we will talk about, now, the pitch to the doctors.

Of course it's awfully hard to get four doctors together, so I tell them that I will meet them anywhere—in their office, in their home, for lunch, the country club. I tell them I do need an hour to an hour and one-half. It usually ends up as a luncheon engage-

ment. I ask them to bring their accountant or their CPA with them and we sit down to lunch. I eat very little. I talk most of the time.

They are worried about the ethics too, and I am always concerned about that for them as well as for lawyers, so I start off by giving them some history of the litigation and tell them how doctors—the Kittner group were doctors—and how they should be proud of those people who established this concept as an association basis, and then how it has grown. I point out how I feel the Internal Revenue has their job to do and they see it wrong, but there is a way to challenge this thing honestly. There are no criminal penalties involved, no fraud penalties, no penalties of any kind if it was to be determined that they were wrong. So I give them the history of the litigation on up to the *Empty* case. I point out to them how the taxpayer has never lost a case in this area.

Then I pull out an excerpt from a report of activities of a special committee on Professional Corporations of America by the American Bar Association. I like this because it talks bad about the Internal Revenue, but it also talks about doctors, and this they like, so we have the doctors and lawyers in one report. This was a report on Monday, February 8, 1965, at the midyear meeting of the American Bar Association in New Orleans. This report of our American Bar Association committee points out, and the doctors like this, that at its meeting on June 24, 1964, the House of Delegates of the American Medical Association adopted a resolution relating to the proposed amendment of the Kittner regulation and providing for the continuance of "its vigorous opposition to tax regulations that discriminate against professional associations and professional corporations and its support of legislation which seeks to provide tax equality with business corporations for professional associations and professional corporations." Now, that's the doctors talking in their association.

Then the next paragraph is about the American Bar Association, and it talks about the "arbitrary, unfounded, undefensible regulations of the Internal Revenue." That's the part I always eat up, right there.

This report does not propose to say that lawyers *should* incorporate or should not incorporate. They leave it up to each state to determine whether they want to adopt a Professional Corporation Act, and, of course, every lawyer has to make his own decision. And that is what we tell the doctors. We tell them the good and the bad, what the chances are for an audit, what the problems are, and before the law became established as it has in the last two or three months, we said, "Doctor, if you are timid, do not incor-

porate. If you are going to be so nervous that an Internal Revenue man is going to come in and audit you, don't incorporate. Life is too short.

"If you are not going to *act* like a corporation and understand the corporate concept, don't incorporate."

So the next thing we talk about is how a corporation functions and how they are going to have to change their way of doing business. I would never incorporate a doctor if he does not have a competent accounting man, or will rely upon you to help him operate as a corporation, because he will end up being challenged and he will not achieve the things that you've recommended to him. So we tell him there is, or was at least a calculated risk taxwise, but we say, "You make the decision. You can put the money into the profit-sharing plan, and we put a clause in the profit-sharing plan saying this whole thing is up-stepped and the money can be taken out of the profit-sharing plan and redistributed, so you owe Uncle Sam nothing more than the six percent interest for the time that you have had the money, but if you are half way smart it will earn the six percent while you have it in the profit-sharing plan. This is assuming you are a loser. So you will be out the interest but you will have earned enough to pay the interest to Uncle Sam for having kept his money, if he wins.

"The only other cost you are out," I tell the doctor, "is my attorney's fees, the cost of setting this thing up, and that is a tax deduction, win, lose, or draw, although it still takes money, but it isn't too much."

It might interest you what you charge doctors for this. As I say, you lawyers can do it for yourself, but the doctors cannot, and it is a service and there is a degree of specialization that is required of a good general practitioner, so our fee for doctors has been \$2,500, and that is without going to the Internal Revenue to seek a ruling on the profit-sharing plan. This is setting up the corporation, the beginning meetings, the Articles, the Bylaws, Employment Contracts, Disclaimer Contracts, all the things that go to make up the "acting like a corporation" that I have already discussed with you, working with the buy and sell agreement, funding it by insurance, if they are so inclined, working with their insurance man—all these things. Then we have charged \$500 for each additional doctor in the group, but we feel we have to put a top limit on it, so when we get up around \$3,500 or \$4,000 for a group—we have incorporated some with ten or fifteen doctors—I think our fee was \$3,500 or \$4,000.

We have a lot of these things, although we may have to change

them, but we are great ones for the MTST-IBM typewriter, and we have three of them in the office, so we have a lot of these things programmed and we can turn one out quite rapidly, but it still has to be tailored to fit each group of doctors and there is a lot of followup work. So the fee is *earned*.

We recently had, and this is becoming more and more prevalent now in our jurisdiction, we just received an Attorney General's opinion that there was a repeal by implication, at least our professional corporation statute, it is not a repeal, it is directed to a specific legislation and therefore controls over the dental bill, and now we can incorporate dentists. I feel the same thing is true in our state with optometrists. We do not list professions in our statute, as you have. We just say "where a license is required to practice a profession," any of those, and then you run into all sorts of strange things over in the code with reference to other professions. But we have all gone out and spent enough time and explained and worked with our Attorney General, and I think he is right on the law and on his opinion.

I explain to the doctors also the same entity concept with reference to their declining years and how they can build their profession, because I think it can work there as well as it can with a lawyer, and you can have something for your estate and something for your widow.

Basically, I tell the doctors that I feel their annual income should be in the area, taxable income, of \$30,000 per year, but we incorporated much earlier than that so far as our law firm was concerned, because I wasn't doing it for tax reasons, and I really don't know whether I am selling the idea to these doctors that taxes are not the whole thing, so I use the \$30,000 figure for the doctors and I don't have any problem because I think the average is \$40,000 or \$50,000, as I read the last statistics on doctors. I tell them that they should be earning enough to continue the standard of living to which they've reached up to and still have a savings or investment program, because the money will be put into this profit-sharing tax-sheltered trust, and they are not going to have their hands on it until they are sixty-five, or disability or death, and then their estate would have it. I tell them, "Please don't incorporate unless you have suitable partners that you know you are going to get along with, but even if you don't, it's easier to disband in the corporate form, I feel, than in the partnership form because the corporation goes on. Ours continues to the last surviving stockholder. We have to have two people to incorporate in Arizona. Your statute wisely indicates that one person may incorporate. I have been setting up some corporations with what I call an accommo-

dating stockholder. Your statute prohibits a professional man from owning stock in more than one professional corporation. Ours does not. So I have used some crossing over and have one doctor accommodate another, but surprisingly enough sometimes they end up with a merger anyway, so it works. But I tell them the risk involved. I am not trying to sell them anything. They just have to make that decision for themselves.

This, basically, is it. I have perhaps skipped some things, but I have been talking almost an hour and I didn't realize that. There may be some questions you might want to ask, and if they are simple questions that have a practical solution I might be able to help.

ALBERT G. SCHATZ, Omaha: Do you think you can get by Internal Revenue with the one-doctor corporation?

MR. HUNTER: Well, you may have to go to court. I would certainly tell the doctor. We always go to the district court because that is where you win the cases, in the Tax Court, the Tax Court. I like the district court judges because they are lawyers and general practitioners, a lot of them.

But I think that under the definition of the Internal Revenue Code they haven't defined "corporation." It's left to the state. Right now I think the correct ruling is, yes. We have one-man corporations in business corporations and the law really supports it in the rationale, if you read the statutes, because they do not define "corporation" in the Internal Revenue Code. It's left to state definition. One man can do it for sure here. We might have more problems in Arizona than you have, but I think I can get two men there to do it, and even if one man leaves, our statute says that it continues to the death of the last surviving stockholder. So that is how long that corporation continues, so that by implication says that we in our state can continue a one-man corporation. It takes two to start it but one can continue. I think the better law is that the one-man corporation should be upheld.

I don't think we've had any rulings on it, though, that I know of.

That's good! One question and I gave some kind of an answer to it!

QUESTION: I want to ask if you have this book coming out in a week?

MR. HUNTER: It is being sent to the ABA. The deadline is a week. They've given us two or three deadlines. We changed the format of it in August when I got back from the ABA convention

and we decided we would try to take a law firm balance sheet and profit and loss statement and use a consistent example rather than lots of little examples throughout as to what happens to you when you incorporate. So when we decided to set up a mythical law firm and then show what happens by reference back, we had to go back and revamp some things. This is being done primarily by a young lawyer who is our tax man in our law firm. He and I put our heads together about once a week and make this or that change. We hope to have it ready.

It is going to be just a very basic hand tool, but I think it will be useful, especially to the general practitioner who wants to do this for himself, because you can do it yourself. We are writing it for that and not for the specialist. There will be other books coming out after this that are perhaps more learned, perhaps more detailed, but I think this may be as useful a tool as you can find. It should be published along the first of the year sometime.

QUESTION: The shareholders are listed...?

MR. HUNTER: Yes, the shareholders are listed, and your statute does that, only to the licensed practitioner. We do not include the secretaries in our profit-sharing plan because at the time we incorporated we were worried about the fee-splitting, fee-sharing with lay people. I have since ceased to worry about that problem. Your Rule, I think, takes care of that very nicely, so long as there is not a definable fee that is allocated—I don't recall the exact wording in your proposed Rule, but so long as there is not a definable fee, I think that is right. We may change ours, because I think there is no reason why the young ladies should not be included in the firm, except that in the profit-sharing plan it might help keep some of them longer. The only reason you might not include them is because they do forfeit, you may have to go at a very early vesting when you put these secretaries in because we seem to have a lot of young girls who stay with us two, three, or four years, even though we give them all the medical insurance, we give them life insurance, we give them disability insurance, we give them all the things we have for the men to a lesser degree, but they don't seem to appreciate it. They like the cash dollar in the pocket to go buy the hat. That's why I don't know whether the profit-sharing would do us any good or not.

I know the law firm of Drexler and Wald in Denver feel that maybe that's a little help on the omissions and errors insurance. If these girls are over there and kind of have to keep track of you and help *prevent* a mistake, they may see that far ahead that there is some savings in premiums or dollars if there is a malpractice suit. I don't think our girls think that far ahead, however.

If there are no more questions, I thank you very much for the opportunity to present this.

MR. MOLDENHAUER: Thank you, Jim.

This will only be about two more minutes, if we could keep you all here. We have brought Jim Haggart back from a conference with his client to answer a couple of questions about the Truth In Lending Act, if anybody still has them. There were a lot of questions that seemed to come up. Does anyone have any questions on Jim's presentation on the Truth In Lending Act?

VIRGIL J. HAGGART, Jr., Omaha: Then I will take just one minute, and I know you won't believe that, after my performance yesterday.

Two questions were asked after I talked yesterday which I couldn't answer at the time, one was asked which I could answer, so I guess my batting average was not too bad.

First of all, someone raised the question about the occasional transaction. The case where, for instance, I sell my residence to a purchaser and take back some kind of a security interest in the real estate to secure the deferred payments, the question being, "Must I then make all these disclosures that are required by Truth In Lending?"

I think the answer to that question lies in the definition of the term "creditor," because I take it that only a creditor is required to make these disclosures under Regulation Z. So if you look at the definition of "creditor" contained in Regulation Z you will find that "creditor" means a person who, in the ordinary course of business, regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of consumer credit."

So I would say that if it is really an isolated transaction, and if the person extending the credit does not do this in the ordinary course of his business, he is not a creditor within the act, and he is not required to make the disclosure. Of course the risk you run there is, how many isolated transactions can you engage in before someone is going to come along and say, "Whether you believe it or not, you are in this business and are a creditor."

Believe me, the safest course here in all of these questions is to advise your client to comply, to make the disclosure. It has been our experience with the clients that we work with that the disclosures don't seem to deter very many borrowers. They don't seem to pay much attention to them, so probably you are not going to lose

very many transactions by making the disclosures. If in doubt, obviously the only safe course is to advise your client to go ahead and make them.

The second question was: "What about the merchant who offers two percent if paid within ten days, net within thirty days? Is he required to make disclosures under the Truth In Lending Act?"

Section 226.8 of Regulation Z covers this. The answer is that if the discount is less than 5 percent of the cash price, he is not bound to make disclosures. If the discount is more than 5 percent, then he is required to do so, and the method by which he is to compute the finance charge is set forth in the Regulation. But as long as he stays at 5 percent or less, he is not required to make disclosures.

Those were two questions that were asked several times yesterday, and those, I believe, are the correct answers to them. Does anyone else have any?

QUESTION: What about the merchant that adds on if the account is not paid?

MR. HAGGART: The same rule applies. Take a look at 226.8. That covers this whole area.

Any other questions? Thank you very much.

MR. MOLDENHAUER: Thank you, Jim.

We have one last very short but very important item, and we will turn the program back now to our immediate past President of this past year—Charles Adams.

GENERAL ASSEMBLY

PRESIDENT ADAMS: I am asking Jim Haggart to escort his senior partner to the microphone.

To comply with the rules and regulations of our Association, I declare that the Assembly has been reconvened and it is now my pleasure to hand this gavel to my successor.

You probably know, the order of rotation for many years has been that there be somebody from Lincoln, and that was Russ Mattson, and it was my privilege to follow him, being a country boy, and following me will be a boy from the metropolitan area. That has been our rotation for many years.

Last evening at the banquet George Turner was out of the room for the moment and he forgot to remind me that I should have done this, or at least part of this last night. I am afraid I greatly offended Bill Baird's beautiful wife, Grace. So my apologies to her!

At this time, with all due ceremony, it is my pleasure to present the gavel, and it is inscribed with Bill's name, representing symbolically the presidency of the Nebraska State Bar Association, to the Honorable William J. Baird of Omaha, who will close the assembly.

PRESIDENT WILLIAM J. BAIRD: Thank you very much, gentlemen. May I only say that I consider it to be the finest honor that can come to a lawyer in Nebraska to have the opportunity to serve this Association as its President, and I am deeply appreciative of the fact that I do have this opportunity next year.

I pledge myself to endeavor to the best of my efforts to continue the successful administrations of my predecessors.

I find that my immediate past predecessor has left me an awfully difficult act to follow. "Chick" Adams has done an outstanding job. He has had an outstanding year, and the way he has represented our Association reflects credit on every one of us as being members of the Nebraska Bar. "Chick," we appreciate it.

Without further ado I would like to use my new gavel to perform my first official function, which is to declare the Seventieth annual meeting of the Nebraska Bar Association duly adjourned.

...The Seventieth annual meeting of the Nebraska State Bar Association was adjourned sine die at four-forty o'clock...

NEBRASKA STATE BAR ASSOCIATION
Statement of Cash Receipts and Disbursements
Year ended August 31, 1969

Receipts:

Active members' dues	\$ 63,285
Inactive members' dues	5,790
Reinstatements	200
Sale of evidence books	795
Bill Digest subscriptions	\$ 1,910
Less expense of Digest	1,291
	<u>619</u>
Miscellaneous income	11
	<u>70,700</u>

Disbursements:

Salaries	\$ 8,609
Payroll taxes	907
Printing and stationery	1,144
Office supplies and expense	1,133
Telephone and telegraph	154
Postage and express	2,392
Directory	1,430
Officers' expenses	1,160
Executive council	832
Judicial council	8
Nebraska Law Review	10,752
Nebraska State Bar Association	
Journal	\$ 3,239
Less receipts for	
advertising	565
	<u>2,674</u>
Committee on public service	4,315
Less receipts for pamphlets....	176
	<u>4,139</u>
American Bar Association	
meetings	3,681
Young lawyers section	71
Mid-year meeting	366
Annual meeting, 1968	8,775
Less reimbursements and	
exhibit space.....	3,758
	<u>5,017</u>
Committee on inquiry	152
Committee on legal education	
and continuing legal education	286
Advisory committee	607

Committee on cooperation		
with American Law Institute	331	
Committee on reorganization	1,375	
Fair trial free press	33	
Committee on availability of legal service	218	
Committee on economics and		
law office management	250	
Committee on legislation	5,186	
Eighth circuit conference	500	
Aid to local bars	588	
Carried forward	<u>\$53,995</u>	<u>70,700</u>
University of Nebraska Law School		
moot court.....	100	
Tax institute	\$ 1,882	
Less reimbursements and		
registration receipts	<u>667</u>	1,215
Creighton Law Review	900	
Institute on will and trust drafting	1,944	
Probate manual	10,727	
Less receipts from manual	<u>6,933</u>	3,794
Referendum on dues increase	190	
Law day U.S.A.	1,288	
Insurance	80	
Maintenance expense	313	
Auditing	444	
Dues and subscriptions	70	
Section on real estate, probate and trust law	107	
Bad debts expense	30	
Bridge the Gap program	62	
Nebraska District Judges Association	250	
Annual meeting, 1969	145	
Miscellaneous expenses	<u>209</u>	65,136
Excess of receipts over disbursements		5,564
Balance at beginning of year		<u>10,620</u>
Balance at end of year (notes 1 and 2)		<u>\$ 16,184</u>

Notes:

- (1) The balance at end of year does not include a \$500, noninterest-bearing note receivable from Great Plains Tax Institute which is due January 1, 1970.
- (2) The association receives dividends in respect to a group insurance contract. The dividends, income on related investments, cash balances and investments have been segregated from the operating funds of the association. At August 31, 1969, segregated cash and investments amounted to \$38,750. During the year ended August 31, 1969, investment income amounted to \$1,864, and the dividend received with respect to the group insurance contract amounted to \$2,053. Also, a claims stabilization reserve fund is maintained with the insurance company.
- (3) The association adopted a retirement program for employees during November, 1967. No provision has been made for funding this obligation.

ROLL OF PRESIDENTS

1. 1900	*Eleazer Wakely	Omaha	37. 1936	*J. G. Mothersead	Scottsbluff
2. 1901	*William D. McHugh	Omaha	38. 1937	*C. J. Campbell	Lincoln
3. 1902	*Samuel P. Davidson	Tecumseh	39. 1938	*Harvey M. Johnsen	Omaha
4. 1903	*John L. Webster	Omaha	40. 1939	*James M. Lanigan	Greeley
5. 1904	*C. B. Letton	Fairbury	41. 1940	*E. B. Chappell	Lincoln
6. 1905	*Ralph W. Breckenridge	Omaha	42. 1941	*Raymond G. Young	Omaha
7. 1906	*E. C. Calkins	Kearney	43. 1942	*Paul E. Boslaugh	Hastings
8. 1907	*T. J. Mahoney	Omaha	44. 1943	*Robert R. Moodie	West Point
9. 1908	*C. C. Flansburg	Lincoln	45. 1944	*George L. DeLacy	Omaha
10. 1909	*Francis A. Brogan	Omaha	46. 1945	*Virgil Falloon	Falls City
11. 1910	*Charles G. Ryan	Grand Island	47. 1946	*Paul F. Good	Omaha
12. 1911	*Benjamin F. Good	Lincoln	48. 1947	*Joseph T. Votava	Omaha
13. 1912	*William A. Redick	Omaha	49. 1948	*Robert H. Beatty	North Platte
14. 1913	*John J. Halligan	North Platte	50. 1949	*Abel V. Shotwell	Omaha
15. 1914	*H. H. Wilson	Lincoln	51. 1950	*Earl J. Moyer	Madison
16. 1915	*C. J. Smyth	Omaha	52. 1951	*Clarence A. Davis	Lincoln
17. 1916	*John N. Dryden	Kearney	53. 1952	*George B. Hastings	Grant
18. 1917	*F. M. Hall	Lincoln	54. 1953	*Laurens Williams	Omaha
19. 1918	*Arthur C. Wakely	Omaha	55. 1954	*J. D. Cronin	O'Neill
20. 1919	*R. E. Evans	Dakota City	56. 1955	*John J. Wilson	Lincoln
21. 1920	*W. M. Morning	Lincoln	57. 1956	*Wilber S. Aten	Holdrege
22. 1921	*A. G. Ellick	Omaha	58. 1957	*Barton H. Kuhns	Omaha
23. 1922	*George F. Corcoran	York	59. 1958	*Paul L. Martin	Sidney
24. 1923	*Edward P. Holmes	Lincoln	60. 1959	*Joseph C. Tye	Kearney
25. 1924	*Fred A. Wright	Omaha	61. 1960	*Flavel A. Wright	Lincoln
26. 1925	*Paul Jessen	Nebraska City	62. 1961	*Hale McCown	Beatrice
27. 1926	*E. E. Good	Wahoo	63. 1962	*Ralph E. Svoboda	Omaha
28. 1927	*F. S. Berry	Wayne	64. 1963	*George A. Healey	Lincoln
29. 1928	*Robert W. Devoe	Lincoln	65. 1964	*Floyd E. Wright	Scottsbluff
30. 1929	*Anan Raymond	Omaha	66. 1965	*Harry B. Cohen	Omaha
31. 1930	*J. L. Cleary	Grand Island	67. 1966	*Herman Ginsburg	Lincoln
32. 1931	*Fred Shepherd	Lincoln	68. 1967	*M. M. Maupin	North Platte
33. 1932	*Ben S. Baker	Omaha	69. 1968	*George B. Boland	Omaha
34. 1933	*J. J. Thomas	Seward	70. 1968	*C. Russell Mattson	Lincoln
35. 1934	*John J. Ledwith	Lincoln	71. 1969	*Charles F. Adams	Aurora
36. 1935	*L. B. Day	Omaha			

ROLL OF SECRETARIES

1. 1900-06	Roscoe Pound	Lincoln	4. 1910-19	A. G. Ellick	Omaha
2. 1907-08	George P. Costigan, Jr.	Lincoln	5. 1920-27	Anan Raymond	Omaha
3. 1909	W. G. Hastings	Lincoln	6. 1928-36	Harvey Johnsen	Omaha
			7. 1937-	George H. Turner	Lincoln

ROLL OF TREASURERS

1. 1900	Samuel F. Davidson	Tecumseh	6. 1914-16	Chas. G. McDonald	Omaha
2. 1901	S. L. Geisthardt	Lincoln	7. 1917-22	Raymond M. Crossman	Omaha
3. 1902-03	Charles A. Goss	Omaha	8. 1923-37	Virgil J. Haggard	Omaha
4. 1904-05	Roscoe Pound	Lincoln	9. 1938-	George H. Turner	Lincoln
5. 1906-13	A. G. Ellick	Omaha			

* Deceased

ROLL OF EXECUTIVE COUNCIL

1. 1900-04	R. W. Breckenridge	Omaha	12. 1910-19	Alfred G. Ellick	Omaha
2. 1900-08	Andrew J. Sawyer	Lincoln	13. 1911-13	John A. Ehrhardt	Stanton
3. 1900-02	Edmund H. Hinshaw	Fairbury	14. 1911-11	Benjamin F. Good	Lincoln
4. 1903-06	W. H. Kellgar	Auburn	15. 1912-15	C. J. Smyth	Omaha
5. 1904-07	John N. Dryden	Kearney	16. 1912-12	William A. Redick	Omaha
6. 1905-08	F. A. Brogan	Omaha	17. 1913-15	W. M. Morning	Lincoln
7. 1907-10	S. P. Davidson	Tecumseh	18. 1913-16	J. J. Halligan	North Platte
8. 1908-09	W. T. Wilcox	North Platte	19. 1914-14	H. H. Wilson	Lincoln
9. 1909-11	R. W. Breckenridge	Omaha	20. 1915-17	Edwin E. Squires	Broken Bow
10. 1910-12	Frank H. Woods	Lincoln	21. 1916-16	John N. Dryden	Kearney
11. 1910-10	Charles G. Ryan	Grand Island	22. 1916-17	Fredrick Shepherd	Lincoln
			23. 1917-17	Frank M. Hall	Lincoln

24. 1917-18	Anan Raymond	Omaha	95. 1944-46	George L. DeLacey	Omaha
25. 1918-18	A. C. Wakely	Omaha	96. 1945-47	Virgil Falloon	Falls City
26. 1918-22	Fred A. Wright	Omaha	97. 1945-49	Leon Samuelson	Franklin
27. 1919-19	R. E. Evans	Dakota City	98. 1946-48	Harry W. Shackelford	Omaha
28. 1919-22	Geo. F. Corcoran	York	99. 1946-48	Paul F. Good	Lincoln
29. 1919-20	L. A. Flansburg	Lincoln	100. 1947-48	Joseph T. Votava	Omaha
30. 1920-20	W. M. Morning	Lincoln	101. 1947-48	John E. Dougherty	York
31. 1920-27	Anan Raymond	Omaha	102. 1947-55	Lyle E. Jackson	Neligh
32. 1921-21	Alfred G. Ellick	Omaha	103. 1948-49	Robert H. Beatty	North Platte
33. 1921-23	Guy C. Chambers	Lincoln	104. 1947-50	Frank D. Williams	Lincoln
34. 1922-24	James R. Rodman	Kimball	105. 1947-50	Thomas J. Keenan	Geneva
35. 1923-26	E. E. Good	Wahoo	106. 1948-51	Laurens Williams	Omaha
36. 1924-26	Robert W. Devoe	Lincoln	107. 1949-51	Joseph H. McGroarty	Omaha
37. 1924-24	Fred A. Wright	Omaha	108. 1949-54	Wilber S. Aten	Holdrege
38. 1925-28	Paul Jessen	Nebraska City	109. 1948-49	Abel V. Shotwell	Omaha
39. 1925-27	Clinton Brome	Omaha	110. 1949-55	Paul L. Martin	Sidney
40. 1927-29	Charles E. Matson	Lincoln	111. 1949-55	Joseph C. Tye	Kearney
41. 1927-28	Fred S. Berry	Wayne	112. 1949-51	Earl J. Moyer	Madison
42. 1928-29	Robert W. Devoe	Lincoln	113. 1950-60	Harry A. Spencer	Lincoln
43. 1928-30	T. J. McGuire	Omaha	114. 1950-55	Paul P. Chaney	Falls City
44. 1928-34	Harvey Johnsen	Omaha	115. 1950-59	Paul Bek	Seward
45. 1929-31	E. A. Coufal	David City	116. 1950-52	Clarence A. Davis	Lincoln
46. 1929-29	Anan Raymond	Omaha	117. 1951-55	Barton H. Kuhns	Omaha
47. 1930-32	Paul E. Boslaugh	Hastings	118. 1952-57	Thomas C. Quinlan	Omaha
48. 1930-30	J. L. Cleary	Grand Island	119. 1951-52	George B. Hastings	Grant
49. 1931-33	W. C. Dorsey	Omaha	120. 1952-53	Laurens Williams	Omaha
50. 1931-31	Fred Shepherd	Lincoln	121. 1953-54	J. D. Cronin	O'Neill
51. 1932-34	Richard Stout	Lincoln	122. 1954-57	Norris Chadderdon	Holdrege
52. 1931-32	Ben S. Baker	Omaha	123. 1954-56	John J. Wilson	Lincoln
53. 1933-35	Barlow F. Nye	Kearney	124. 1955-56	Wilber S. Aten	Holdrege
54. 1933-33	J. J. Thomas	Seward	125. 1955-58	F. M. Deutsch	Norfolk
55. 1934-36	Chas. E. McLaughlin	Omaha	126. 1955-64	Clarence E. Haley	Hartington
56. 1934-34	John J. Ledwith	Lincoln	127. 1955-58	R. R. Wellington	Crawford
57. 1935-35	L. B. Day	Omaha	128. 1955-64	Alfred G. Ellick	Omaha
58. 1935-37	James M. Langan	Greeley	129. 1954-55	Jean B. Cain	Falls City
59. 1935-38	H. J. Requarte	Lincoln	130. 1955-57	Hale McCown	Beatrice
60. 1935-38	Raymond M. Crossman	Omaha	131. 1956-62	C. Russell Matson	Lincoln
61. 1935-40	F. H. Pollock	Stanton	132. 1956-58	Barton H. Kuhns	Omaha
62. 1935-41	T. J. Keenan	Geneva	133. 1957-59	Paul L. Martin	Sidney
63. 1935-39	Walter D. James	McCook	134. 1957-60	Richard E. Hunter	Hastings
64. 1935-37	Roland V. Rodman	Kimball	135. 1957-64	John R. Fike	Omaha
65. 1936-36	J. G. Mothersead, Scottsbluff		136. 1957-64	Thomas F. Colfer	McCook
66. 1936-36	James L. Brown	Lincoln	137. 1958-63	William H. Lamme	Fremont
67. 1937-39	David A. Fitch	Omaha	138. 1958-61	Carl G. Humphrey	Mullen
68. 1937-39	Raymond G. Young	Omaha	139. 1958-60	Joseph C. Tye	Kearney
69. 1937-41	M. M. Maupin, North Platte		140. 1959-65	Charles F. Adams	Aurora
70. 1937-41	Golden P. Kratz	Sidney	141. 1959-61	Flavel A. Wright	Lincoln
71. 1938-42	Sterling F. Mutz	Lincoln	142. 1959-60	Thomas C. Quinlan	Omaha
72. 1938-42	Don W. Stewart	Lincoln	143. 1960-61	Hale McCown	Beatrice
73. 1940-46	George N. Mecham	Omaha	144. 1960-63	Ralph E. Svoboda	Omaha
74. 1940-42	Abel V. Shotwell	Omaha	145. 1960-67	Herman Ginsburg	Lincoln
75. 1940-42	Frank M. Colfer	McCook	146. 1960-65	James F. Begley	Plattsmouth
76. 1941-43	Virgil Falloon	Falls City	147. 1961-64	George A. Healey	Lincoln
77. 1941-43	Joseph C. Tye	Kearney	148. 1962-65	Lester A. Danielson	Scottsbluff
78. 1941-47	Earl J. Moyer	Madison	149. 1962-65	Floyd E. Wright	Scottsbluff
79. 1937-37	C. J. Campbell	Lincoln	150. 1962-68	John C. Mason	Lincoln
80. 1938-38	Harvey Johnsen	Omaha	151. 1961-	Vance E. Leininger	Columbus
81. 1939-39	James M. Langan	Greeley	152. 1964-	Fred R. Irons	Hastings
82. 1940-40	E. B. Chappell	Lincoln	153. 1964-66	Wm. J. Baird	Omaha
83. 1942-45	Fred J. Cassidy	Lincoln	154. 1964-66	Tracy J. Peycke	Omaha
84. 1941-41	Raymond G. Young	Omaha	155. 1964-	W. E. Mumby	Harrison
85. 1942-48	Max G. Towle	Lincoln	156. 1964-65	Hale McCown	Beatrice
86. 1942-42	Paul E. Boslaugh	Hastings	157. 1963-	Harry B. Cohen	Omaha
87. 1942-45	John E. Dougherty	York	158. 1965-	Bernard B. Smith	Lexington
88. 1942-49	Yale C. Holland	Omaha			
89. 1943-45	Robert R. Moodie, West Point				
90. 1941-45	B. F. Butler	Cambridge			
91. 1943-46	Frank M. Johnson, Lexington				
92. 1944-49	Floyd E. Wright, Scottsbluff				
93. 1945-50	John J. Wilson	Lincoln			
94. 1945-48	Robert B. Waring	Geneva			

159.	1965-67	Robert D. Mullin	Omaha	164.	1966-69	Leo Eisenstatt	Omaha
160.	1966-68	Paul P. Chaney	Falls City	165.	1967-69	C. Russell Mattson	Lincoln
161.	1966-	M. A. Mills, Jr.	Osceola	166.	1968-	Charles F. Adams	Aurora
162.	1966-68	M. M. Maupin	North Platte	167.	1969-	Wm. J. Baird	Omaha
163.	1966-67	George B. Boland	Omaha	168.	1969-	Bert L. Overcash	Lincoln